

THE CALIFORNIA STATE UNIVERSITY
OFFICE OF THE CHANCELLOR



BAKERSFIELD June 3, 2014

CHANNEL ISLANDS

CHICO

MEMORANDUM

DOMINGUEZ HILLS

TO: CSU Presidents

EAST BAY

FROM: Timothy P. White
Chancellor

FRESNO

FULLERTON

SUBJECT: Implementation of Title IX, VAWA/Campus SaVE Act, and Related Sex Discrimination, Sexual Harassment and Sexual Violence Legislation — Executive Order 1095

HUMBOLDT

LONG BEACH

LOS ANGELES

Attached is a copy of Executive Order 1095 relating to implementation of Title IX, the Campus SaVE Act, and related legislation on sex discrimination, sexual harassment and sexual violence. Executive Order 1095 supersedes Executive Order 1072.

MARITIME ACADEMY

MONTEREY BAY

In accordance with policy of the California State University, the campus president has the responsibility for implementing executive orders where applicable and for maintaining the campus repository and index for all executive orders.

NORTHRIDGE

POMONA

If you have questions regarding this executive order, please call Equal Opportunity/Whistleblower Compliance at (562) 951-4400.

SACRAMENTO

SAN BERNARDINO

TPW/eb

SAN DIEGO

Attachment

SAN FRANCISCO

c: CSU Office of the Chancellor Leadership
DHR Administrators
Human Resources Officers
Provosts
Title IX Coordinators
Vice Presidents, Administration and Finance
Vice Presidents, Student Affairs

SAN JOSÉ

SAN LUIS OBISPO

SAN MARCOS

SONOMA

STANISLAUS

THE CALIFORNIA STATE UNIVERSITY
Office of the Chancellor
401 Golden Shore
Long Beach, California 90802-4210
(562) 951-4400

Executive Order: 1095

Effective Date: June 3, 2014

Supersedes: Executive Order 1072

Title: Implementation of Title IX, VAWA/Campus SaVE Act, and Related Sex Discrimination, Sexual Harassment and Sexual Violence Legislation

This Executive Order provides direction on implementing Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*) and related regulations (34 C.F.R. Part 106) (Title IX); the Violence Against Women Reauthorization Act of 2013 (which amends the Jeanne Clery Disclosure of Campus Security and Campus Crimes Statistics Act, commonly known as the Clery Act) (20 U.S.C. 1092(f)) (VAWA) under its Campus Sexual Violence Elimination Act provision (Campus SaVE Act); Title IV of the 1964 Civil Rights Act (42 U.S.C. § 2000c *et seq.*); the California Equity in Higher Education Act (Cal. Educ. Code § 66250 *et seq.*); California Education Code §§ 67385.7 & 67390-91; and the Governor's *California Campus Blueprint to Address Sexual Assault*.

Legislative Requirements

Title IX is a federal law that applies to educational institutions receiving federal financial assistance and prohibits discrimination on the basis of sex in an educational institution's programs or activities, including employment, academic, educational, extracurricular and athletic activities (both on and off campus). Title IX protects all people regardless of their gender or gender identity from sex discrimination, including sexual harassment and sexual violence, which are forms of sex discrimination. Title IX requires institutions to take necessary steps to prevent sexual assault on their campuses, and to respond promptly and effectively when an assault is reported. The Clery Act requires colleges and universities to report annual statistics on crime, including sexual assault and rape, on or near their campuses, and to develop and disseminate prevention policies. VAWA/Campus SaVE Act clarifies that “sexual violence” includes domestic violence,

dating violence and stalking, which must be included in campus Clery reports, and also requires that institutional policies address and prevent sexual violence through training, education, and certain discipline procedures.¹ The California Equity in Higher Education Act prohibits discrimination based on any protected status, including gender or sex, in all postsecondary institutions in the state. California Education Code § 67385.7 *et seq.* requires the CSU to provide educational and preventive information about sexual violence to students. The *California Campus Blueprint to Address Sexual Assault* provides guidance on steps that can be taken to improve individual campus responses to sexual assault.²

Together, these laws require CSU campuses to (1) publish and widely disseminate a notice of nondiscrimination on the basis of gender or sex; (2) designate one employee to coordinate Title IX compliance (including compliance with VAWA/Campus SaVE Act, and all other relevant sexual discrimination/harassment/violence legislation); (3) adopt appropriate complaint and investigation procedures; (4) implement education and prevention programs for students and employees, as well as victim resource programs for victims of sexual harassment or sexual violence; (5) provide written rights and options information to victims of sexual violence; (6) provide training to the campus community on how to prevent, identify and report sex discrimination (including sexual harassment and sexual violence); (7) provide training on how to conduct investigations to those employees who investigate allegations of sex discrimination (including sexual harassment and sexual violence); (8) provide training to student conduct hearing officers.

The University is committed to creating and sustaining an educational and working environment free of sex discrimination, sexual harassment, sexual violence, domestic violence, dating violence, and stalking. The safety and well-being of the campus community is a priority for the University.

Definitions

Sex Discrimination means an adverse action taken against an individual because of gender or sex (including sexual harassment, sexual violence, domestic violence, dating violence, and stalking) as prohibited by Title IX; Title IV; VAWA/Campus SaVE Act; California Education Code § 66250 *et seq.*; and/or California Government Code § 11135. *See also* Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act (Cal. Govt. Code § 12940 *et seq.*), and other applicable laws. Both men and women can be victims of Sex Discrimination.

¹ Clery reporting and discipline procedures are addressed in other systemwide policy communications.

² Copies of the Blueprint may be obtained from <http://www.calcasa.org/wp-content/uploads/2012/06/OES-2004-CA-Campus-Blueprint.pdf>.

Sexual Harassment, a form of Sex Discrimination, is unwelcome verbal, nonverbal or physical conduct of a sexual nature that includes, but is not limited to Sexual Violence, sexual advances, requests for sexual favors, and indecent exposure, where:

- a. Submission to, or rejection of, the conduct is explicitly or implicitly used as the basis for any decision affecting a student's academic status or progress, or access to benefits and services, honors, programs, or activities available at or through the University; *or*
- b. Such conduct is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the student, and is in fact considered by the student, as limiting the student's ability to participate in or benefit from the services, activities or opportunities offered by the University; *or*
- c. Submission to, or rejection of, the conduct by a University employee is explicitly or implicitly used as the basis for any decision affecting a term or condition of employment, or an employment decision or action; *or*
- d. Such conduct is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the University employee or third party, and is in fact considered by the University employee or third party, as intimidating, hostile or offensive.

Sexual Harassment also includes acts of verbal, non-verbal or physical aggression, intimidation or hostility based on gender or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

Sexual Violence is a form of Sexual Harassment and means physical sexual acts, such as unwelcome sexual touching, Sexual Assault, Sexual Battery, Rape, Domestic Violence, Dating Violence, and Stalking (when based on gender or sex) perpetrated against an individual against his or her will and without consent or against an individual who is incapable of giving consent due to that individual's use of drugs or alcohol, status as a minor, or Disability.³ Sexual Violence may include 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).

Men as well as women can be victims of these forms of Sexual Violence. Unlawful sexual intercourse with a minor (statutory rape) occurs even if the intercourse is

³ See definition of Consent below.

consensual when the victim is under 18 years old, because the victim is considered incapable of giving legal consent due to age.

Sexual Assault is a form of Sexual Violence 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.⁴

Sexual Battery is a form of Sexual Violence and is any willful and unlawful use of force or violence upon the person of another because of that person's gender or sex.⁵

Rape is a form of Sexual Violence 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 s/he is incapacitated from alcohol and/or drugs, is under 18 years old, or if a mental disorder or developmental or physical disability renders the person incapable of giving consent. The accused's relationship to the person (such as family member, spouse, friend, acquaintance or stranger) is irrelevant.⁶ (See complete definition of Consent below.)

Acquaintance Rape is a form of Sexual Violence 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.)

Consent means an informed, affirmative, conscious decision by each participant to engage in mutually agreed-upon sexual activity.

- Consent must be **voluntary**, and given without coercion, force, threats, or intimidation. Consent requires positive cooperation in a particular sexual act, or expression of intent to engage in that sexual act through the exercise of free will.
- Consent can be **withdrawn or revoked**. Consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms of sexual activity (or other sexual acts). Consent to sexual activity given on one occasion does not constitute consent to sexual activity on another occasion. The fact that two people are or were in a dating or sexual relationship does not constitute consent to engage in sexual activity. There must **always** be mutual and affirmative consent to engage in sexual activity. Consent to a sexual act may be withdrawn or revoked at any time, including after penetration. The victim's request for the perpetrator

⁴ Cal. Penal Code § 240.

⁵ Cal. Penal Code § 242.

⁶ Cal. Penal Code §§ 261-263.

to use a condom or birth control does not, in and of itself, constitute consent. Once consent is withdrawn or revoked, the sexual activity must stop immediately.

- Consent cannot be given by a person who is *incapacitated*. For example, a person cannot give consent if s/he is unconscious or coming in and out of consciousness. A person is *incapacitated* if s/he lacks the physical and/or mental ability to make informed, rational judgments. Examples of incapacitation include unconsciousness, sleep and blackouts. Whether an *intoxicated* person (as a result of using alcohol or other drugs) is *incapacitated* depends on the extent to which the alcohol or other drugs impact the person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments. A person with a medical or mental disability may also lack the capacity to give consent.
- Being intoxicated by drugs or alcohol does not diminish a person's responsibility to obtain consent from the other party before engaging in sexual activity. Factors to be considered include whether the person knew, or whether a reasonable person in the accused's position should have known, that the victim did not give, or revoked, consent; was incapacitated; or was otherwise incapable of giving consent.
- Sexual intercourse with a minor is never consensual when the victim is under 18 years old, because the victim is considered incapable of giving legal consent due to age.

Domestic Violence is a form of Sexual Violence and is abuse committed against someone who is a current or former spouse, current or former cohabitant, someone with whom the abuser has a child, someone with whom the abuser 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. 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 husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.⁷

Dating Violence is a form of Sexual Violence and 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

⁷ Cal. Penal Code § 13700(b) and Cal. Family Code § 6211.

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.

Stalking means a repeated course of conduct directed at a specific person (when based on gender or sex) that places that person in reasonable fear for his/her or others' safety, or to suffer substantial emotional distress.⁹

Confidentiality and Sexual Violence,

Dating Violence, Domestic Violence and Stalking

The University encourages victims of Sexual Violence, Dating Violence, Domestic Violence, or Stalking (collectively Sexual Violence) to talk to someone about what happened – so they can get the support they need, and so the University can respond appropriately. Whether – and the extent to which – a University employee may agree to maintain confidentiality (and not disclose information to the Title IX Coordinator) depends on the employee's position and responsibilities at the University. The following information is intended to make victims aware of the various reporting and confidential disclosure options available to them – so they can make informed choices about where to turn for help. The University strongly encourages victims to talk to someone identified in one or more of these groups.

Certain University employees, listed below, are required by law to maintain near or complete confidentiality; talking to them is sometimes called a “privileged communication.” University law enforcement employees may maintain the victim's identity as confidential, if requested by the victim, but will report the facts of the incident to the Title IX Coordinator, including the identity of the perpetrator. Most other University employees are required to report all details of a Sexual Violence incident (including the identities of both the victim and alleged perpetrator) to the Title IX Coordinator so the University can take immediate action to protect the victim, and take steps to correct and eliminate the cause of Sexual Violence.

University Police, the Title IX Coordinator, University-employed physicians, professional counselors, sexual assault and domestic violence counselors and advocates, and certain other University employees are required to explain to victims their rights and options with respect to confidentiality.

⁸ Cal. Penal Code § 13700(b).

⁹ Cal. Penal Code § 646.9.

Privileged and Confidential Communications

*Physicians, Psychotherapists, Professional Counselors and Clergy*¹⁰ – Physicians, psychotherapists, professional, licensed counselors, and clergy who work or volunteer on or off campus, and who provide medical or mental health treatment or counseling (including those who act in that role under their supervision) may not report any information about an incident of Sexual Violence to anyone else at the University, including the Title IX Coordinator, without the victim’s consent. A victim can seek assistance and support from physicians, psychotherapists, professional, licensed counselors, and clergy without triggering a University investigation that could reveal the victim’s identity or the fact of the victim’s disclosure. *However, see limited exceptions below regarding when health care practitioners must report to local law enforcement agencies. Health care practitioners should explain these limited exceptions to victims, if applicable.*

*Sexual Assault and Domestic Violence Counselors and Advocates*¹¹ – Sexual assault and domestic violence counselors and advocates who work or volunteer on or off campus in sexual assault centers, victim advocacy offices, women’s centers, and health centers (including all individuals who work or volunteer in these centers and offices, as well as non-professional counselors or advocates, and those who act in that role under their supervision) may talk to a victim without revealing any information about the victim and the incident of Sexual Violence to anyone else at the University, including the Title IX Coordinator, without the victim’s consent. A victim can seek assistance and support from these counselors and advocates without triggering a University investigation that could reveal his/her identity or that a victim disclosed an incident to them. *However, see limited exceptions below regarding when sexual assault and domestic violence counselors and advocates must report to local law enforcement agencies. Counselors and advocates should explain these limited exceptions to victims, if applicable.*

The University will be unable to conduct an investigation into a particular incident or pursue disciplinary action against a perpetrator if a victim chooses to (1) speak only to a physician, professional counselor, clergy member, sexual assault counselor, domestic violence counselor or advocate; and (2) maintain complete confidentiality. Even so, these individuals will assist victims in receiving other necessary protection and support, such as victim advocacy, disability, medical/health or mental health services, or legal services, and will advise victims regarding their right to file a Title IX complaint with the University and a separate complaint with local or University police. If a victim insists on confidentiality, such professionals, counselors and advocates will likely not be able to

¹⁰ Cal. Evid. Code § 990 *et seq.*, § 1010 *et seq.*, and § 1030 *et seq.*

¹¹ Cal. Evid. Code § 1035 *et seq.* and § 1037 *et seq.*

assist the victim with: University academic support or accommodations; changes to University-based living or working schedules; or adjustments to course schedules. A victim who at first requests confidentiality may later decide to file a complaint with the University or report the incident to the police, and thus have the incident fully investigated. These counselors and advocates can provide victims with that assistance if requested by the victim. These counselors and advocates will also explain that Title IX includes protections against retaliation, and that the University will not only take steps to prevent retaliation when it knows or reasonably should know of possible retaliation, but will also take strong responsive action if it occurs.

EXCEPTIONS: Under California law, any health practitioner employed in a health facility, clinic, physician's office, or local or state public health department or clinic is required to make a report to local law enforcement if he or she provides medical services for a *physical condition* to a patient/victim who he or she knows or reasonably suspects is suffering from (1) a wound or physical injury inflicted by a firearm; or (2) any wound or other physical injury inflicted upon a victim where the injury is the result of assaultive or abusive conduct (including Sexual Violence, Domestic Violence, and Dating Violence).¹² This exception does *not* apply to sexual assault and domestic violence counselors and advocates. Health care practitioners should explain this limited exception to victims, if applicable.

Additionally, under California law, *all* professionals described above (physicians, psychotherapists, professional counselors, clergy, and sexual assault and domestic violence counselors and advocates) are mandatory child abuse and neglect reporters, and are required to report incidents involving victims under 18 years of age to local law enforcement.¹³ These professionals will explain this limited exception to victims, if applicable.

Finally, some or all of these professionals may also have reporting obligations under California law to (1) local law enforcement in cases involving threats of immediate or imminent harm to self or others where disclosure of the information is necessary to prevent the threatened danger;¹⁴ or (2) to the court if compelled by court order or subpoena in a criminal proceeding related to the Sexual Violence incident.¹⁵ If applicable, these professionals will explain this limited exception to victims.

¹² Assaultive or abusive conduct is defined to include a list of 24 criminal offenses, including Sexual Battery, incest, Rape, spousal Rape, abuse of a spouse or cohabitant, and any attempt to commit these crimes. Cal. Penal Code §§ 11160-11163.2.

¹³ Cal. Penal Code §§ 11164-11174.3; see also CSU Executive Order 1083 or any superseding executive order.

¹⁴ Cal. Evid. Code § 1024.

¹⁵ Cal. Evid. Code § 1035.4.

Reporting to University or Local Police

If a victim reports to local or University Police about Sexual Violence, the police are required to notify victims that their names will become a matter of public record unless confidentiality is requested.¹⁶ If a victim requests that his/her identity be kept confidential, his/her name will not become a matter of public record and the police will not report the victim's identity to anyone else at the University, including the Title IX Coordinator. University Police will, however, report the facts of the incident itself to the Title IX Coordinator being sure not to reveal to the Title IX Coordinator victim names/identities or compromise their own criminal investigation. The University is required by the federal Clery Act to report certain types of crimes (including certain sex offenses) in statistical reports. However, while the University will report the type of incident in the annual crime statistics report known as the Annual Security Report, victim names/identities will not be revealed.

Reporting to the Title IX Coordinator and Other University Employees

Most University employees have a duty to report Sexual Violence incidents when they are on notice of it. When a victim tells the Title IX Coordinator or another University employee about a Sexual Violence incident, the victim has the right to expect the University to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably. *In all cases, the University strongly encourages victims to report Sexual Violence directly to the campus Title IX Coordinator.*

As detailed above in the Privileged and Confidential Communications section of this policy, all University employees *except* physicians, licensed counselors, sexual assault counselors and advocates, must report to the Title IX Coordinator all relevant details about any Sexual Violence incidents of which they become aware. The University will need to determine what happened – and will need to know the names of the victim(s) and the perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the incident.

To the extent possible, information reported to the Title IX Coordinator or other University employees will be shared only with individuals responsible for handling the University's response to the incident. The University will protect the privacy of individuals involved in a Sexual Violence incident except as otherwise required by law or University policy. A Sexual Violence report may result in the gathering of extremely sensitive information about individuals in the campus community. While such

¹⁶ Cal. Penal Code § 293; Cal. Gov. Code § 6254(f).

information is considered confidential, University policy regarding access to public records and disclosure of personal information may require disclosure of certain information concerning a report of sexual violence. In such cases, efforts will be made to redact the records, as appropriate, in order to protect the victim's identity and privacy and the privacy of other involved individuals. Except as detailed in the section on Privileged and Confidential Communications above, no University employee, including the Title IX Coordinator, should disclose the victim's identity to the police without the victim's consent or unless the victim has also reported the incident to the police.

If a victim requests of the Title IX Coordinator or another University employee that his/her identity remain completely confidential, the Title IX Coordinator will explain that the University cannot always honor that request and guarantee complete confidentiality. If a victim wishes to remain confidential or request that no investigation be conducted or disciplinary action taken, the University must weigh that request against the University's obligation to provide a safe, non-discriminatory environment for all students, employees and third parties, including the victim. Under those circumstances, the Title IX Coordinator will determine whether the victim's request for complete confidentiality and/or no investigation can be honored under the facts and circumstances of the particular case, including whether the University has a legal obligation to report the incident, conduct an investigation or take other appropriate steps. Without information about a victim's identity, the University's ability to meaningfully investigate the incident and pursue disciplinary action against the perpetrator may be severely limited.

The Title IX Coordinator will inform the victim of the initiation of an investigation prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the University's response to the incident. The Title IX Coordinator will remain mindful of the victim's well-being, and will take ongoing steps to protect the victim from retaliation or harm, and work with the victim to create a safety plan. Retaliation against the victim, whether by students, employees or third parties, will not be tolerated. The University and Title IX Coordinator will also:

- Provide interim remedies requested by the victim, if they are reasonably available, regardless of whether the victim chooses to report Sexual Violence to campus or local police;
- Assist victims in accessing available victim advocacy, academic support, counseling, disability, medical/health or mental health services, and legal assistance both on and off campus;
- Provide security and support, which could include issuing a no-contact order, helping arrange a change of campus-based living or working arrangements or

course schedules (including for the perpetrator pending the outcome of the investigation) or adjustments for assignments, tests, or work duties; and

- Inform victims of their right to report a crime to University or local police – and provide victims with assistance if desired.

The University will not require a victim to participate in any investigation or disciplinary proceeding if the victim does not wish to participate.

The University will not generally notify parents or legal guardians of a Sexual Violence report unless the victim is under 18 years old or the victim provides the University with written permission to do so.¹⁷

Under California law, and pursuant to University policy, all University employees, including the Title IX Coordinator, are mandatory child abuse and neglect reporters and should explain to victims under 18 years of age that they are required to report the Sexual Violence incident to the police.¹⁸ However, the identity of the person who reports and the report itself are confidential and disclosed only among appropriate agencies.¹⁹

Because the University is under a continuing legal obligation to address the issue of Sexual Violence campus-wide, Sexual Violence reports (including non-identifying reports) may also require the University to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported Sexual Violence occurred; increased education, training and prevention efforts, including to targeted population groups; climate assessments/victimization surveys; and/or revision of policies and practices.

The Office of the Ombuds, if available on a specific campus, provides confidential, neutral and informal dispute resolution services, provides information about University policies and procedures, and makes referrals. However, in Sexual Violence cases, California law mandates that the Ombuds as well as all other University employees (except for physicians, licensed counselors, sexual assault counselors and advocates as discussed in the Privileged and Confidential Communications section of this policy above) report Sexual Violence incidents to the Title IX Coordinator.

¹⁷ If there is a health and safety issue (e.g., immediate threat to self or others), the University may notify parents or legal guardians, regardless of the victim's age, as allowed under the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g).

¹⁸ Cal. Penal Code §§ 11164-11174.3; see also CSU Executive Order 1083 or any superseding executive order.

¹⁹ Cal. Penal Code § 11167(d).

NOTE: If the University determines that the perpetrator poses a serious and immediate threat to the campus community, a designated Campus Security Authority under the Clery Act may be called upon to issue a timely warning to the community. Any such warning will not include any information that identifies the victim.

Notice of Nondiscrimination on the Basis of Gender or Sex

Each CSU campus is required to post a *Notice of Nondiscrimination on the Basis of Gender or Sex* prominently on its website. The notice must also be posted at campus locations where other notices regarding campus policies are posted, as well as published in electronic and printed publications of general distribution that provide information to students and employees about the University's services and policies.

The notice must contain specific information, including contact information for the U.S. Department of Education, Office for Civil Rights, and the campus Title IX Coordinator, as well as any Deputy Title IX Coordinator(s). The notice should make clear what kind of conduct constitutes Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, that such conduct is prohibited Sex Discrimination, and what Consent means.

Attachment A is the form *Notice of Nondiscrimination on the Basis of Gender or Sex* campuses shall make available in the manner described above. Aside from inserting information regarding campus administrators and on and off campus/local resources where indicated on the form, campuses *shall not* make any other changes to the Notice. The notice must identify the campus Title IX Coordinator and any Deputy Title IX Coordinator(s), and their respective roles and responsibilities on campus.²⁰

**Notice of Rights and Options for Victims of Sexual Violence,
Dating Violence, Domestic Violence and Stalking**

VAWA/Campus SaVE Act mandate that a *written* explanation of rights and options be provided to a student, employee or third party *who complains to the University that he/she has been a victim* of Sexual Violence, Domestic Violence, Dating Violence, or Stalking, whether the offense occurred on or off campus. It is the Title IX Coordinator's responsibility to ensure this written notice is provided to the complainant/victim(s).

Attachment C is the form written explanation of *Rights and Options for Victims of Sexual Violence, Dating Violence, Domestic Violence, and Stalking* campuses shall provide to complainants/victims. Aside from inserting information regarding campus

²⁰ See also **Attachment B** discussed below, *Myths and Facts about Sexual Violence*, which should be published alongside **Attachment A**, *Notice of Nondiscrimination on the Basis of Gender or Sex*.

administrators or local resources where indicated on the form, campuses shall not make any other changes to the form. The form shall contain the following:

- Information regarding possible sanctions or protective measures the University may impose following the final determination of a University disciplinary procedure regarding Sexual Violence, Rape, Acquaintance Rape, Domestic Violence, Dating Violence, Sexual Violence, or Stalking.²¹
- Information regarding procedures complainants should follow if Sexual Violence, Domestic Violence, Dating Violence, and Stalking has occurred, including *written* information about:
 - The importance of preserving evidence as may be necessary to prove Sexual Violence, Domestic Violence, Dating Violence, or Stalking, or to obtain a temporary restraining or other protective order;
 - The name and contact information of the University employee(s) to whom the alleged offense should be reported;
 - Reporting to law enforcement and campus authorities, including the victim's option to (a) notify law enforcement authorities, including on-campus and local police; (b) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and (c) decline to notify such authorities;
 - Where applicable, the rights of victims and the University's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court.
- Procedures for University disciplinary action for Sexual Violence, Domestic Violence, Dating Violence, and Stalking, including a clear statement that:
 - Such proceedings shall provide a prompt, fair, and impartial investigation and resolution;
 - Such proceedings shall be conducted by officials who receive annual training on issues related to these offenses, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;

²¹ Provision of this information in no way limits already existing obligations to provide interim remedies as warranted.

- The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice;
- Both the accuser and the accused shall be simultaneously informed in writing of:
 - The outcome of any disciplinary proceedings that arises from an allegation of Sexual Violence, Domestic Violence, Dating Violence, or Stalking;
 - The University's procedures to appeal the results of the disciplinary proceeding;
 - Any change to the disciplinary results that occurs prior to the time such results become final; and
 - When disciplinary results become final.
- Information regarding how the University protects the confidentiality of victims in its annual Clery reports, including how publicly available recordkeeping is accomplished without the inclusion of identifying information about the victim, to the extent permissible by law.
- Notification about counseling, medical/mental health, victim advocacy, legal assistance, and other services available for victims, both on campus and in the community.
- Notification about options for, and available assistance in, changing academic, living, transportation, and working situations, if requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the incident to campus police or local law enforcement.

A statement that no officer, employee or agent of the University shall retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising his/her rights or responsibilities: *“CSU policy prohibits retaliation against a person who reports Sexual Violence, assists someone with a report of Sexual Violence, or participates in any manner in an investigation or resolution of a Sexual Violence complaint. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education.”*

Complaint Procedures

The CSU is required to adopt and publish complaint procedures that provide for prompt and equitable resolution of Sex Discrimination complaints, including Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking.

Complaints made by employees, former employees, and applicants for employment.

Executive Order 1096, entitled “Systemwide *Policy* Prohibiting Discrimination, Harassment and Retaliation Against Employees and Third Parties and *Procedure* for Handling Discrimination, Harassment and Retaliation Allegations by Employees and Third Parties” is the appropriate systemwide procedure for all complaints of Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking made by employees and former employees against the CSU, another CSU employee, a CSU student or a third party. Employees covered by a collective bargaining agreement that provides a grievance procedure for raising allegations of Sex Discrimination or Sexual Harassment, including Sexual Violence, Domestic Violence, Dating Violence, and Stalking shall use the grievance procedure specified in their collective bargaining agreement.

Complaints made by students.²² Executive Order 1097, entitled "Systemwide Policy Prohibiting Discrimination, Harassment, and Retaliation Against Students and Systemwide Procedure for Handling Discrimination, Harassment and Retaliation Complaints by Students" is the appropriate systemwide procedure for all complaints of Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking made by CSU students against the CSU, a CSU employee, another CSU student, or a third party.

Complaints made by student-employees. Executive Order 1096 is the appropriate systemwide procedure for all complaints of Sex Discrimination, including Sexual Harassment or Sexual Violence, made by student-employees where the alleged Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking arose out of the person’s status as an employee and not his/her status as a student.

Complaints made by third parties. Executive Order 1096 is the appropriate systemwide procedure for all complaints of Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking filed by third parties against the CSU, a CSU employee or a CSU student.

Regardless of whether an employee, a student or a third party ultimately files a complaint under the applicable complaint procedure, if a campus knows or has reason to know

²² For purposes of this Executive Order, the term "students" includes applicants for admission.

about possible Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, it must review the matter to determine if an investigation is warranted. When warranted, all such investigations must be prompt, thorough and impartial. The campus must then take appropriate steps to eliminate the Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and/or Stalking, prevent its recurrence, and remedy its effects.

The Campus Title IX Coordinator

Each campus is required to designate one Title IX Coordinator with primary responsibility to monitor and oversee overall campus-wide implementation of compliance with this Executive Order,²³ including coordination of training, education, communications, and administration of complaint procedures for faculty, staff, students and third parties in the areas of Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking. The Title IX Coordinator shall have authority across *all* campus-based divisions and programs (e.g., Human Resources, Academic Affairs, Student Affairs, Athletics, Housing, University Police, etc.) to oversee and ensure implementation of Title IX and this Executive Order in all areas, including the duties listed below. The Title IX Coordinator and any Deputy Title IX Coordinator(s) shall be Management Personnel Plan (MPP) employees. The designated coordinator should be someone without other institutional responsibilities that could create a conflict of interest (e.g., someone serving as University counsel or as a disciplinary decision maker).

Each campus may designate one or more Deputy Title IX Coordinators. The Title IX Coordinator may delegate training, education, communications, complaint procedure administration, investigations, and related Title IX duties to one or more Deputy Title IX Coordinators. However, all Deputy Title IX Coordinators must report to the Title IX Coordinator, and the Title IX Coordinator shall oversee and supervise all such delegated tasks.

The Title IX Coordinator and any Deputy Title IX Coordinators must have adequate training on what constitutes Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, as well as how to investigate such complaints. The Title IX Coordinator and any Deputy Title IX Coordinator(s) must also understand how campus and systemwide complaint procedures operate.

The Title IX Coordinator is responsible for ensuring the *Notice of Non-Discrimination on the Basis of Gender or Sex (Attachment A)* and the *Myths and Facts About Sexual Violence (Attachment B)* are widely published and disseminated as set forth above.

²³ Again, this includes compliance with VAWA/Campus SaVE Act and other related sexual harassment/violence legislation referenced above.

Also, the notice must identify the campus Title IX Coordinator and any Deputy Title IX Coordinator(s), and their respective roles and responsibilities on campus. The Title IX Coordinator is also responsible for ensuring the written explanation of ***Rights and Options for Victims of Sexual Violence, Dating Violence, Domestic Violence, and Stalking (Attachment C)*** is provided to all Sexual Violence complainants/victims.

Title IX prohibits sex-based discrimination in ***all*** University programs and activities, including athletics. Title IX measures gender equity in athletics in three distinct areas: (1) participation; (2) scholarships; and (3) other benefits, including the provision of equipment and supplies, scheduling, travel, tutoring, coaching, locker rooms, facilities, medical and training facilities and services, publicity, recruiting, and support services. Because the Title IX requirements governing gender equity in athletics are complex and require coordination with NCAA and other rules, campuses may wish to consider designating a Deputy Title IX Coordinator to handle only gender equity in athletics issues under the supervision of the Title IX Coordinator, who remains ultimately responsible for campus-wide compliance.

In addition to coordinating training, education and preventive measures in the areas of Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, the campus Title IX Coordinator's mandatory duties include:

- Ensuring Sexual Violence victims are notified of the right to file a criminal complaint;
- Providing the victim with reasonable interim remedies, if requested by the victim, regardless of whether the victim chooses to report the conduct to campus police or local law enforcement;
- Meeting with the victim on a regular basis to determine what steps (interim and ultimate) should be taken to protect him/her from any hostile or unsafe environment resulting from Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and/or Stalking, and ensuring that such steps are taken;
- Working with appropriate campus divisions (e.g., University Police, Human Resources, Academic Affairs, and Student Affairs) to provide employees and students education programs and information, as required by Title IX, VAWA/Campus SaVE Act, and other applicable laws;
- Overseeing ***all*** complaints of Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and/or Stalking, including related investigations, interim and/or ultimate remedies, resolution, and coordination with disciplinary decision-makers regarding any resulting discipline against the accused;

- Reviewing the outcome of employee and student disciplinary proceedings involving cases of alleged Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and/or Stalking, to determine whether any additional remedies need to be provided to the victim;
- Creating a committee of employees, students and campus officials to identify strategies for ensuring that employees and students know how to identify and report Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, and know what remedies are available to victims;
- Regularly assessing employee and student activities to ensure that no practices or behaviors violate policies against Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, and using the results of such assessments to inform proactive remedial steps; and
- Identifying and addressing any systemic or other patterns of Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, and implementing corrective measures, as appropriate.

Training, Education and Preventive Measures

Each campus must implement preventive education programs to promote the awareness of CSU policies against Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, and to make victim resources available, including comprehensive victim services. Information regarding these programs must be included in all (1) orientation programs for all *new* students²⁴ and employees; (2) training for students who serve as advisors in residence halls; and (3) training for student athletes and coaches. Ongoing prevention and awareness campaigns for *all* students and employees shall also be conducted. These programs shall include the following information:

- A statement that the CSU prohibits Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking.
- What constitutes Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking.
- The definition of Consent.
- A statement that Sexual Violence, Domestic Violence, Dating Violence, and Stalking violate University policy and criminal law.

²⁴ This includes incoming transfer, graduate, online, and extended education students.

- Common facts and myths about the causes of Sexual Violence. (See **Attachment B, *Myths and Facts about Sexual Violence***, to be posted and published alongside **Attachment A, *Notice of Nondiscrimination on the Basis of Gender or Sex.***)
- Safe and positive options for bystander intervention that may be taken by an individual to prevent harm or intervene in risky situations involving these offenses.
- Methods of encouraging peer support for victims.
- A statement explaining that the University’s primary concern is the safety of members of the campus community; that the use of alcohol or drugs never makes the victim at fault for Sexual Violence; that students or employees who are victims of Sexual Violence should not be deterred from reporting incidents of Sexual Violence out of a concern that they might be disciplined for related violations of drug, alcohol, or other University policies; and that except in extreme circumstances, students or employees who are victims of Sexual Violence shall not be subject to discipline.
- A statement that “CSU policy prohibits retaliation against a person who reports Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, assists someone with a report of such conduct, or participates in any manner in an investigation or resolution of a Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and/or Stalking complaint. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education.”
- How to recognize warning signs of abusive behavior and how to avoid potential attacks.
- What someone should do if s/he has been the victim of, or witness to, Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking.
- Individuals to whom incidents may be reported.
- The availability of, and contact information for, campus and community resources for victims of Sexual Violence.
- Campus and systemwide policies and disciplinary procedures available for addressing alleged violations and the consequences of violating these policies. Such proceedings shall:

- Provide a prompt, fair, and impartial investigation and resolution;
- Be conducted by officials who receive annual training on issues related to Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.
- The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice.
- Both the accuser and the accused shall be simultaneously informed in writing of:
 - The outcome of any disciplinary proceedings that arises from an allegation of a Sexual Violence, Domestic Violence, Dating Violence, or Stalking;
 - The university's procedures for the accused to appeal the results of the disciplinary proceeding;
 - Any change to the disciplinary results that occurs prior to the time such results become final; and
 - When disciplinary results become final.
- Possible sanctions or protective measures the University may impose following the final determination of a University disciplinary procedure regarding Sexual Violence, Domestic Violence, Dating Violence, or Stalking.
- How the University will protect the confidentiality of victims, including how publicly-available recordkeeping (e.g., campus Clery reports) will be accomplished without the inclusion of identifying information about the victim, to the extent permissible by law.
- That persons who report being a victim of Sexual Violence, Domestic Violence, Dating Violence, or Stalking ***must receive written*** notification of:
 - Existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims, both on campus and in the community.
 - Options for, and available assistance in, changing academic, living, transportation, and working situations, if requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

- Procedures complainants should follow if Sexual Violence, Domestic Violence, Dating Violence, or Stalking has occurred, as well as the fact that the following *written* information must be provided to victims:
 - The importance of preserving evidence as may be necessary to prove Sexual Violence, Domestic Violence, Dating Violence, or Stalking, or to obtain a temporary restraining or other protective order;
 - The name and contact information of the University employee(s) to whom the alleged offense should be reported;
 - Reporting to law enforcement and campus authorities, including the victim's option to (a) notify law enforcement authorities, including on-campus and local police; (b) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and (c) decline to notify such authorities;
 - Where applicable, the rights of victims and the university's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court.

The above information is also contained in the *Notice of Nondiscrimination on the Basis of Gender or Sex (Attachment A)*. As previously stated, campuses shall post the notice on the campus website and include the notice in handbooks/policies applicable to employees, students, student athletes and members of student activity groups, along with *Attachment B, Myths and Facts About Sexual Violence*.

All persons involved in implementing these procedures (e.g., the campus Title IX Coordinator and any Deputy Title IX Coordinators, investigators, and hearing officers presiding over student conduct hearings) shall have relevant annual training on issues related to Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking. Such annual training shall include the CSU complaint processes, as well as the handling, investigation and analysis of complaints of Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking. The annual training shall also address applicable confidentiality issues, especially with respect to the campus's duty to weigh any victim's request for confidentiality against its duty to provide a safe and nondiscriminatory environment for all members of the campus community. For matters involving Sexual Violence, Domestic Violence, Dating Violence, and Stalking, the training shall include how to conduct an investigation and hearing process that protects the safety of the victim(s).

Remedies and Enforcement

Interim and Ultimate Remedies. The University is required to provide the victim with reasonably available interim remedies, if requested by the victim, regardless of whether the victim chooses to report the conduct to campus police or local law enforcement. The victim should be notified of options for avoiding contact with the alleged perpetrator, including changes to the accused's or victim's employment, academic or living situations, as appropriate. For example, the campus may prohibit the parties from having any contact with each other pending the outcome of the campus investigation and any ensuing discipline proceeding. Campuses should minimize the burden on the alleged victim and should not, as a matter of course, remove alleged victims from work assignments, job sites, classes or housing while allowing the accused to maintain the status quo. Other possible interim (and ultimate) steps may include providing an escort between campus locations in extraordinary cases where safety may be endangered; changes to employee work areas, work assignments or reporting relationships; providing students with academic support services such as tutoring or allowing students to re-take a course or withdraw from a course without penalty and without adverse effect on their academic records; and reviewing any disciplinary actions proposed to be taken against the alleged victim to see if there is a causal connection between the alleged Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, or Stalking, and the misconduct that may have resulted in the victim facing potential discipline. The Title IX Coordinator shall assist and provide the victim with reasonable remedies as requested by the victim throughout the reporting, investigative, and disciplinary processes, and thereafter.

Victim Rights and Resources. Victims also should be made aware of their rights under Title IX, VAWA/Campus SaVE Act and related legislation, and any available resources, such as counseling, health, and mental health services, as well as the right to file a complaint with University and/or local law enforcement. Campuses must also ensure that victims know how to report any subsequent problems, and the campus Title IX Coordinator or other appropriate campus representatives should follow-up with victims to determine whether any retaliation or new incidents of Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, or Stalking have occurred.

When addressing Sexual Violence, campuses should consider both on and off campus resources, including local rape crisis centers, municipal law enforcement agencies, district attorneys' offices, and forensic medical examination sites. This allows campuses to draw upon the expertise and resources of a broader group of professionals, thereby marshalling and maximizing time-sensitive services and resources.

Both the victim and the accused shall be *simultaneously* informed in writing of the outcome of any University disciplinary proceedings that arise from an allegation of Sexual Violence, Domestic Violence, Dating Violence, or Stalking.

Written Explanation of Victim Rights and Options. VAWA/the Campus SaVE Act mandate that a *written* explanation of rights and options must be provided to a student, employee or third party *who complains to the University that he/she has been a victim* of Sexual Violence, Domestic Violence, Dating Violence, or Stalking, whether the offense occurred on or off campus. It is the Title IX Coordinator's responsibility to ensure this written notice is provided to the complainant/victim(s). (See Attachment C.)

Coordination with Sexual Violence Criminal Investigations and Proceedings

A pending (campus or local) police investigation does not relieve a campus of its responsibility to resolve Sexual Violence complaints: a campus may not wait until the conclusion of a police investigation to commence its own investigation, and must take immediate steps to protect the complainant/victim(s). Although it may be necessary to temporarily delay the fact-finding portion of an investigation while the police are gathering evidence, once notified that the police have completed the fact gathering portion of their investigation, the campus must promptly resume and complete its own investigation. Subject to applicable law, the Title IX Coordinator should normally be given access to campus law enforcement investigation notes and findings as necessary for the investigation, so long as it does not compromise the criminal investigation.

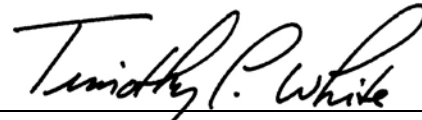
All law enforcement agencies are required to notify victims that their name will become a matter of public record unless there is a request for confidentiality.²⁵ If a victim requests his/her identity be kept confidential, the victim's name will not become a matter of public record and will not be reported to anyone else at the University, including the Title IX Coordinator. University police will, however, report the incident itself to the Title IX Coordinator, being sure not to reveal to the Title IX Coordinator the victim's identity or compromise its investigation. Unless the victim has already notified and/or consented to the disclosure of his/her identity to the Title IX Coordinator, campus law enforcement shall redact all victim identity information before providing the Title IX Coordinator access to its investigation notes and findings.

Campus police should receive copies of, and training on, CSU Sexual Violence complaint procedures and any other procedures used for investigating reports of Sexual Violence. Campus police shall request the victim's consent to report incidents of Sexual Violence to the campus Title IX Coordinator; if the victim refuses to give consent, the campus police shall at a minimum encourage him/her to file a complaint with the Title IX Coordinator (in addition to filing a criminal complaint). Campus police shall also report the incident

²⁵ Cal. Penal Code § 293; Cal. Gov. Code § 6254(f).

itself to the Title IX Coordinator while maintaining the confidentiality of the victim's identity.

If a campus has an MOU with local law enforcement, the MOU must allow the campus to meet its Title IX and VAWA/Campus SaVE Act obligations to resolve complaints promptly and equitably.

A handwritten signature in black ink that reads "Timothy P. White". The signature is written in a cursive style with a large, looping initial 'T'.

Timothy P. White, Chancellor

Dated: June 3, 2014