

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: Systemwide *Policy* Prohibiting Discrimination, Harassment and Retaliation Against Students and Systemwide *Procedure* for Handling Discrimination, Harassment and Retaliation Complaints by Students — Executive Order 1097

HUMBOLDT

LONG BEACH

LOS ANGELES

Attached is a copy of Executive Order 1097, which supersedes Executive Order 1074. Issued in response to the Campus Sexual Violence Elimination Act (the SaVE Act) and related guidance from the U.S. Department of Education, Office for Civil Rights, addressing Title IX of the Education Amendments of 1972, this policy and complaint procedure applies systemwide.

MARITIME ACADEMY

MONTEREY BAY

NORTHRIDGE

Complaints filed on or after the effective date of this executive order shall be processed in accordance with the policy and procedures outlined herein. Complaints filed before the effective date of this executive order shall be handled in accordance with Executive Order 1074.

POMONA

SACRAMENTO

SAN BERNARDINO

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.

SAN DIEGO

SAN FRANCISCO

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

SAN JOSÉ

SAN LUIS OBISPO

TPW/eb

SAN MARCOS

Attachment

SONOMA

STANISLAUS

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

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

Executive Order: 1097

Effective Date: June 3, 2014

Supersedes: Executive Order 1074

Title: Systemwide *Policy* Prohibiting Discrimination, Harassment and Retaliation Against Students and Systemwide *Procedure* for Handling Discrimination, Harassment and Retaliation Complaints by Students

Article I. Definitions

For purposes of this Executive Order, the following definitions apply:

- A. **Accused** means the CSU, a CSU employee, another Student, or a Third Party against whom an allegation of Discrimination, Harassment or Retaliation has been made.
- B. **Adverse Action** means an action that has a substantial and material adverse effect on the Complainant's ability to participate in a University program or activity free from Discrimination, Harassment or Retaliation, as those terms are defined below. Minor or trivial actions or conduct not reasonably likely to do more than anger or upset a Complainant does not constitute an Adverse Action.
- C. **Advisor.** The Complainant and the Accused may each elect to be accompanied by an Advisor to any meeting or interview regarding the allegations. The Advisor may be anyone, provided the Advisor is not a person with information relevant to the allegations who may be interviewed by the Investigator during the investigation. The Advisor may not answer questions regarding the subject matter of the investigation for the Complainant or the Accused.
- D. **Age**, as defined in California Government Code § 12926(b), refers to the chronological age of any individual who has reached his or her 40th birthday.
- E. **California State University (CSU)** means the 23 campus system of the California State University, including the Office of the Chancellor (CO).
- F. **Calendar Days** are defined as Monday through Sunday and includes official holidays.

- G. **Campus or University** means any of the 23 campuses of the CSU or the Office of the Chancellor.
- H. **Complaint** means a written communication that complies with Article VI. C alleging Discrimination, Harassment or Retaliation against the CSU, an employee, another Student, or a Third Party.
- I. **Complainant** means an individual who is eligible to, and does, file a Complaint to report Discrimination, Harassment or Retaliation. It also includes an alleged victim of Discrimination, Harassment or Retaliation in cases where some other person has made a report on that person's behalf.
- J. **DHR (Discrimination, Harassment, and Retaliation) Administrator** means the Management Personnel Plan (MPP) Employee at each Campus who is designated to administer this Executive Order and coordinate compliance with the laws prohibiting Discrimination, Harassment and Retaliation. The DHR Administrator may delegate tasks to one or more designees. **MPP Employee**, as defined in Cal. Code Regs. Title 5 § 42720 *et seq.*, means an employee who has been designated as "management" or "supervisory" under the provisions of the Higher Education Employer-Employee Relations Act. The president may assign the roles of the DHR Administrator and Title IX Coordinator (defined below) to the same person. The names of, and contact information for, the DHR Administrator and Title IX Coordinator shall be made readily available to the Campus community and Third Parties as described in Article III.
- K. **Disability** means mental or physical disability as defined in California Education Code § 66260.5.
- L. **Discrimination** means Adverse Action taken against a Student by the CSU, a CSU employee, another Student, or a Third Party because of a Protected Status.
- M. **Gender**, as defined in Cal. Educ. Code § 66260.7, means sex, and includes a person's gender identity and gender expression. Gender expression means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.
- **Sex**, as defined in Cal. Gov. Code § 12926(p), includes but is not limited to pregnancy, childbirth or associated medical condition(s).
- N. **Genetic Information**, as defined in Cal. Civ. Code § 51(2)(e), means:
- The Student's genetic tests.
 - The genetic tests of the Student's family members.
 - The manifestation of a disease or disorder in the Student's family members.

- Any request for, or receipt of genetic services, or participation in clinical research that includes genetic services, by a Student or any Student's family member.
- Genetic Information does not include information about any Student's sex or age.

O. **Harassment** means unwelcome conduct engaged in because of a Protected Status that 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.

This policy covers unwelcome conduct of a sexual nature. While romantic and/or social relationships between members of the University community may begin as consensual, they may evolve into situations that lead to charges of Sexual Harassment or Sexual Violence, including Domestic Violence, Dating Violence and Stalking, subject to this policy.

1. **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. 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 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.

2. **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 status as a minor, use of drugs or alcohol, or Disability.¹ 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 assault. Unlawful sexual intercourse with a minor (statutory rape) occurs even if the intercourse is consensual when the victim is under 18 years old, because the victim is considered incapable of giving legal consent due to age.

- a. **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.²
- b. **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.³
- c. **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 a person incapable of giving consent. The accused's relationship to the person (such as family member, spouse, friend, acquaintance or stranger) is irrelevant.⁴ (See complete definition of Consent below.)
- d. **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.)
- e. **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

¹ See definition of Consent, below.

² Cal. Penal Code § 240.

³ Cal. Penal Code § 242.

⁴ Cal. Penal Code §§ 261-263.

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 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.
- f. **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.⁵

- g. **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 victim.⁶ This may include someone the victim just met; *i.e.*, at a party, introduced through a friend, or on a social networking website.
 - h. **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 causes the victim to suffer substantial emotional distress.⁷
- P. **Investigator** means the person tasked with investigating a Complaint at Level I. All investigators shall receive annual training regarding such issues as the laws governing Discrimination, Harassment and Retaliation; Title IX and VAWA/Campus SaVE Act (as defined below); as well as other related state and federal laws prohibiting Discrimination, Harassment and Retaliation based on Gender or Sex, including Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence and Stalking; Student and witness privacy rights; and the Family Educational Rights and Privacy Act of 1974 (FERPA). For matters involving Sex Discrimination, Sexual Harassment and Sexual Violence, the Investigator shall also receive annual training on how to conduct an investigation process that protects the safety of the Complainant.
- The Investigator shall not be within the administrative control or authority of any Accused CSU employee. The Investigator may be the DHR Administrator, the Title IX Coordinator, or their designee, provided that he/she shall be an MPP Employee or an external consultant.
- Q. **Nationality**, as defined in Cal. Educ. Code § 66261.5, includes citizenship, country of origin, and national origin.
- R. **Preponderance of the Evidence** means the greater weight of the evidence; *i.e.*, that the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side. The Preponderance of the Evidence is the applicable standard for demonstrating facts in an investigation conducted pursuant to this Executive Order.

⁵ Cal. Penal Code § 13700(b) and Cal. Family Code § 6211.

⁶ Cal. Penal Code § 13700(b).

⁷ Cal. Penal Code § 646.9.

- S. **Protected Status** means Age, Disability, Gender, Genetic Information, Nationality, Race or Ethnicity, Religion, Sexual Orientation, and Veteran or Military Status.
- T. **Race or Ethnicity**, as defined in Cal. Educ. Code § 66261.7, includes ancestry, color, ethnic group identification, and ethnic background.
- U. **Religion**, as defined in Calif. Educ. Code § 66262, includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism. Religious dress and grooming practices, such as wearing religious clothing, head or face covering, jewelry, and artifacts, are part of a Complainant's religious observance or belief.
- V. **Remedies** mean actions taken to correct a violation of the prohibitions against Discrimination, Harassment and Retaliation set forth in this Executive Order. **Interim Remedies** shall be offered to a victim prior to the conclusion of an investigation in order to immediately stop the alleged wrong-doing and/or reduce or eliminate negative impact, when appropriate. Victims of Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking must be provided 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. Examples may include offering the victim the option of psychological counseling services, changes to academic or living situations, completing a course and/or courses on-line (if otherwise appropriate), academic tutoring, arranging for the re-taking of a class or withdrawal from a class without penalty, and/or any measure as appropriate to stop further alleged Discrimination, Harassment or Retaliation until an investigation is concluded or an informal resolution is reached (except in cases of Sexual Violence where informal resolution is not appropriate). 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.
- W. **Retaliation** means Adverse Action taken against a Student because he/she has or is believed to have:
1. Exercised rights under this Executive Order;
 2. Reported or opposed conduct which he/she reasonably and in good faith believes is Discrimination, Harassment or Retaliation;
 3. Participated in a Discrimination, Harassment or Retaliation investigation/proceeding; or
 4. Assisted someone in reporting or opposing Discrimination, Harassment or Retaliation.
- X. **Sexual Orientation**, as defined in Cal. Educ. Code § 66262.7, means heterosexuality, homosexuality, or bisexuality.

- Y. **Student** means an applicant for admission to the CSU, an admitted CSU student, an enrolled CSU student, a CSU extended education student, a CSU student between academic terms, a CSU graduate awaiting a degree, and a CSU student who withdraws from the University while a disciplinary matter (including investigation) is pending.
- Z. **Third Party** means a person other than an Employee or a Student. Examples include employees of auxiliary organizations (as defined in 5 Cal. Code Regs. § 42406), volunteers, independent contractors, vendors and their employees, and visitors.
- AA. **Title IX** means Title IX of the Education Amendments of 1972 (Title IX).
- BB. **Title IX Coordinator** means the Campus MPP Employee appointed by the Campus president to coordinate compliance with Title IX; VAWA/Campus SaVE Act; and other related state and federal laws prohibiting Discrimination, Harassment and Retaliation based on Gender or Sex, including Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking. (See Executive Order 1095).
- Each campus may designate one or more Deputy Title IX Coordinators, also of MPP status. 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. **MPP Employee**, as defined in 5 Cal. Code Regs. § 42720 *et seq.*, means an employee who has been designated as “management” or “supervisory” under the provisions of the Higher Education Employer-Employee Relations Act. The president may assign the roles of the DHR Administrator and Title IX Coordinator to the same person. The names of, and contact information for, the DHR Administrator and Title IX Coordinator shall be made readily available to the Campus community and Third Parties as described in Article III.
- CC. **VAWA** means the Violence Against Women Reauthorization Act of 2013 (which amends the Jeanne Clery Disclosure of Campus Crimes Statistics Act, commonly known as the Clery Act) (20 U.S.C. 1092(f)), under its Campus Sexual Violence Elimination Act provision (Campus SaVE Act).
- DD. **Veteran or Military Status** means service in the uniformed services.
- EE. **Working Days** are defined as Monday through Friday, excluding all official holidays or Campus closures at the Campus where the Complaint originated or at the Chancellor’s Office where the Complaint Level II Appeal is reviewed.

Article II. Policy Statement

The CSU is committed to maintaining an inclusive community that values diversity and fosters tolerance and mutual respect. All Students have the right to participate fully in CSU programs and activities free from unlawful Discrimination, Harassment and Retaliation. The CSU prohibits Harassment of any kind, including, Sexual Harassment and Sexual Violence, Domestic Violence, Dating Violence, and Stalking. Such behavior violates both law and University policy. The University shall respond promptly and effectively to all reports of Discrimination, Harassment and Retaliation, and shall take appropriate action to prevent, correct, and when necessary, discipline behavior that violates this policy.

The CSU strives to be free of all forms of unlawful Discrimination, Harassment and Retaliation. This policy is established in compliance with the California Equity in Higher Education Act (Education Code § 66250 *et seq.*), Title IX, VAWA/Campus SaVE Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975, among other applicable state and federal laws. It is CSU policy that no Student shall, on the basis of any Protected Status, be unlawfully excluded from participation in, or be denied the benefits of, any CSU program or activity. Nor shall a Student be otherwise subjected to unlawful Discrimination, Harassment, or Retaliation for exercising any rights under this Executive Order.

Except as noted below, any Campus community member who knows or has reason to know of allegations or acts that violate this policy, shall promptly inform the DHR Administrator or Title IX Coordinator (where the allegations involve Sex Discrimination, Sexual Harassment or Sexual Violence). Except as noted below, Employees are required to disclose the name of a possible victim of Sexual Violence to the Title IX Coordinator **even where the victim has requested that his/her name remain confidential**; the Title IX Coordinator will determine whether confidentiality is appropriate given the circumstances of each such incident as set forth in Executive Order 1095.

- The following persons are **not** required to report **any** information about an incident of Sexual Violence: (1) physicians; psychotherapists; professional, licensed counselors; and clergy who work on or off campus, and who provide medical or mental health treatment or counseling (including those who act in that role under their supervision); and (2) 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 those who act in that role under their supervision, along with non-professional counselors or advocates who work or volunteer in sexual assault centers, victim advocacy offices, women's centers or health centers), without the victim's consent; and
- The following persons are **not** required to report any **personally-identifiable information** about a victim of Sexual Violence, **if the victim requests**

confidentiality, but must report the facts of the incident, including the identity of the perpetrator (if known): University police.

Employees and Students who violate this policy shall be subject to discipline. If employee discipline is appropriate, it shall be administered in a manner consistent with applicable collective bargaining agreements, CSU policies, and legal requirements. Student discipline shall be administered in accordance with 5 Cal. Code Regs. § 41301 and Executive Order 1098, or any superseding executive order, if applicable.

Article III. Policy Implementation and Communication

Each Campus president shall designate a DHR Administrator who shall be responsible for the implementation of, and compliance with, this policy. The DHR Administrator is responsible for publicizing this Executive Order, developing campus training policies consistent with this Executive Order, conducting training, and establishing an administrative structure consistent with this Executive Order that facilitates the prevention and elimination of Discrimination, Harassment and Retaliation, including Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence and Stalking. Each Campus shall make the contact information for the DHR Administrator and Title IX Coordinator available to all members of the campus community as well as Third Parties. The contact information shall be updated, as necessary.

The requirements for training to promote awareness of CSU policies against Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, are set forth in Executive Order 1095.

This Executive Order shall be made readily available to all Students, CSU employees, and Third Parties, utilizing multiple media of communication, including Student orientations and catalogs, new employee orientations, Campus websites and publications, and the offices of Equity and Diversity, Student Affairs, Student Judicial Affairs, Disabled Student Services, Auxiliary Service Organizations, Academic Affairs, Extended Education and Human Resources.

Article IV. Procedure for Handling Alleged Policy Violations

This Executive Order provides Students a procedure to address Discrimination, Harassment and Retaliation by the CSU, a CSU employee, another Student, or a Third Party. Whenever a Campus determines that a Complaint is outside the scope of this Executive Order, the Campus shall promptly so notify the Student in writing.

A. Who May Use This Procedure

Subject to the exceptions set forth below, any Student may file a complaint of Discrimination, Harassment or Retaliation under this Executive Order.

1. ***Exception: Complaints of Student employees whose Discrimination, Harassment or Retaliation complaints arise out of their employment.*** Such complaints shall be governed by Executive Order 1096, or any superseding executive order, if applicable.
2. ***Exception: Complaints by a Student about his/her academic adjustments and/or accommodations to a University's educational program related to his/her Disability.*** Such inquiries and complaints shall be directed to the Campus Director, Disabled Student Services (DSS), and shall be governed by coded memorandum AA 2014-08, or any superseding policy, if applicable.

B. Grade Appeals That Allege Discrimination, Harassment or Retaliation

Grade appeals that allege Discrimination, Harassment or Retaliation shall proceed concurrently: (i) under Campus procedures per Executive Order 1037 or any superseding Executive Order, as applicable; and (ii) under this Executive Order. However, the Campus grade appeal procedure shall be placed in abeyance until such time as the Campus and any appeal processes under Article VI and/or Article VII of this Executive Order have concluded. The final determination under this Executive Order regarding whether Discrimination, Harassment or Retaliation occurred shall be provided to the Campus grade appeal committee. The committee shall be bound by such determination when considering the grade appeal request under Executive Order 1037.

Grade appeals that do not allege Discrimination, Harassment or Retaliation shall be filed under Campus procedures, per Executive Order 1037, or any superseding executive order, if applicable.

Article V. Informal Resolution – Campus Level

Students who believe they are or may have been victims of Discrimination, Harassment or Retaliation may initiate the Informal Resolution process prior to, or instead of, filing a Complaint. However, it is not appropriate in such cases for a Student to be required to “work out the problem” directly with the Accused; and in no event should any meeting between the Student and the Accused occur without appropriate involvement by the University (*i.e.*, the DHR Administrator or Title IX Coordinator, if the allegations involve Sex Discrimination, including Sexual Harassment).

Where the allegations involve Sex Discrimination (including Sexual Harassment or Sexual Violence), the Complainant shall promptly be referred to the Title IX Coordinator. The Title IX Coordinator shall meet with the Complainant to discuss the Complainant's concerns and reasonable Interim Remedies, as appropriate. In cases where Sexual Violence is alleged, the Complainant shall also be advised to immediately file a Complaint under Article VI. ***Informal resolution is not appropriate when Sexual Violence is alleged.***

In all other cases, the Student shall be notified that the Student, the Accused or the University may at any time elect to terminate the Informal Resolution Process. In that event, the DHR Administrator/Title IX Coordinator shall promptly notify the Student and the Accused in writing that the Informal Resolution process has terminated, the effective date thereof, and inform the student of his/her right to file a complaint pursuant to Article VI.

Upon receipt of a Student's concern, the DHR Administrator or Title IX Coordinator (if the allegations involve Sex Discrimination, Sexual Harassment and Sexual Violence) shall promptly meet with the Student to discuss his or her concern and Interim Remedies, as appropriate.

During the pendency of the Informal Resolution process, the timeline to file a Complaint shall be extended for a period of no longer than **30 Calendar Days**. Thus, under Article VI.B, if an extension is granted, a Complaint may be filed within **90 Calendar Days** after the most recent alleged act of Discrimination, Harassment or Retaliation occurred, or **60 Calendar Days** after the end of the academic term (semester/quarter) in which the most recent alleged act of Discrimination, Harassment or Retaliation occurred (whichever comes later).

If the Student's concern alleges Sex Discrimination (including but not limited to Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence or Stalking), the Title IX Coordinator shall, during the initial meeting with the Student, undertake any and all applicable steps described in Article VI. D. In cases alleging Sexual Violence, Domestic Violence, Dating Violence or Stalking, the Student shall also be advised to immediately file a Complaint under Article VI. In accordance with Title IX and VAWA/Campus SaVE Act, Executive Order 1095 describes the *written* information that must be provided *to a Student who reports* to the University that he/she has been a victim of Sexual Violence (including Domestic Violence, Dating Violence or Stalking).

The Campus shall attempt to resolve the Student's concern quickly and effectively. The DHR Administrator (or Title IX Coordinator, where the allegations involve Sex Discrimination or Sexual Harassment) shall meet with the Student, the Accused, and any other persons or witnesses determined by the DHR Administrator or Title IX Coordinator to be necessary for a resolution of the matter, to review the allegations and any responses. Informal Resolution may take the form of a negotiated resolution facilitated by the DHR Administrator or Title IX Coordinator.

If informal resolution is reached, a record of the resolution shall be signed by the Student and maintained in accordance with applicable Campus recordkeeping policies. The matter shall be considered closed and the Student is precluded from filing a Complaint or appeal concerning the same incident, except where the terms of the informal resolution have been violated or have been ineffective in stopping the Discrimination, Harassment, or Retaliation.

Where the Accused is another Student, the DHR Administrator/Title IX Coordinator shall inform the student conduct administrator of the outcome of the Informal Resolution process, including any Interim Remedies and/or Remedies afforded to the Student-victim.

If resolution is not reached, the Campus shall promptly notify the Student and the Accused in writing that the Informal Resolution process is terminated, and the termination effective date. At the Student and/or Accused's request, such notification shall also be provided to the Student and/or Accused's respective Advisor. The Student shall be provided written notification about how to file a Level I Complaint and the timeline for doing so.

Both the Student and the Accused shall keep the details of the Informal Resolution process confidential until the process is concluded. If the matter is not resolved informally and an investigation is conducted, the Student and the Accused shall maintain confidentiality until the conclusion of the Level I and Level II processes, if any.

Article VI. Level I - Campus Level

The Campus may determine that circumstances warrant initiating an investigation even if a Complaint has not been filed and independent of the intent or wishes of the Student. In that event, any such investigation shall be subject to Article VI. D through I and Article VIII. A through H only. Such investigation shall not be subject to Article VII (*Level II Appeal Review - Office of the Chancellor*).

- A. **Filing a Complaint.** The Student shall submit a written Complaint to the DHR Administrator/Title IX Coordinator. The date of receipt shall be deemed to be the Complaint filing date. The DHR Administrator/Title IX Coordinator shall offer reasonable accommodations to Students who are unable to submit a written complaint because of Disability.
- B. **Timeline for filing a Complaint.** To be timely, a Complaint must be filed *within 60 Calendar Days* after the most recent alleged act of Discrimination, Harassment or Retaliation occurred, or **30 Calendar Days** after the end of the academic term (semester/quarter) in which the most recent alleged act of Discrimination, Harassment or Retaliation occurred (whichever comes later). This timeline may be extended pursuant to Article V, above.
- C. **Complaint Requirements.** The Student should complete the attached "CSU Student Discrimination/Harassment/Retaliation Complaint Form" or, in the alternative, submit a written signed statement containing the following information:
 - 1. The Student's full name, address (including email address) and telephone number(s);
 - 2. The name of the Accused and job title, position or Student status, if known;

3. The Protected Status that is the basis for the alleged Discrimination, Harassment, or Retaliation, or the Complainant's activity that is the basis for the alleged Retaliation;
4. A clear, concise statement of the facts that constitute the alleged Discrimination, Harassment, or Retaliation, including pertinent date(s) and sufficient information to identify any individuals who may provide relevant information during the course of any investigation;
5. A statement verifying that the information provided is true and accurate to the best of the Student's knowledge;
6. The term and year of the Student's most recent active academic status or the term and year in which he/she sought admission to the University;
7. The full name, address and telephone number of the Student's advisor, if any;
8. The specific harm resulting from the alleged Discrimination, Harassment or Retaliation;
9. The specific remedy sought;
10. The Student's signature; and
11. The date on which the Complaint is submitted.

D. Intake interview. The DHR Administrator or Title IX Coordinator (in cases alleging Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence and Stalking) shall meet with the Student as soon as possible, but no later than **10 Working Days** after the Complaint was received. The Student shall make him/herself available for this meeting. Executive Order 1095 describes *written* information that must be provided *to any Student who reports* to the University that he/she has been a victim of Sexual Violence, pursuant to Title IX and VAWA/ Campus SaVE Act:

1. The meeting shall serve as the initial intake interview and will: (a) acquaint the Student with the investigation procedure and timelines; (b) inform the Student of his/her rights (including having an advisor throughout the process); (c) provide the opportunity for the Student to complete and sign a Complaint form, if not already done; and (d) discuss Interim Remedies, as appropriate.
2. In cases alleging Sexual Violence, the Title IX Coordinator shall inform the Student of the right to file a criminal complaint; offer to assist the Student with filing a criminal complaint; assure the Student that such filing will not significantly delay the Campus investigation; advise the Student of available resources such as the Campus police, student health service center or psychological counseling center; and discuss reasonable and appropriate Interim Remedies. Executive Order 1095 describes the

other items that must be addressed with the Student, including the provision of *written* information *to any Student who reports* to the University that he/she has been a victim of Sexual Violence.

- E. **Advisor.** The Student and the Accused may elect to be accompanied by an advisor to any meeting or interview regarding the Complaint. The advisor may be an attorney. The advisor may not speak on behalf of the Student or Accused; his/her role is limited to observing and consulting.
- F. **Confidentiality.** Information regarding the Complaint shall be shared with other University employees and law enforcement exclusively on a “need to know” basis. University employees shall endeavor to honor any Complainant's or victim's request for confidentiality; however, the University shall also weigh requests for confidentiality against its duty to provide a safe and nondiscriminatory environment for all members of the Campus community. **Confidentiality, therefore, cannot be ensured. Except as noted in Article II, in cases involving Sexual Violence, victim requests for complete confidentiality are to be referred to the Title IX Coordinator, who will then determine whether the request for complete confidentiality can be honored under the facts and circumstances of the particular case. (See Executive Order 1095).**
- G. **Investigation Procedure.** The DHR Administrator or Title IX Coordinator (in cases alleging Sex Discrimination, including Sexual Harassment and Sexual Violence) shall promptly investigate the Complaint or assign this task to another Investigator on a case-by-case basis. The Investigator shall receive annual training regarding such issues as the investigatory process; and the laws governing Discrimination, Harassment and Retaliation. (See also Executive Order 1095 regarding required training for Sexual Harassment and Sexual Violence investigations.) If delegated, the DHR Administrator or the Title IX Coordinator (in cases alleging Sex Discrimination, including Sexual Harassment and Sexual Violence) shall oversee the investigation to ensure that it is conducted in accordance with the standards, procedures and timelines set forth herein.

The Student and the Accused shall have equal opportunities to present relevant witnesses and evidence in connection with the investigation.

The investigation shall be completed no later than **60 Working Days** after the intake interview, unless the timeline has been extended pursuant to Article VIII. E or F. The timeline should not be extended for a period longer than an additional **30 Working Days** from the original due date.

On occasion, a criminal investigation may be initiated by a law enforcement agency over the same allegations that are reported in a Complaint filed under this Executive Order. A pending (Campus or local) police investigation is a separate investigation and it does not relieve a Campus of its responsibility to handle complaints under this Executive Order. Thus, a Campus may not wait until the conclusion of a police investigation to commence its own investigation under this Executive Order. 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. In cases involving Sexual Violence, see the “Coordination with Criminal Investigations and Proceedings” section of Executive Order 1095.

Upon inquiry, the Complainant and Accused shall be advised of the status of the investigation.

- H. **Investigative Report.** Within the investigation period stated above, the Investigator shall prepare an investigative report. The report shall include a summary of the allegations, the investigative process, the Preponderance of the Evidence standard, the evidence considered and appropriate findings. The report shall be promptly provided to the DHR Administrator or Title IX Coordinator (if applicable).
- I. **Notice of Investigation Outcome.** If the DHR Administrator or Title IX Coordinator (in cases alleging Sex Discrimination, including Sexual Harassment and Sexual Violence) performed the investigation, he or she shall notify the Student in writing of the investigation outcome within **10 Working Days** of completing the report. Otherwise, within **10 Working Days** of receiving the report, the DHR Administrator or Title IX Coordinator shall review the report and notify the Student in writing of the outcome of the investigation. Where a Complaint is made against another Student, the DHR Administrator or Title IX Coordinator shall also notify the Campus student conduct administrator of the investigation outcome.

Written notice of the investigation outcome shall include a summary of the allegations, the investigative process, the Preponderance of the Evidence standard, the evidence considered, the findings of fact, a determination as to whether this Executive Order was violated, and if so, any Remedies to be afforded to the Complainant (such as an order that the Accused not contact the Complainant). If the outcome is that this Executive Order was not violated, the notice shall inform the Complainant of his/her right to file an appeal under Article VII. At the Complainant’s request, a copy of the notice shall also be provided to his or her Advisor, if any.

A separate written notice shall be provided to the Accused indicating whether or not the allegations at Level I were substantiated. If the outcome is that this Executive Order was not violated, the Accused shall also be informed of the Complainant’s right to file an appeal. At the Accused’s request, a copy of the notice shall also be provided to his or her Advisor.

Article VII. Level II Appeal Review - Office of the Chancellor

- A. **Timing for Appeal to CO.** Any Complainant who is not satisfied with a Level I determination that this Executive Order was not violated may file a Level II appeal with the Office of the Chancellor (CO) no later than **14 Calendar Days** after receipt of the written notice of the Level I outcome.

Level II appeals shall be addressed to:

Equal Opportunity and Whistleblower Compliance Unit
Systemwide Human Resources
Office of the Chancellor
401 Golden Shore, 4th Floor
Long Beach, California 90802

The CO shall provide prompt written notice to the Accused and the DHR Administrator or Title IX Coordinator (where the allegations involve Sex Discrimination, Sexual Harassment or Sexual Violence) of any such appeal.

- B. Appeal Request.** The appeal shall be in writing and shall: (1) specify the reasons why the determination reached at Level I was erroneous; and (2) identify the specific evidence submitted at Level I that supports a finding the alleged Discrimination, Harassment or Retaliation by a Preponderance of the Evidence. The issues and evidence raised on appeal shall be limited to those raised and identified at Level I. The CO will offer reasonable accommodations to Complainants who are unable to submit a written appeal because of Disability.
- C. CO Review.** The CO review shall be limited in scope to determining (1) whether the Level I findings of fact are supported by a Preponderance of the Evidence; and (2) whether the findings of fact support the conclusion that this Executive Order was not violated. The review will not involve a new investigation and will not consider evidence that the Complainant did not introduce at Level I. If the CO review determines that evidence introduced for the first time at Level II could have affected the Level I determination, the Complaint shall be returned to the Campus so that the Level I investigation may be completed and the findings revised, if necessary, within a specified timeframe. Under these circumstances, the Complainant and Accused shall be informed that the investigation has been reopened and the timeline established in Article VII. D shall be extended pursuant to Article VIII. E and F.
- D. CO Response.** The CO designee shall respond to the Student no later than **60 Working Days** after receipt of the Level II appeal, unless the timeline has been extended pursuant to Article VIII. E or F. The response shall include a summary of the issues raised on appeal, a summary of the evidence considered, the Preponderance of the Evidence standard, a determination of the two issues listed in Section C above, and a final decision. A copy shall be forwarded to the DHR Administrator or Title IX Coordinator (where the allegations involve Sex Discrimination, Sexual Harassment or Sexual Violence). At the Complainant's request, a copy of the CO Response shall also be provided to his or her Advisor. The Campus shall determine whether any remedies shall be afforded to the Complainant and provide prompt written notice to the Complainant of any remedies to be provided to him/her. The CO designee shall provide a separate notice to the Accused and, if requested by the Accused, to his or her Advisor, indicating the appeal outcome; *i.e.*, whether the Accused has been

determined to have violated this Executive Order by a Preponderance of the Evidence.

- E. **Closure.** The CO Response and decision are final and conclude the CSU Complaint process.


Article VIII. General Provisions for Investigation/Review of Complaints

- A. All investigations and reviews shall be conducted impartially and in good faith.
- B. Students and CSU employees are required to cooperate with the investigation and other processes set forth in this Executive Order, including but not limited to attending meetings, being forthright and honest during the process, and keeping confidential the existence and details of the investigation/review. If a Complainant and/or Accused refuse to cooperate, the CSU may draw all reasonable inferences and conclusions on the basis of all available evidence and conclude the investigation/review.
- C. A Student shall proceed with a Complaint in good faith. A Student who knowingly and intentionally files a false Complaint or gives false statements shall be subject to discipline in accordance with 5 Cal. Code Regs. § 41301. Such disciplinary action shall not be deemed to be Retaliation.
- D. Both the Student and Accused shall have the right to identify witnesses and other evidence for consideration; however, the CSU shall decide what evidence (if any) is relevant and significant to the issues raised.
- E. If the Student, the Accused, a witness, the Investigator, CO designee, or other necessary person involved in the Complaint process is unavailable due to any reason deemed to be legitimate by the Investigator/CO designee, the timelines stated herein will be automatically adjusted for a reasonable time period that should not exceed an additional 30 Working Days. The Student and Accused shall receive written notification of any period of extension.
- F. Timelines set forth herein may also be extended by mutual agreement. If the Student does not agree or does not respond to the CSU's request for an extension, the CSU shall respond to the Complaint or appeal within the timelines set forth herein. Any such response shall be interim in nature as it will be based upon the information available at the time. The interim response shall note that the investigation or review is continuing until the CSU is satisfied that its duty to respond to the allegation(s) has been appropriately discharged. The interim response shall include a summary of the allegations, a description of the investigative and review process, and shall also provide the Student with an anticipated date of completion.
- G. When submitting a Complaint or issuing a Level I or II decision, personal delivery, overnight delivery service, or certified mail shall be used. If personal delivery is

used, a signature acknowledging the calendar date of delivery shall be obtained which will establish the date of filing or response. If certified mail delivery is used, the postmark shall establish the date of filing or response.

- H. The University is not obligated to investigate under the provisions of this Executive Order when no Complaint is filed, or when a Complaint is not timely filed. Nevertheless, if the University determines the circumstances warrant an investigation, the University shall investigate the underlying allegations of any Discrimination, Harassment or Retaliation Complaint. In that event, any such investigation shall be subject to Article VI. D through I and Article VIII. A through H of this Executive Order, but shall not be subject to Article VII. The University may in its discretion waive the time limits for filing a Complaint and choose to process the Complaint under this Executive Order. In the event that the University determines an investigation is not warranted, the reasons for that decision shall be reduced to writing and retained by the University according to appropriate record retention policies.
- I. Where it is necessary for the Complainant or his/her Advisor to have access to specific information for the purpose of filing a complaint, the Complainant or his/her Advisor shall make a written request for such information to the Campus. The Complainant or his/her Advisor shall have access to information within the policies and procedures and laws governing confidentiality and privacy that are relevant to any issue raised in the complaint. This provision does not authorize a Complainant access to the personal files of another without the written consent of that person.
- J. The CSU is committed to academic freedom assuring that all persons may exercise rights of free expression, speech and assembly; however, those rights do not allow any form of unlawful discrimination, harassment or retaliation.

Attachments: Student Complaint Form for Discrimination/Harassment/Retaliation
Complaints
CSU Student Discrimination/Harassment/Retaliation Complaint Timeline



Timothy P. White, Chancellor

Dated: June 3, 2014