

THE CALIFORNIA STATE UNIVERSITY
OFFICE OF THE CHANCELLOR



BAKERSFIELD

April 6, 2012

CHANNEL ISLANDS

CHICO

MEMORANDUM

DOMINGUEZ HILLS

EAST BAY

TO: CSU Presidents

FRESNO

FROM: Charles B. Reed
Chancellor

FULLERTON

SUBJECT: Implementation of Title IX of the Education Amendments of 1972 and Related Sexual Harassment/Violence Legislation for CSU Students — Executive Order 1072

HUMBOLDT

LONG BEACH

LOS ANGELES

Attached is a copy of Executive Order 1072 regarding implementation of Title IX of the Education Amendments of 1972 and related sexual harassment/violence legislation for CSU students, which supersedes Executive Order 993.

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 contact the Office of General Counsel at (562) 951-4500.

SACRAMENTO

CBR/gsb

SAN BERNARDINO

Attachment

SAN DIEGO

c: Executive Staff, Office of the Chancellor

SAN FRANCISCO

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
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Executive Order: 1072
Effective Date: April 6, 2012
Supersedes: Executive Order 993
Title: Implementation of Title IX of the Education Amendments of 1972 and Related Sexual Harassment/Violence Legislation for CSU Students

This executive order provides direction on implementing Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 et seq.) and its implementing regulations (34 C.F.R. Part 106) ("Title IX"); the California Equity in Higher Education Act (Education Code §66250 et seq.); California Education Code §67385.7; and the Governor's "California Campus Blueprint to Address Sexual Assault" for CSU students.

Legislative Requirements

Title IX is a federal law that prohibits discrimination on the basis of sex in an educational institution's academic, educational, extracurricular and athletic activities (both on and off campus). Title IX protects all people regardless of their gender or gender identity from sexual harassment and violence, which are forms of sex discrimination. The U.S. Department of Education Office for Civil Rights published guidance concerning sexual harassment in 2001 ("*Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*") and more recently in an April 4, 2011 "Dear Colleague" letter. Under Title IX, CSU campuses are required to (1) publish and widely disseminate a notice of nondiscrimination on the basis of sex; (2) designate an employee to coordinate Title IX compliance; (3) adopt appropriate complaint and investigation procedures; (4) implement education and victim resource programs; (5) provide training to the campus community on how to identify and report harassment; and (6) provide training to appropriate employees about how to investigate allegations of sexual discrimination (including harassment and violence).

The California Equity in Higher Education Act and Education Code §67385.7 together require campuses to provide, as part of all student orientations, educational and preventative information about sexual violence, and to post sexual violence prevention and education information on the campus website.

The "California Campus Blueprint to Address Sexual Assault" provides guidance on steps that can be taken to improve individual campus responses to sexual assault. Copies of the Blueprint may be obtained from <http://www.calcasa.org>.

Title IX Notice of Nondiscrimination

Each CSU campus is required to post a Title IX notice of nondiscrimination on the basis of sex prominently on its website and in electronic and printed publications of general distribution. Campuses must also post the notice in a prominent location on campus, such as in the main administration building or other locations where other notices regarding campus rules, regulations, procedures and standards of conduct are posted.

The notice should make clear what kind of conduct constitutes sexual discrimination, including sexual harassment and violence, and that such conduct is prohibited sex discrimination.

“Sexual Discrimination” means an adverse act of sexual discrimination (including sexual harassment and sexual violence) that is perpetrated against an individual on a basis prohibited by Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq., and its implementing regulations, 34 C.F.R. Part 106 (“Title IX”); California Education Code §66250 et seq. and/or California Government Code §11135.

“Sexual Harassment” is unwelcome conduct of a sexual nature that includes, but is not limited to: sexual violence; sexual advances; requests for sexual favors; indecent exposure; and other verbal, nonverbal or physical unwelcome conduct of a sexual nature, where 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 individual, and is in fact considered by the individual, as limiting the individual’s ability to participate in or benefit from the services, activities or opportunities offered by the university. Sexual harassment also includes gender-based harassment, which may include acts of verbal, non-verbal or physical aggression, intimidation or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

“Sexual Violence” means physical sexual acts (such as unwelcome sexual touching, sexual assault, sexual battery and rape) perpetrated against an individual without consent or against an individual who is incapable of giving consent due to that individual's use of drugs or alcohol, or disability.

Sexual violence prevention and education information also should be provided, along with the availability of, and contact information for, campus and community resources for victims of sexual violence, including the campus Title IX Coordinator(s) and the

U.S. Department of Education Office of Civil Rights. The notice should also include:

- Common facts and myths about the causes of sexual violence;
- Information about dating violence, rape, sexual assault, domestic violence, and stalking crimes, including details about how to file internal administrative complaints with the campus and how to file criminal charges with local law enforcement officials;
- Information regarding campus, criminal and civil consequences of committing acts of sexual violence; and
- 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 the sexual violence; that victims 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, victims of sexual violence shall not be subject to discipline for related violations of the Student Conduct Code.

Complaint Procedures

Title IX requires that the CSU adopt and publish complaint procedures that provide for "prompt and equitable" resolutions of sex discrimination complaints, including sexual harassment and sexual violence.

Complaints made by students¹ against the CSU, a CSU employee, other CSU students or a third party. Executive Order 1074, 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, harassment or violence made by CSU students (including applicants for admission) against the CSU, a CSU employee, a CSU auxiliary or CSU auxiliary employee, another CSU student or a CSU vendor.

Regardless of whether a student ultimately files a complaint under the applicable complaint procedure, if the campus knows or has reason to know about possible harassment or discrimination, it must review the matter to determine if an investigation is warranted. All such investigations must be prompt, thorough and impartial. The campus must then take appropriate steps to eliminate the harassment/discrimination, prevent its recurrence, and remedy its effects.

Campus Title IX Coordinator(s)

Each campus is required to designate a Title IX Coordinator to monitor and oversee overall implementation of Title IX compliance, including coordination of training, education, communications, and administration of complaint procedures for faculty, staff,

¹ For purposes of this executive order, the term "students" includes applicants for admission.

students and other members of the campus community. 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). The Title IX Coordinator(s) must have adequate training on what constitutes sexual discrimination, including harassment and violence, as well as how to investigate such complaints. The Title IX Coordinator(s) must also understand how campus and systemwide complaint procedures operate.

It is important to note that Title IX prohibits sex-based discrimination in all educational programs, 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 both a "senior" and a "deputy" Title IX Coordinator, with the latter handling only gender equity in athletics issues while reporting to the senior Title IX Coordinator ultimately responsible for campus-wide compliance. If a campus elects to have more than one coordinator, the requisite Title IX notice of nondiscrimination should describe each coordinator's respective role and responsibilities.

In addition to coordinating training, education and preventative measures, addressed below, the Title IX Coordinator's duties include:

- Ensuring that the complainant is notified of the right to file a criminal complaint;
- Meeting with the complainant on a regular basis to determine what steps (interim and ultimate) should be taken to protect the complainant from any hostile or unsafe environment resulting from the sexual harassment/violence, and ensuring that such steps are taken;
- Working with and training campus law enforcement personnel to provide information on Title IX requirements to ensure that reports of sexual violence are appropriately handled;
- Overseeing all complaints of discrimination and harassment and their related investigation and resolution, including complaints against students handled through the student discipline process;
- Reviewing the outcome of student disciplinary proceedings involving cases of alleged sexual violence to determine whether any remedies need to be provided to the victim that were not made available during the discipline process;
- Creating a committee of students and campus officials to identify strategies for ensuring that students know how to identify and report sexual harassment/violence and know what remedies are available to victims;
- Regularly assessing student activities to ensure that the practices and behaviors do not violate policies against sexual harassment and violence and using the resulting information to inform proactive remedial steps; and
- Identifying and addressing any systemic or other patterns of sexual harassment.

Training, Education and Preventative Measures

Campuses must implement preventative education programs and make available victim resources, including comprehensive victim services. Information regarding these programs must be included in (1) orientation programs for new students, faculty and staff; (2) training for students who serve as advisors in residence halls; and (3) training for student athletes and coaches.

These educational programs should include a discussion of what constitutes sexual discrimination, including sexual harassment and sexual violence, what someone should do if s/he has been the victim of, or witness to, sexual discrimination/harassment/violence, the relevant campus and systemwide policies and disciplinary procedures, and the consequences of violating these policies.

The education and prevention programs provided shall also include the following:

- Common facts and myths about the causes of sexual violence;
- Information about dating violence, rape, sexual assault, domestic violence, and stalking crimes, including details about how to file internal administrative complaints with the campus and how to file criminal charges with local law enforcement officials;
- The availability of, and contact information for, campus and community resources for students who are victims of sexual violence;
- Methods of encouraging peer support for victims;
- Information regarding campus, criminal and civil consequences of committing acts of sexual violence; and
- 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 the sexual violence; that victims 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, victims of sexual violence shall not be subject to discipline for related violations of the Student Conduct Code.

Campuses must also include such information in their employee handbook/policies and any handbooks/policies applicable to student athletes and members of student activity groups. These materials should provide guidance on how to identify and report sexual harassment and violence, and what others should do if they learn of an incident involving someone else.

All persons involved in implementing the campus Title IX complaint procedures (e.g., Title IX coordinators, investigators and adjudicators) shall have relevant training or experience with respect to the handling, investigation and analysis of complaints of sexual discrimination, harassment and violence, as well as the CSU complaint processes. The training shall also address applicable confidentiality issues, especially with respect to the campus's duty to weigh any alleged victim's request for confidentiality against its

duty to provide a safe and nondiscriminatory environment for all members of the campus community.

Remedies and Enforcement

The alleged victim should be notified of options for avoiding contact with the alleged perpetrator, including changes to the alleged perpetrator's or victim's 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 classes or housing while allowing the alleged perpetrator to maintain the status quo. Other possible interim (and ultimate) steps include providing an escort between campus locations in extraordinary cases where safety may be endangered; providing academic support services such as tutoring; arranging for the alleged victim to re-take a course or withdraw from a class without penalty and without adverse effect on his/her academic record; and reviewing any proposed disciplinary actions against the alleged victim to see if there is a causal connection between the discipline and the alleged incident.

Alleged victims also should be made aware of their Title IX rights and any available resources, such as counseling, health, and mental health services and the right to file a complaint with local law enforcement. Campuses must also ensure that alleged victims know how to report any subsequent problems, and Title IX coordinators or appropriate campus representatives should follow-up with alleged victims to determine whether any retaliation or new incidents of harassment or violence have occurred.

When addressing sexual assault, 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.

Coordination with Criminal Investigations and Proceedings

A pending (campus or local) police investigation does not relieve a campus of its responsibility to resolve sexual harassment and 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. Although it may be necessary to temporarily delay the fact-finding portion of a Title IX 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 Title IX investigation, so long as it does not compromise the criminal investigation.

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

If a campus has an MOU with local law enforcement, the MOU must allow the campus to meet its Title IX obligation to resolve complaints promptly and equitably.



Charles B. Reed

Charles B. Reed, Chancellor

Dated: April 6, 2012