

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 Employees and Third Parties and *Procedure* for Handling Discrimination, Harassment and Retaliation Allegations by Employees and Third Parties — Executive Order 1096

HUMBOLDT

LONG BEACH

LOS ANGELES

Attached is a copy of Executive Order 1096, which supersedes Executive Order 1089. Executive Order 1096 is issued in response to the Campus Sexual Violence Elimination Act (the SaVE Act), related guidance from the U.S. Department of Education, Office for Civil Rights, addressing Title IX of the Education Amendments of 1972, and new amendments to the California Fair Employment and Housing Act (FEHA). This policy and complaint procedure applies systemwide.

MARITIME ACADEMY

MONTEREY BAY

NORTHRIDGE

POMONA

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 1089.

SACRAMENTO

SAN BERNARDINO

SAN DIEGO

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 FRANCISCO

SAN JOSÉ

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

SAN LUIS OBISPO

SAN MARCOS

TPW/eb

SONOMA

Attachment

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

ARCHIVE

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

Executive Order: 1096

Effective Date: June 3, 2014

Supersedes: Executive Order 1089

Title: 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

Article I. Definitions

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

- A. **Accused** means the CSU, an Employee, a 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 employment or ability to participate in a University program or activity free from discrimination, harassment or retaliation. Minor or trivial actions or conduct not reasonably likely to do more than anger or upset a Complainant do 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, including a union representative from the Complainant's or the Accused's collective bargaining unit, 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. However, the Advisor may observe and consult with the Complainant or the Accused and take appropriate action to ensure that the investigation does not violate applicable laws, policies, or collective bargaining agreements.
- D. **Age**, as defined in Cal. Govt. Code §12926(b), refers to the chronological age of any Complainant 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. **Campus or University** means any of the 23 campuses of the CSU or the Office of the Chancellor.
- G. **Complaint** means a written communication that complies with Article VI.C alleging Discrimination, Harassment or Retaliation.
- H. **Complainant** means an individual who is eligible to use the procedure in this Executive Order (see Article IV.A) and does report being subjected to Discrimination, Harassment or Retaliation, as those terms are defined below. It also includes the alleged victim of Discrimination, Harassment or Retaliation in cases where some other person has made a report on his/her behalf.
- I. **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 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.
- J. **Disability**, as defined in Cal. Govt. Code §12926 (j), (m), and (n) and the federal Americans with Disabilities Act (ADA), 2008 Amendments, means:
1. Having a physical or mental condition that limits a major life activity. “Limits” means making the achievement of a major life activity difficult. “Limits” is determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity. A “major life activity” is broadly construed and includes physical, mental, and social activities (such as walking, talking, seeing, hearing) and working; or
 2. Having a known history of a qualifying impairment; or
 3. Being regarded or treated as having or having had a qualifying impairment; or
 4. Being regarded or treated as having or having had such an impairment that has no presently disabling effects but may become a qualifying impairment in the future.
- K. **Discrimination** means Adverse Action taken by the CSU or an Employee because of a Protected Status.
- L. **Employee**, as defined in Cal. Code Regs. Title 5 §42700(h), means a person legally holding a position in the CSU. This term includes full-time, part-time, permanent, tenured,

probationary, temporary, intermittent, casual, and per-diem positions. This term does not include auxiliary or foundation employees or other Third Parties.

- M. **Gender**, as defined in Cal. Govt. Code §12926(r), means sex, and includes a person's gender identity and gender expression.
- N. **Gender expression**, as defined in Cal. Govt. Code §12926(r), means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.
- O. **Genetic Information**, as defined in Cal. Govt. Code §12926(g), means, with respect to any person, information about any of the following:
1. The person's genetic tests.
 2. The genetic tests of the person's family members.
 3. The manifestation of a disease or disorder in the person's family members.
 4. Any request for, or receipt of genetic services, or participation in clinical research that includes genetic services, by a person or any of the person's family members.

Genetic Information does not include information about the sex or age of any person.

- P. **Harassment** means unwelcome conduct engaged in because of a Protected Status *and*:
- Submission to, or rejection of, the conduct is made a term or condition of the Complainant's employment; *or*
 - Submission to or rejection of such conduct by the Complainant is used as the basis or threatened to be used as the basis for employment actions or decisions affecting the Complainant; *or*
 - The conduct is sufficiently severe or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the Complainant, and is in fact considered by the Complainant, as intimidating, hostile or offensive.

Harassment includes, but is not limited to, verbal harassment (e.g., epithets, derogatory comments, or slurs), physical harassment (e.g., assault, impeding or blocking movement, or any physical interference with normal work or movement), and visual forms of harassment (e.g., derogatory posters, cartoons, drawings, symbols, or gestures).

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/or 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; or propositions; offering employment benefits or giving preferential treatment in exchange for sexual favors; indecent exposure, where:

- a. Submission to, or rejection of, the conduct by the Complainant is explicitly or implicitly used as the basis for any decision affecting a term or condition of the Complainant's employment, or an employment decision or action; *or*
- b. The conduct is sufficiently severe or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the Complainant, and is in fact considered by the Complainant, 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 a Complainant who did not give consent or is incapable of giving consent due to that individual's status as a minor, Disability or use of drugs or alcohol.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 Violence. 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 the person incapable of giving consent. The accused's relationship to the person (such as family member,

¹ See definition of Consent below.

² Cal. Penal Code § 240.

³ Cal. Penal Code § 242.

spouse, friend, acquaintance or stranger) is irrelevant.⁴ (See complete definition of Consent below).

- d. **Acquaintance Rape:** 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 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.

⁴ Cal. Penal Code §§ 261-263.

- 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 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
- Q. **Investigator** means the person tasked with investigating a Complaint at Level I - Campus Level. All investigators shall receive annual training regarding such issues as the investigatory process and 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 and Sexual Violence, Domestic Violence, Dating Violence, and Stalking; employee, 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. 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.
- R. **Medical Condition**, as defined in Cal. Govt. Code §12926(i), means either:
1. A health impairment associated with a diagnosis or history of cancer; or

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

⁶ Cal. Penal Code § 13700(b).

⁷ Cal. Penal Code § 646.9.

2. A gene or chromosome that is a known cause of a disease or disorder in a person or the person's offspring, or that is associated with an increased risk of developing a disease or disorder although there are no present symptoms of the disease or disorder.
- S. **Military and Veteran Status**, as defined in Cal. Govt. Code §12926(k) means a member or veteran of the United States Armed Forces, United States Armed Forces Reserve, the United States National Guard, and the California National Guard.
- T. **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.
- U. **Protected Status** means race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.
- V. **Religion**, as defined in Cal. Govt. Code §12926(q), 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.
- W. **Remedies** means action(s) taken to correct a violation of the prohibitions against Discrimination, Harassment and Retaliation set forth in this Executive Order. **Interim Remedies** are those that must be offered prior to conclusion of informal resolution and/or an investigation in order to stop the alleged wrongdoing 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 with reasonably available accommodations and 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 Complainant the option of psychological counseling services, changes to work area, work assignments, or supervisory reporting relationship, 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.
- X. **Retaliation** means Adverse Action taken against a person 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.
- Y. **Sex**, as defined in Cal. Govt. Code §12926(r), includes but is not limited to gender, pregnancy, childbirth, breastfeeding or medical condition(s) related to pregnancy, childbirth or breastfeeding.
- Z. **Sexual Orientation**, as defined in Cal. Govt. Code §12926(s), means heterosexuality, homosexuality, or bisexuality.
- AA. **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 school while a disciplinary matter (including investigation) is pending.
- BB. **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.
- CC. **Title IX** means Title IX of the Education Amendments of 1972 (Title IX).
- DD. **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 and 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.
- EE. **VAWA** means the Violence Against Women Reauthorization Act of 2013 (20 U.S.C. 1092(f)) (which amends the Jeanne Clery Disclosure of Campus Security and Crime Statistics Act, commonly called the Clery Act)(VAWA), under its Campus Sexual Violence Elimination Act provision (Campus SaVE Act).
- FF. **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. It is CSU policy to provide equal opportunity for all persons regardless of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, and military and veteran status. Insofar as Employees are concerned, this policy extends to all employment practices, including recruitment, selection, hiring, promotion, training, compensation, benefits, transfer, separation, and other terms, conditions, or privileges of employment. It also includes full and equal accommodations, advantages, facilities, privileges and services for all members of the campus community, as well as Third Parties.

The CSU prohibits Harassment of any kind, including Sexual Harassment and Sexual Violence, Dating Violence, Domestic 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 will take appropriate action to prevent, correct, and when necessary, discipline behavior that violates this policy.

The CSU provides reasonable accommodation to qualified persons with disabilities unless doing so would impose an undue hardship. Reasonable accommodation is to be determined by the Campus following an interactive process with the Complainant to identify the nature and extent of the Complainant's restrictions and the appropriate reasonable accommodation.

The CSU strives to be free from all forms of unlawful Discrimination, Harassment and Retaliation. This policy is established in compliance with Title VII of the Civil Rights Act of 1964, Section 503 of the Rehabilitation Act of 1973, Title I of the Americans with Disabilities Act of 1990, the ADA Amendments Act of 2008, the Age Discrimination Act of 1975, Title II of the Genetic Information Nondiscrimination Act of 2008, the Vietnam-Era Veterans Readjustment Assistance Act of 1974, Title IX, VAWA/Campus SaVE Act, the California Fair Employment and Housing Act (Cal. Govt. Code § 12940 *et seq.*), and Unruh Civil Rights Act (Cal. Govt. Code § 51 *et seq.*), among other applicable laws and policies.

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, 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 and/or 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

The President shall designate a DHR Administrator who is responsible for the implementation of, and compliance with, this Executive Order at each Campus. 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.

To prevent Discrimination, Harassment and Retaliation, and to encourage reporting of such conduct, training shall be provided by each Campus to all Employees, including Faculty unit employees and student assistants. Such training shall be provided to all employees within 12 months of the effective date of this Executive Order, and on a two-year basis thereafter. New employees shall receive training within 6 months of their initial hiring. Such training shall explain, but not be limited to: what constitutes Discrimination, Harassment and Retaliation under applicable law; the rights and responsibilities of each Employee relating to workplace Discrimination, Harassment and Retaliation; the protection against Retaliation for Employees who report Discrimination, Harassment or Retaliation; the procedure provided in this Executive Order for filing, investigating and resolving a complaint; and the option and method for filing a harassment complaint with external government agencies such as the Department of Fair Employment and Housing (DFEH) and the Equal Employment Opportunity Commission (EEOC).

Under Cal. Govt. Code § 12950.1, each Campus shall provide supervisory employees at least two hours of interactive Sexual Harassment training within six months of the Employee's assignment to a supervisory position and every two years thereafter. Each Campus shall maintain documentation of the delivery and completion of these trainings. For detailed guidance regarding the definition of "supervisor" and the implementation of this training, Campuses shall consult Coded Memoranda HR 2005-35 and other applicable policies.

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

Each Campus shall distribute a copy of the following documents to all Employees:

1. The Department of Fair Employment and Housing (DFEH) information sheet on sexual harassment (Form DFEH-185, or any superseding document); and
2. This Executive Order.

In addition, each Campus shall post the DFEH poster on employment discrimination (Form DFEH-162, or any superseding document) in prominent and accessible locations on Campus where other employment notices regarding rules, regulations and procedures are posted.

Article IV. Procedure for Handling Alleged Policy Violations

A. **Who May Use This Procedure.** The individuals listed below may use the procedure in this Executive Order to address Discrimination, Harassment or Retaliation. Whenever a Campus determines that a Complaint is outside the scope of this Executive Order, the Campus shall promptly so notify the Complainant in writing.

1. Employees. Non-represented Employees and Employees in bargaining units whose collective bargaining agreements have incorporated this Executive Order may use the procedure described in this Executive Order to address Discrimination, Harassment or Retaliation by the CSU, another Employee, a Student, or a Third Party. As used in this subsection, the term "Employee" includes former Employees.
2. Employees who are covered by a grievance procedure in a collective bargaining agreement. Employees who are covered by a collective bargaining agreement that provides a grievance procedure for raising allegations of Discrimination, Harassment and Retaliation shall use the grievance procedure specified in their collective bargaining agreement.
3. Applicants for employment. Applicants for employment may use the procedure outlined in this Executive Order to address Discrimination, Harassment or Retaliation that occurred during their application process.
4. Student-employees. At times, a person may be employed by the CSU and also be a Student. If an allegation of Discrimination, Harassment or Retaliation arose out of the

person's status as a Student and not their status as an Employee, the allegation shall be handled under Executive Order 1097 (Systemwide Policy Prohibiting Discrimination, Harassment and Retaliation Against Students and Systemwide Procedure for Handling Discrimination, Harassment and Retaliation Complaints by Students) or a superseding executive order. An allegation arising out of the person's work environment (while they are acting as an Employee) shall be handled under this Executive Order.

5. Third Parties. Allegations of Discrimination, Harassment, or Retaliation by Third Parties against the CSU, an Employee or a Student shall be investigated and resolved in accordance with the procedure outlined in this Executive Order.

Article V. Informal Resolution – Campus Level

A Complainant who may use the procedure outlined in this Executive Order (as specified in Article IV) and who believes he/she may have been subjected to Discrimination, Harassment or Retaliation may initiate the Informal Resolution process prior to or instead of filing a Complaint. However, it is not appropriate to require the Complainant to “work out the problem” directly with the Accused; and in no event should any meeting between the Complainant and the Accused be directed to occur without appropriate involvement by the Campus (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.***

During pendency of the Informal Resolution process, the timeline to file a Complaint shall be extended for a period of no longer than **20 Working Days**. Thus, under Article VI.B., a Complaint may be filed no later than **50 Working Days** after the occurrence of the most recent alleged act of Discrimination, Harassment or Retaliation.

The Complainant shall be notified in writing of the following: his/her concerns are being handled pursuant to the Informal Resolution process; he/she may end the Informal Resolution at any time; he/she has an option to file a Complaint under Article VI (Level I – Campus Level) within **50 Working Days** after the occurrence of the most recent alleged act of Discrimination, Harassment or Retaliation; and the date that option expires. When a complaint involves Sexual Violence, see Executive Order 1095 regarding **written** information that must be provided **to any person who complains** to the University that he/she has been a victim, pursuant to Title IX and VAWA/Campus SaVE Act.

Upon receipt of the Complainant's concern(s), the DHR Administrator shall promptly meet with the Complainant to discuss the concern(s). The DHR Administrator shall also discuss reasonable Interim Remedies with the Complainant, as appropriate.

The Campus shall attempt to promptly and effectively resolve the Complainant's concern(s), keeping in mind, should resolution fail, the Complainant has a maximum of **50 Working Days** after the occurrence of the most recent alleged act of Discrimination, Harassment or Retaliation to file a Complaint. The Campus shall meet with the Complainant, the Accused, and any other person(s) or witness(es) determined by the Campus to be necessary for a resolution, to review the allegations and any responses. Informal resolution may take the form of a negotiated resolution facilitated by the Campus.

If informal resolution is reached, a written record of the resolution shall be signed by the Complainant and maintained in accordance with applicable recordkeeping policies. The matter shall be considered closed and the Complainant 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 alleged Discrimination, Harassment, or Retaliation.

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

Both the Complainant 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 Complainant 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 Complainant. In that event, any such investigation shall be subject to Article VI. D through I and Article VIII, A through I only. Such investigation shall not be subject to Article VII (*Level II Appeal Review - Office of the Chancellor*).

- A. **Filing a Complaint.** A written Complaint shall be submitted to the DHR Administrator. The date of receipt shall be deemed to be the Complaint filing date. The DHR Administrator shall offer reasonable accommodation to Complainants who are unable to submit a written complaint because of a Disability.
- B. **Timeline for filing a Complaint.** To be timely, a Complaint must be filed no later than **30 Working Days** after the occurrence of the most recent alleged act of Discrimination, Harassment or Retaliation, unless extended pursuant to Article V above.
- C. **Complaint Requirements.** The Complainant should complete the attached "Complaint Form for Discrimination/Harassment/Retaliation Complaints" or, in the alternative, submit a written signed statement containing the following information:

1. The Complainant's full name, relationship to the University, and contact information, including mailing address, email address and telephone number(s);
2. The name of the Accused and relationship to the University, if known;
3. The Protected Status that is the basis for the alleged Discrimination or Harassment, 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 Complainant's knowledge;
6. The full name and contact information of the Complainant's Advisor, if any;
7. The specific harm resulting from the alleged Discrimination, Harassment or Retaliation;
8. The specific remedy sought;
9. The Complainant's signature; and
10. The date on which the Complaint is submitted.

D. **Intake interview.** The DHR Administrator or the Title IX Coordinator (in cases alleging Sex Discrimination, Sexual Harassment, Sexual Violence, Dating Violence, Domestic Violence and Stalking) shall promptly meet with the Complainant after receiving the Complaint. The Complainant shall make him/herself available for this meeting. When a complaint involves Sexual Violence, see Executive Order 1095 regarding *written* information that must be provided *an Employee or Third Party who reports* to the University that he/she has been a victim, pursuant to Title IX and VAWA/Campus SaVE Act.

1. The meeting shall serve as the initial intake interview and will:
 - a. Acquaint the Complainant with the investigation procedure and timelines;
 - b. Inform the Complainant of his/her rights (including having an Advisor throughout the process);
 - c. Provide the opportunity for the Complainant to complete and sign a Complaint form, if not already done; and
 - d. Discuss reasonable Interim Remedies, as appropriate.
2. In cases alleging Sexual Violence, the Title IX Coordinator shall:
 - a. Inform the Complainant of the right to file a criminal complaint, offer to assist the Complainant with filing a criminal complaint, and assure the Complainant that such filing will not significantly delay the Campus investigation;
 - b. Advise the Complainant of available resources such as the Campus police, the Campus health service center, the Employee Assistance Program, or psychological counseling center; and

- c. Discuss with the Complainant reasonable and appropriate Interim Remedies to avoid contact with the Accused.
 - d. See Executive Order 1095 for other items that must be addressed with the Complainant, including the provision of **written** information that must be provided **an Employee or Third Party who reports** to the University that he/she has been a victim, pursuant to Title IX and VAWA/Campus SaVE Act.
- E. **Advisor.** The Complainant and Accused may elect to be accompanied by an Advisor to any meeting or interview regarding the allegations.
- 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 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 the 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 Complainant 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 receiving the Level I Complaint, unless the timeline has been extended pursuant to Article VIII. E or F.

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 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 the 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, the findings of fact, and a determination as to whether this Executive Order was violated. The report shall be promptly provided to the DHR Administrator (or the Title IX Coordinator, if the allegations involve Sex Discrimination, Sexual Harassment or Sexual Violence).
- I. **Notice of Investigation Outcome.** If the DHR Administrator or the Title IX Coordinator (in cases alleging Sex Discrimination, including Sexual Harassment and Sexual Violence) performed the investigation, he or she shall notify the Complainant 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 the Title IX Coordinator, if applicable) shall review the report and notify the Complainant in writing of the outcome of the investigation.

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. 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/her Advisor.

A separate written notice shall be provided to the Accused indicating whether the allegations at Level I were substantiated. If the investigation 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/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 Chancellor’s Office (CO) no later than **10 Working Days** after receiving the written notice of the Level I outcome. If the deadline falls on a non-Working Day, the Level II appeal must be filed no later than the next Working Day.

Level II appeals shall be addressed to:

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

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

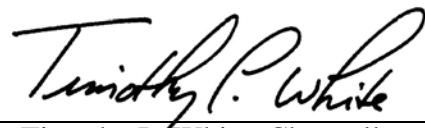
- B. **Appeal Request.** The appeal shall be in writing and shall: (1) specify the reasons why the determination reached at Level I was erroneous; and (2) identify the specific evidence submitted at Level I that supports a finding of the alleged Discrimination, Harassment or Retaliation by a Preponderance 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 a 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 Complainant no later than **90** Working Days after receiving the Level II appeal, unless the timeline has been extended pursuant to Article VIII. E. or F. The CO Response shall include a written 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/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/her Advisor, indicating the appeal outcome; i.e., whether he/she 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. All persons (including the Complainant, the Accused, and the witnesses) 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 any person refuses to cooperate, the University may draw all reasonable inferences and conclusions on the basis of all available evidence and conclude the investigation/review.
- C. A Complainant shall proceed with a Complaint in good faith. An Employee who knowingly and intentionally files a false Complaint or knowingly gives false statements shall be subject to discipline in accordance with applicable collective bargaining agreements, CSU policies and legal requirements (e.g., Education Code Section 89530 et seq.). Such disciplinary action shall not be deemed to be Retaliation.
- D. Both the Complainant and Accused shall have the right to identify witnesses and other evidence for consideration; however, the University shall decide what evidence (if any) is relevant and significant to the issues raised.
- E. If the Complainant, 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 by the length of time the person is unavailable. The Complainant and Accused shall be provided written notification of any period of extension.
- F. Timelines set forth herein may also be extended by mutual agreement between the Investigator/CO Designee and the Complainant for a reasonable time period. If the University requests a time extension in order to conduct an effective investigation or review, and the Complainant does not agree or does not respond to the University's request, the University 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 will note that the investigation or review is continuing. The interim response shall include a summary of the allegations, a description of the investigative or review process, and shall also provide the Complainant with an anticipated date of completion. The investigation or review shall continue until the University is satisfied that its duty to respond to the Complaint has been appropriately discharged, provided the investigation or review is completed no later than an additional **60 Working Days**.
- 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 I 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. If 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. Nothing contained herein is intended or should be construed to interfere with an Employee's right to consult with a representative.
- J. Taking into account campus operational needs, CSU shall provide the Complainant and Advisor, if any, reasonable release time for preparing and presenting the complaint upon their request.
- K. 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/records of another without the written consent of that person.
- L. A Complainant may choose to pursue remedies with outside government agencies at any time without waiting for the conclusion of the CSU complaint process under this Executive Order.

Attachments: Complaint Form for Discrimination/Harassment/Retaliation Complaints
Timeline of Executive Order 1096 Procedure



Timothy P. White, Chancellor

Dated: June 3, 2014