



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

50 UNITED NATIONS PLAZA  
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March 14, 2018

President Erika D. Beck, Ph.D.  
California State University, Channel Islands  
University Hall  
One University Drive  
Camarillo, CA 93012

(In reply, please refer to OCR Docket Number 09-06-6001.)

Dear President Beck:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced compliance review against California State University (CSU), Channel Islands (University) to evaluate the University's compliance with Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, at 34 C.F.R. Part 106; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104; Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35; and Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, at 34 C.F.R. Part 100. OCR opened this compliance review to investigate the University's procedural response to student complaints alleging violations of these laws, including complaints of harassment. OCR's review included investigation of the following issues:

1. Whether the College complied with Title IX, Section 504, and Title II requirements regarding development and dissemination of notice of nondiscrimination pursuant to 34 C.F.R. §§ 106.8(a) and 106.9; 34 C.F.R. §104.8(a) and (b); and 28 C.F.R. §35.106;
2. Whether the College complied with Title IX, Section 504 and Title II requirements regarding the designation and notice of a Title IX, Section 504, and Title II Coordinator pursuant to 34 C.F.R. § 106.8(a); 34 C.F.R. §104.7(a); and 28 C.F.R. §35.107(a); and
3. Whether the University provided a timely and appropriate response to oral reports and written complaints of discrimination and harassment as required under TVI, TIX, Section 504 and Title II and their respective implementing regulations.

OCR is responsible for enforcing Title VI, Title IX, Section 504 and Title II. Title VI prohibits discrimination on the bases of race, color, or national origin in programs and activities operated by recipients of financial assistance from the Department. Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of financial assistance from the Department. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of financial assistance from the Department. Title II prohibits discrimination on the basis of disability by public entities. The University is a public education institution and a recipient of financial

assistance from the Department. Therefore, OCR had jurisdiction to investigate this compliance review under Title VI, Title IX, Section 504, and Title II.

### Background and Investigation Summary

The University is a four-year, state public university located in Camarillo, California. The University is required to adopt and implement policies and procedures, called Executive Orders (EOs), that are developed and disseminated by the CSU, Office of the Chancellor (Chancellor's Office) for all California state universities in its system. After OCR conducted an initial investigation, which included interviews with administrators, faculty, campus law enforcement personnel, campus counselors, and students, a review of case files<sup>1</sup>, and policies and procedures, in 2009, OCR identified several compliance issues and concerns, which it shared with the University and the Chancellor's Office. With respect to the University's EOs for addressing complaints of discrimination and harassment, the compliance issues included that the informal resolution process was not voluntary for the parties and the grievance procedures did not have reasonably prompt timelines for major stages in the resolution process. In response to these initial concerns, the University conducted training for staff and issued guidance. The Chancellor's Office also revised its system-wide discrimination-related EOs several times, and in doing so, it addressed several of the compliance issues raised by OCR. The most recent versions of the EOs, which were issued on June 23, 2015, with further revisions made on October 5, 2016, are reviewed and discussed herein.

OCR's investigation also included review of the University's response to oral reports and written complaints of alleged discrimination on the aforementioned bases during the 2015-2016 academic year. In addition, OCR reviewed the University's development and dissemination of notice of nondiscrimination, and designation and training of Title IX, Title II, and Section 504 Coordinator(s) from the beginning of the 2015-2016 academic year through January, 2018, and its training for staff, faculty, and students for the 2016-2017 academic year through December, 2017. In the 2017-2018 academic year, OCR also interviewed the Title IX, Section 504 and Title II Coordinator (hereinafter "Compliance Coordinator") and the Director of the University's Disability Accommodations and Support Services office. The legal standards, facts gathered, and the reasons for our determinations are summarized below.

#### A. Legal Standards, Facts, Analysis and Conclusions of Law

#### **4. Whether the College complied with Title IX, Section 504, and Title II requirements regarding development and dissemination of notice of nondiscrimination pursuant to 34 C.F.R. §§ 106.8(a) and 106.9; 34 C.F.R. §104.8(a) and (b); and 28 C.F.R. §35.106.**

#### Legal Standard

The Title IX regulation, at 34 C.F.R. § 106.9, requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective

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<sup>1</sup> OCR's initial review of cases included the University's responses to oral reports and written complaints of alleged discrimination during the 2003-2004 through the 2005-2006 academic years. Because the University took steps to address OCR's initial concerns and because, since that time, the University has implemented significant changes with respect to policies and procedures and staffing and training for investigations of such reports and complaints, OCR has not included additional analysis of this information herein.

bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in any educational program or activity which it operates, and that it is required by Title IX and its implementing regulation not to discriminate in such a manner. The notice of nondiscrimination must include a statement that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR (34 C.F.R. § 106.9(b)) and, the University must provide adequate notification of the contact information, including the name (or title), address, and phone number for the Title IX Coordinator, to students and employees (34 C.F.R. § 106.8).

The Section 504 regulation, at 34 C.F.R. §104.8(a) and (b), requires a recipient employing 15 or more persons to take appropriate and continuing steps to notify program participants, beneficiaries, applicants, employees, and unions or professional organizations that it does not discriminate on the basis of disability. The notification must also identify the responsible employee designated under 34 C.F.R. §104.7(a) to coordinate its efforts to comply with the regulations.

The Title II regulation, at 28 C.F.R. §35.106, similarly requires a public entity to inform applicants, participants, beneficiaries, and other interested persons about the protections against disability discrimination assured by Title II and the regulation. Under 28 C.F.R. §35.107(a), public entities employing 50 or more persons must also notify all interested individuals of the name, address, and telephone number of the designated Title II compliance coordinator.

#### Facts, Analysis, and Conclusions of Law

OCR reviewed the notices of nondiscrimination on the University's website. OCR found that the University's "Disability Equity and Notice of Nondiscrimination" was compliant, because it states that discrimination on the basis of disability is prohibited and includes the Section 504 and Title II Coordinator's contact information, as well as the contact information for the Disability Accommodations and Support Services office and its director.<sup>2</sup> It also includes contact information for OCR, a web link to a grievance form and other information about how to access disability services. However, the University's general nondiscrimination statement, which is posted on its website, is not compliant. While it states that the University prohibits discrimination on the basis of sex, race, and disability and identifies the University's commitment to diversity and inclusion, it does not include the name, address, and telephone number for the responsible Title IX, Section 504, and Title II Coordinator(s). It also does not include a statement that inquiries regarding Title IX can be made to OCR.<sup>3</sup> For these reasons, OCR found that the University was not in compliance with Title II, Section 504 and Title IX and their implementing regulations with respect to development and dissemination of notice of nondiscrimination.

#### **5. Whether the College complied with Title IX, Section 504 and Title II requirements regarding the designation and notice of a Title IX, Section 504, and Title II Coordinator pursuant to 34 C.F.R § 106.8(a); 34 C.F.R. §104.7(a); and 28 C.F.R. §35.107(a).**

#### Legal Standards

34 C.F.R. § 106.8(a) requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX, including

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<sup>2</sup> <https://www.csuci.edu/dass/nondiscrimination.htm>. Last checked: December 19, 2017.

<sup>3</sup> <https://policy.csuci.edu/statements/non-discrimination.htm>. Last checked: December 19, 2017.

investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by Title IX. The Section 504 regulations, at 34 C.F.R. §104.7(a), require a recipient that employs 15 or more persons to designate at least one person to coordinate its efforts to comply with and carry out its responsibilities under Section 504. The Title II regulations, at 28 C.F.R. §35.107(a), contain a similar requirement for public entities that employ 50 or more persons to designate a compliance coordinator. The public entity shall make available to all interested persons the name, office address, and telephone number of the employee(s) designated as the compliance coordinator.

#### Facts, Analysis, and Conclusion of Law

The University has appointed and designated one individual, the Senior Director of Equity and Inclusion, to serve as its Title IX, Section 504, and Title II Coordinator (hereinafter Compliance Coordinator). The Compliance Coordinator has served in these positions at the University since February 2015. She is an attorney and has experience with conducting investigations, and addressing compliance issues for public entities. She previously served in a Deputy Title IX Coordinator position and addressed Title IX athletics compliance at another university before beginning with the University. The University also has a Deputy Title IX Coordinator. The Deputy Title IX Coordinator, who began working for the University in August 2017, also served as a compliance coordinator at another University before beginning her position and has experience in resolving sexual assault matters and addressing Title IX Athletics compliance, among other things. The Compliance Coordinator and Deputy Title IX Coordinator have both received an annual multi-day training from the CSU system regarding implementation of the relevant EOs that address the system's response to reports and complaints of discrimination and harassment related to all protected categories. Both individuals have also participated in other outside trainings on topics including conducting sexual assault and trauma-informed investigations. The Compliance Coordinator has conducted training for two additional investigators who, as needed, assist with conducting investigations related to faculty and staff.

The Compliance Coordinator told OCR that consistent with the relevant EOs, she oversees the response to all reports and complaints alleging discrimination and harassment based on protected categories, including if investigations are being conducted by one of the other investigators or the Deputy Title IX Coordinator. She told OCR that she reviews the investigative reports from any other investigator, and all reports and complaints reported by responsible employees are entered into a centralized data system and received by the Compliance Coordinator. The case files reviewed by OCR provide additional support for these statements as they reflect the Compliance Coordinator's involvement in all cases, regardless of the reporting individual or party or protected basis for the report.

In addition to the Compliance Coordinator and Deputy Title IX Coordinator, the University has an office of Disability Accommodations Supports and Services (DASS). The DASS Director works with students to assess whether they are qualified students with disabilities and any need for accommodations and modifications. While the Compliance Coordinator does not oversee the DASS office, interviews and files reviewed showed that the two offices coordinate their efforts. The Compliance Coordinator also told OCR that the DASS office refers any discrimination and harassment complaints that rise to a level beyond a dispute over appropriate services to her. The files reflect coordination in several cases between the two offices and that the Compliance Coordinator consults with the DASS office when a student with a disability is involved in a complaint or report of discrimination or harassment.

OCR reviewed documentation showing that the Compliance Coordinator has provided trainings to staff in various forums, including department meetings and in trainings dedicated to reaching

residential/housing staff. The Compliance Coordinator established a centralized online tracking and reporting system so that reports and complaints are documented and maintained. The Compliance Coordinator conducts in person annual orientation training for all students on campus and checks compliance with annual mandatory pre-registration training related to discrimination and harassment, including with respect to sex, race, national origin, and disability. In such trainings, the Compliance Coordinator told OCR that she shares her contact information and the various ways in which reports can be made to the office.

#### Analysis and Conclusion of Law

OCR found that the University had properly designated and trained a Title IX, Section 504 and Title II Coordinator. In addition, the University also has a Deputy Title IX Coordinator. OCR found that the Compliance Coordinator and Deputy Title IX Coordinator have appropriate qualifications and knowledge for the positions and have received appropriate training from the University regarding the relevant discrimination statutes and the policies and grievance procedures for addressing and resolving discrimination and harassment. OCR's review of the case files during the 2015-2016 academic year provided evidence showing that responses are centrally coordinated by the Compliance Coordinator, who involves other parties and administrators as needed. OCR also found that the Compliance Coordinator is fulfilling other duties to ensure a coordinated approach to compliance by providing training to staff, faculty, and students and creating tools, such as an electronic centralized reporting and tracking system available to all staff, to ensure that reports and responses are recorded. Accordingly, OCR found that the University was in compliance with respect to designation of a Title IX, Section 504, and Title II Coordinator.

**6. Whether the College's policies and procedures related to complaints of discrimination and harassment on the basis of sex and/or disability, as written, comply with Title IX, Section 504, and Title II pursuant to 34 C.F.R §106.8(b); 34 C.F.R. §104.7(b); and 28 C.F.R. §35.107(b).**

#### Legal Standards

Title IX and its implementing regulation, at 34 C.F.R. § 106.8(b) requires that a recipient adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by Title IX.

The Section 504 regulation, at 34 C.F.R. §104.7(b), require a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. The Title II regulation, at 28 C.F.R. §35.107(b), similarly require a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures.

OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, such as whether the procedures provide for the following: notice of the procedure to students, and employees, such as where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

## Facts

As stated above, the CSU Chancellor's Office sets policy and procedure for each of the state universities in the system. The University has adopted and the president of the University is charged with implementing the system-wide EOs issued from the Chancellor's Office to address discrimination and harassment on the basis of race, color, national origin, sex, and disability.

OCR analyzed the following applicable EOs. The effective dates are below, and they remained in effect as of OCR's last review on January 4, 2018:

- EO 1095, "Systemwide Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence and Stalking Policy" (effective June 23, 2015);
- EO 1096, "Systemwide Policy Prohibiting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence and Stalking Against Employees and Third Parties and Systemwide Procedure for Addressing Such Complaints by Employees and Third Parties." (effective June 23, 2015, revised on October 5, 2016 to incorporate technical amendments to the California Fair Employment and Housing Act Regulations);
- EO 1097, "Systemwide Policy Prohibiting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking Against Students and Systemwide Procedure for Addressing Such Complaints Against Students" (effective June 23, 2015, revised on October 5, 2016); and
- EO 1098, "Student Conduct Procedures" (effective June 23, 2015).

## Executive Order 1095

EO 1095 specifies the requirements of Title IX with respect to protection from discrimination and harassment on the basis of sex in the University's programs and activities, including employment, educational, extracurricular, and athletic activities on and off campus. It provides that the University will take immediate and appropriate steps to investigate and resolve any reports or complaints promptly and equitably, and states that the University is obligated to take appropriate steps to eliminate the misconduct found, prevent its recurrence, and remedy its effects. EO 1095 identifies factors that the University will consider in terms of honoring any request for confidentiality, including weighing it against the University's obligation to provide a safe, non-discriminatory environment for all students. The complainant and respondent have the same opportunities to be accompanied by advisors and mentors and to be simultaneously informed in writing of the outcomes of an investigation and their rights to appeal.

EO 1095 states that each campus is required to designate one Title IX Coordinator with primary responsibility to monitor, supervise, and oversee overall campus-wide implementation of compliance with Title IX and the related EOs, including coordination of training, education, communications, and administration of complaint procedures. The Title IX Coordinator may not have other institutional responsibilities that could create a conflict of interest. The Title IX Coordinator and any Deputy Title IX Coordinator must have adequate training with respect to the defined offenses covered by the EOs and the system-wide complaint procedures and on how to investigate complaints. All individuals involved in implementing the procedures for Title IX are required to have relevant and annual training on the CSU complaint processes, confidentiality, and how to conduct investigations and hearings. Each campus is

also required to develop preventative education programs for employees and students to ensure awareness of the EOs and stop and prevent the prohibited conduct.

### Executive Orders 1096 and 1097

EO 1096 is the system-wide policy and grievance procedure for all complaints of discrimination and harassment on any protected basis (including disability, sex, race, and nationality) and for all complaints of retaliation<sup>4</sup> made by applicants for employment, employees, student-employees (where the alleged violation arose out of the student's status as an employee) against the CSU, a CSU employee, a CSU student or a third party. EO 1097 is the system-wide policy and procedure for all complaints of discrimination and harassment on any protected basis and for complaints of retaliation made by CSU students against the CSU, a CSU employee, another CSU student, or a third party. EO 1096 and EO 1097 are the same in nearly all relevant respects, except as otherwise identified herein.

To report allegations under EO 1097, a student may submit a formal written complaint to the Title IX Coordinator for sex discrimination, sexual harassment, sexual misconduct, dating and domestic violence and stalking, and to the Discrimination, Harassment, and Retaliation (DHR) Administrator for discrimination and harassment on other bases and for retaliation. If someone is appealing a grade change, the final determination under EO 1097 as to whether a violation occurred shall be provided to the campus grade appeal committee. EO 1096 and EO 1097 set forth definitions of prohibited conduct, including but not limited to the definitions for discrimination, harassment, retaliation, sexual misconduct, sexual assault, sexual battery, rape, acquaintance rape, reasonable accommodations, and affirmative consent.

EO 1096 and EO 1097 state that the University shall respond promptly and effectively to all such complaints and take appropriate action to prevent, correct, and discipline conduct that violates policies. Employee discipline is administered consistent with the applicable collective bargaining agreements, policies and legal requirements; student discipline is administered in accordance with EO 1098, which is discussed below.

Employees who know or have reason to know of allegations or acts that violate EO 1096 must promptly inform the DHR Administrator or Title IX Coordinator.<sup>5</sup> There is no stated timeframe for making a report but complainants are encouraged to come forward as soon as possible because delays may impede the ability to conduct an investigation or take appropriate remedial measures. The University will respond to all reports of alleged violations of the EOs, whether or not a report is submitted as a written complaint. The DHR Administrator/Title IX Coordinator determines whether the matter is appropriate for investigation and notifies the parties in writing; an investigation may not be warranted where the reported information is insufficient. All determinations regarding whether to proceed or not proceed with an investigation are to be documented in writing and maintained in accordance with system-wide records retention policies.

Complainants may initiate the Early Resolution process (ERP) prior to, or instead of, filing a complaint in order to "explore whether the complainant's concern(s) can be resolved by the campus without an

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<sup>4</sup> The EOs state that an individual is protected from retaliation "for exercising rights under the policy, including opposing discrimination or harassment based on a protected status or for participating in any manner in any related investigation or proceeding."

<sup>5</sup> The use of "DHR Administrator/Title IX Coordinator" is intended to identify that either individual may be the appropriate responsible party for the action depending on the nature of the report or complaint as set forth in the policies and procedures.

investigation.” No complainant is required to use the ERP. Where voluntary mediation is requested, the EOs state that no meeting should occur without involvement of an appropriate campus administrator. To initiate the process, the complainant contacts the DHR Administrator/Title IX Coordinator, who promptly meets with the complainant to discuss concerns and inform the complainant about the range of possible outcomes, that participation is voluntary and does not include an investigation, and that resolution options include discussions with the parties, referrals to counseling, separation of the parties, agreements to disciplinary action, training, or other remedies.

If resolution is reached through ERP, a written record is documented and maintained and information about the outcome provided to either the Student Conduct Administrator (for students) or Human Resource or Academic Affairs (for the employee). If resolution is not reached, the campus must notify the complainant and, where applicable, the respondent in writing that the ERP has ended and the effective date of termination. At any time, the complainant or campus, but not the respondent, may elect to terminate the ERP.

The DHR Administrator/Title IX Coordinator shall meet with the complainant no later than 10 working days after the report or complaint was received to provide an initial intake interview and explain the complainant’s rights and complaint procedure options, and discuss available resources, supports, and interim measures. The DHR Administrator/Title IX Coordinator is also required to meet with the respondent for an initial interview and either during that interview or prior to it, explain the investigation procedure and timelines, inform the respondent of rights/options under the complaint procedures, and provide the respondent with a copy of the procedures, a description of the complainant’s allegations, and a full opportunity to respond, including by accepting a list of witnesses and any documentary evidence from the respondent, discussing interim measures, and scheduling additional meetings.

Within 10 working days of either the intake interview or filing (not specified), the complainant is notified that the complaint has either been accepted or not accepted for investigation through written notice with citation to applicable procedure. If the complaint is accepted, the DHR Administrator/Title IX Coordinator (or designee) must promptly investigate. The parties have equal opportunities to present witnesses and evidence, be accompanied by advisors of their choice, and, upon inquiry, shall be advised of the status of the investigation. Before issuing a final investigative report or reaching a final conclusion, the investigator shall have advised the parties or have offered to advise the parties, of any evidence upon which the findings will be based, and shall have given the parties an opportunity to respond to the evidence, including presenting further evidence or arguments that could impact the outcome. The investigator shall not reach a final conclusion or issue an investigative report, until she/he gives careful consideration to any such relevant evidence, information or arguments.

The investigation shall be completed and an investigation report submitted to the DHR Administrator/Title IX Coordinator no later than 60 working days after the intake interview (a total of 70 days from filing), unless the timeline is extended for good cause. However, the timeline cannot be extended longer than 30 additional working days from the original due date.

Within 10 working days of issuance of the “final investigative report” (80 days or more because there is no timeline for finalizing the report), the DHR Administrator/Title IX Coordinator shall notify the parties in writing of the outcome of the investigation, which shall include a summary of allegations and the investigative process, the standard of review (here, preponderance of the evidence), the evidence considered, the findings, a determination as to whether the relevant EO was violated, and if a violation



is found, any remedies. The notice shall advise the parties of the right to file an appeal and to request a copy of the final investigation report with any exhibits/attachments, and the notice shall be delivered in a manner that guarantees delivery within two working days.

Within 10 days after receiving notice of the investigative outcome, a complainant or respondent who is not satisfied with the outcome of the investigation may file an appeal with the Chancellor's Office based on (1) the investigative outcome being unsupported by the evidence, (2) serious prejudicial errors, or (3) new evidence not available at the time of the investigation. The Chancellor's Office does not conduct a new investigation but may interview the parties. The complainant, respondent and DHR Administrator/Title IX Coordinator receive the written appeal response, which includes a summary of the issues, the evidence considered, and the determinations reached, no later than 30 working days after the appeal is filed. However, there is no limit on the overall time for appeals and responses, if the Chancellor's Office remands for further information or investigation.

EO 1096 and EO 1097 both state that all investigators shall receive annual training, including with respect to discrimination, harassment, retaliation, and how to conduct an investigation under applicable procedures. With respect to conflicts of interest, complaints against a president shall be filed with the Chancellor's Office. Complaints against the employees of the Chancellor's Office are addressed by the president of the relevant campus, and complaints against the Chancellor or a member of the Board of Trustees are referred to the Chair or Vice Chair of the Board or the Chancellor's Office Title IX coordinator for processing and investigation. Neither EO 1096 nor EO 1097 addresses how to handle conflicts of interest for a Title IX Coordinator/DHR Administrator or any investigators. EO 1096 and EO 1097 are to be distributed and made regularly available to students and employees using multiple means, including catalogs, email, orientation materials, and webpages. Timelines can be adjusted for a reasonable time period not to exceed 30 working days for any reason deemed to be legitimate by the campus investigator/Chancellor's Office appeal reviewer or by mutual agreement of the parties.

#### Executive Order 1098

EO 1098 governs all student disciplinary matters system-wide for allegations involving discrimination, and harassment on any protected basis, and for allegations of retaliation. Student conduct administrators are required to receive appropriate training regarding the discipline process, conducting investigations and hearings, and the laws governing discrimination, harassment, and retaliation, and Title IX, among other things. Each campus president is to appoint hearing officers and those with conflicts of interest are ineligible to serve. All complainants, impacted party witnesses, and respondents may be accompanied by an advisor. If any timelines are revised, the parties are informed.

For all complaints of discrimination, harassment, and retaliation based on all protected bases except sex, the DHR administrator makes the determination under EO 1096 and 1097, as to whether the student has violated the student conduct code and prepares a report that includes findings and conclusions, which are final and binding in all subsequent proceedings, unless appealed. For complaints of sex discrimination, including harassment and retaliation, the Title IX Coordinator investigates and makes a determination under EO 1096 and 1097 and prepares a report that includes findings and conclusions, which are final and binding in all subsequent proceedings, unless appealed.

Where the investigation report finds a violation or the finding of a violation is sustained after appeal, the Student Conduct Administrator will initiate student conduct proceedings, and the Student Conduct

Administrator and the DHR Administrator/Title IX Coordinator will consult with respect to appropriate sanctions and remedies.

The Student Conduct Administrator is required to offer the complainants the opportunity to confer with him/her to offer input concerning appropriate sanctions and remedies; any conference shall occur within 10 working days after either receipt of the final investigation report or final appeal outcome. After this time period elapses, the Student Conduct Administrator is required to notify the student charged in writing that a conference has been scheduled and to include in the notice the section(s) of the policies that are the subject of proposed discipline, the range of sanctions, including sanctions designed to provide remedies to the complainant, the location on campus where the student can view the discipline file, notification of any immediate, interim suspension<sup>6</sup> and/or withdrawal of consent to remain on campus, notification of the student's rights to be accompanied at the conference by an advisor, and a copy of the applicable EO. The Student Conduct Administrator has the authority to propose a resolution agreement to be signed by the student and the University after the student has been given a reasonable opportunity to review it with an advisor. The respondent must be informed that any proposed resolution may be appealed by the complainant and is not final until any such appeal is exhausted.

If a case does not proceed to hearing, the DHR Administrator/Title IX Coordinator shall notify the complainant of the resolution agreement and right to appeal it, and shall take any appropriate further steps to address the effects of any violations, and identify and address any remaining systemic concerns.

If not resolved, the Student Conduct Administrator shall issue a notice of hearing to the complainant, respondent and DHR Administrator/Title IX Coordinator promptly after the conference that includes the proposed sanction and code sections at issue; the date, time and place of the hearing; the location where the parties can view the investigation report; notice of the ability for both parties to be accompanied by advisors; a notification of any interim suspension; and the right to waive the hearing and accept the sanction proposed. The hearing is to be scheduled no later than 20 working days after the date of the notice of hearing and limited to determining appropriate sanctions. All parties and witnesses are required to attend in person; the student conduct administrator and respondent put on evidence in the case and the hearing officer asks questions of the complainant and other witnesses on behalf of the respondent and complainant unless the complainant or other witnesses waive the requirement. For cases involving sexual harassment/sexual violence, questions may not be posed to complainants about past sexual behaviors involving any persons other than the student charged.

The Hearing Officer submits a written report to the president 10 working days after the hearing to recommend sanctions and additional remedies. The president may impose the recommended sanction, adopt a different sanction(s), or reject sanctions altogether and set forth any reasons for the deviation in a letter issued to the parties and to the Student Conduct Administrator, Hearing Officer and DHR Administrator/Title IX Coordinator within 10 working days of the Hearing Officer's report. The decision letter shall include the outcome of the hearing on sanctions, a copy of the Hearing Officer's report, and

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<sup>6</sup> Per the EO, interim suspensions may be imposed where there is reasonable cause to believe that separation of a student is necessary to protect the personal safety of persons within the University community or property and to ensure maintenance of order. The student may request a hearing to determine whether continued interim suspension is appropriate and such hearing shall be conducted within 10 working days to determine "whether there is reasonable cause to believe that continued interim separation is necessary to protect the personal safety of persons within the University community or University property and to ensure the maintenance of order."

notice of the parties' right to appeal to the Chancellor's Office. The DHR Administrator/Title IX Coordinator shall determine if any remedies or additional steps shall be afforded or undertaken to maintain a safe and nondiscriminatory University environment.

The complainant and respondent may each file an appeal of the sanctions decision (or proposed resolution agreement) to the Chancellor's Office not later than 10 working days after the date of the president's decision letter. The sanctions appeal is limited to whether the sanction is reasonable and whether any prejudicial procedural errors occurred during the hearing. The Chancellor's Office is required to issue a final appeal response to the parties within 10 working days.

#### Analysis and Conclusion of Law

As currently written, in most respects, the CSU system-wide policies and procedures provide an equitable process for both complainants and respondents. Each policy and procedure sets forth multiple ways in which notice of its contents should be provided to students and employees and the manner in which complaints should be filed, including the applicable policy and procedure. Each policy and procedure reinforces that responsible employees shall report any notice of potentially discriminatory conduct to either the DHR Administrator/Title IX Coordinator in a timely manner. The policies and procedures also identify the University's responsibility to provide a prompt, appropriate, impartial, and equitable resolution to all such complaints. EO 1095, 1096, and 1097 provide that both the complainant and respondent have the opportunity to provide information about witnesses and other evidence to the investigator (or, during the sanctions process, the hearing officer) and to request and review the investigative report, evidence, and exhibits, and to provide a response after reviewing the same. They also provide that both the complainant and respondent have the right to an advisor of their choice, to receive notice of the charges and notice at each stage regarding the outcome of the investigation and appeal, to an individual conference with the Title IX Coordinator/DHR Administrator, and to receive information about applicable procedures and potential outcomes.

EO 1095 specifies that with respect to Title IX, the policies and procedures protect from discrimination on the basis of sex in the University's programs and activities, including employment, academic, extracurricular, and athletic activities, both on and off campus. EO 1095, 1096 and 1097 include an assurance that the CSU will take steps to prevent recurrence of any discrimination or harassment found to have occurred and correct any the discriminatory effects, if a violation is found. However, none of the policies and procedures address whether the University will consider the effects of sexual violence or sexual harassment that occurred off-campus but that may create a hostile environment in the context of a University program or activity. OCR notes that while the policies and procedures do not address this, the University's Compliance Coordinator stated that the University reviews reports of off-campus sexual violence and sexual harassment that have a nexus to campus programs and activities; the 2015-2016 University case files that OCR reviewed reflect the same.

With respect to whether the procedures set forth a reasonably prompt time frame for all major stages of the complaint process, OCR found that the procedures do not contain a timeframe for issuance of the final investigative report after completion of the investigation. As such, they do not set forth a reasonably prompt timeline for the complainant and respondent to receive notice of the outcome of the investigation. In this regard, in one of the cases requested by OCR, OCR identified a concern because on December 18, 2017, the University informed OCR that the final investigative report had not been issued to the parties, even though more than a year had passed. OCR also found that while the procedures set forth an appeal timeframe of 30 working days (plus 30 days of extension) for the Chancellor's Office to

issue a decision related to the investigative findings and determination, and another 10 working days to issue a determination after sanctions, the procedures permit the Chancellor to remand and request further information or investigation at the investigative determination stage, which can trigger another right to appeal and another round of review; the procedures do not set forth a reasonably prompt total time for this remand and appeal process to occur, such that in any case the appeal time prior to the inception of the sanctions hearing process could be extensive.

OCR also identified a concern with respect to equity related to the ERP because after ERP is initiated, only the complainant and not the respondent may terminate the ERP at any time and proceed with the formal investigation process. The University's Compliance Coordinator stated that it is her practice to ensure that respondents are also made aware of the voluntary nature of the ERP process and of the right to end it at any time; however, there were no documents in the case files reviewed by OCR that specifically reflected that such right had been identified to any respondent.

OCR also identified a concern that the policies and procedures do not prohibit conflicts of interest and bias for the Title IX Coordinator, DHR Administrator, Deputy Title IX Coordinators, and investigators. The Compliance Coordinator stated that any challenges on these bases would be addressed on a case-by-case basis and that if a conflict was identified, the University would try to engage another investigator; however, she stated that this process and the prohibition on conflicts of interest/bias was not memorialized in any document or communicated to the parties.

Accordingly, OCR found that the policies and procedures for addressing discrimination and harassment were compliant, except in the following ways. Only the complainant, and not the respondent, is informed in writing of the right to terminate the ERP at any time and proceed to the formal complaint process. None of the policies address whether the University will consider the effects of off campus sexual violence or sexual harassment when evaluating whether there is a hostile environment on campus or in an off campus education program or activity. There is no stated timeline for issuing the investigative report after the conclusion of the investigation process, and the issuance of the report is the communication through which the complainant and respondent receive notice of the conclusion of the first major stage of the grievance process. In addition, the policies and procedures do not include a reasonably prompt timeframe for the final resolution of an appeal after the investigative findings stage because the Chancellor's Office decision may result in multiple appeals and remands on the same matter with no stated time limitation.

OCR also identified a compliance concern because there is no procedure for addressing or a prohibition against conflicts of interest/bias by the Title IX Coordinators/Deputies/investigators, and the University could not identify a way in which such a prohibition was communicated to the parties and did not have a clear process for addressing such issues, if raised by the parties. Prior to OCR completing its investigation of this compliance concern, the University expressed an interest in voluntary resolution through revision to the EOs, and OCR agreed it was appropriate to do so.

**7. Whether the University provided a timely and appropriate response to oral reports and written complaints of discrimination and harassment as required under Title IX, Title VI, Section 504 and Title II and their implementing regulations?**

Legal Standards

For Title VI, OCR evaluates the appropriateness of the responsive action to discrimination, including harassment, on the basis of race, color, and/or national origin by assessing whether it was timely, reasonable, and effective. What constitutes a reasonable response to discrimination will differ depending upon the circumstances. However, in all cases the University must timely conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the discrimination, and remedy the effects of the discrimination on the student who was discriminated against. The University must also take steps reasonably calculated to prevent the discrimination from recurring.

The regulation implementing Title IX, at 34 C.F.R. § 106.31, provides that “. . . no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any . . . education program or activity” operated by recipients of Federal financial assistance. When responding to alleged sex discrimination, including sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The inquiry must be prompt, reliable, and impartial. Pending the outcome of a response to a report or an investigation of a complaint, Title IX requires a recipient to take steps to protect the complainant from further harassment as necessary, including taking interim measures. The recipient also should take steps to prevent any retaliation against the student who made the complaint and/or those who provided information. A recipient must consider the effects of off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity.

For Section 504 and Title II, OCR evaluates the appropriateness of the responsive action to alleged discrimination on the basis of disability by assessing whether it was prompt and equitable. What constitutes a reasonable response to discrimination will differ depending upon the circumstances. However, in all cases the University must promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the discrimination, and remedy the effects of the discrimination on the student who was discriminated against. The University must also take steps reasonably calculated to prevent the discrimination from recurring.

With respect to each jurisdictional area, other actions may be necessary to address a hostile environment on a protected basis or prevent recurrence of discrimination, if a violation is found. The University also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

### Facts and Analysis

The University provided OCR with its investigation/resolution files for sixty-four (64) reports and complaints of alleged discrimination on the basis of race, color, national origin, disability and sex that it received during the 2015-2016 academic year. OCR reviewed all case files provided by the University and conducted a detailed analysis related to thirty-four matters, including three alleged violations of Section 504/Title II, five alleged violations of Title VI, and 26 alleged violations of Title IX, including 13 reports and/or complaints involving allegations of sexual harassment/sexual violence. OCR reviewed and analyzed the University's responses to these oral reports and written complaints to assess whether they complied with the relevant federal statutes and regulations that were at issue in this compliance review.

In addition, OCR requested the University's investigative file(s) for the complaints of three female students alleging that the same male student had sexually assaulted each of them during the 2016-2017 academic year, between September and October 2016. As of December 15, 2017, the University had not issued a final investigative report to the parties. The Compliance Coordinator identified that the allegations raised were both severe and complex and that the record was voluminous however, without reviewing the file, OCR could not make a compliance determination as to whether the reasons provided were sufficient to mitigate the delay in completing this major stage in University's grievance process. Accordingly, OCR identified a compliance concern related to the length of time to complete these investigations.

With respect to the 2015-2016 files reviewed, OCR identified compliance concerns because, while in several cases the University had information about the identity of a respondent University student, employee, or third party vendor, and had identified witnesses to potentially harassing behavior, it did not follow-up with the respondent to assess whether the conduct occurred or whether any steps were needed to prevent its recurrence. For example, in one matter, third party students reported that a male student had engaged in unwelcome conduct of a sexual nature with a female student during a meeting of an on-campus student group, and, in one instance, other students allegedly intervened to stop the male student from engaging in an unwelcome physical pursuit of the female student. The Compliance Coordinator identified that a campus advisor met with the female student after receiving the report to inform her of her Title IX rights and options under the University's policies and procedures with respect to the reported behavior, but the Compliance Coordinator did not follow-up with the respondent to assess whether any harassment had occurred and/or whether any steps may have been needed to prevent it from reoccurring. In another matter, a faculty member reported to the Compliance Coordinator that a student had reported that her professor was attempting to initiate an unwelcome sexual relationship with her, and that the professor told the student not to tell the reporting faculty member. The Compliance Coordinator met with the student eight days later for an initial intake meeting, and the student stated that she did not want the University to disclose her identity to the professor or to proceed with an investigation. The student was in the professor's course at the time of the report and told the Compliance Coordinator that she wanted to complete the course. The Compliance Coordinator timely offered accommodations and resources, and notified the professor's department chair of the report, in case future complaints were made. The Compliance Coordinator stated that she was informed that the department chair followed-up with the professor but there was no documentation of the content of this follow-up conversation or record of any further conversations with the student to assess whether the alleged sexually harassing conduct had ceased or with the department chair to identify whether the matter was resolved.

In another matter, on November X, 2014, a student emailed a faculty member to report that one of her professors refused to grade her midterm examination, after telling her that if she had parents who did not speak English it could be a problem. On November XX, 2014, the faculty member reported the information to the Compliance Coordinator, identifying her concern that the professor refused to grade the student's work based on "racist assumptions." The reporting faculty member stated that after she had learned that the professor made the comments, she had personally assisted the student with her writing for the class. The student reported to the same faculty member that when she returned to class, the same professor had publicly humiliated her about the work product. The reporting faculty member's email to the Compliance Coordinator stated that other students had come forward "to confirm this and to share their own testimony about the way [the professor] bullies students, and the hostile environment she [had] created." The Compliance Coordinator's log noted that she had offered to do an intake but that the matter had been resolved directly between the student and her professor

by that time, so the matter was closed. The Compliance Coordinator subsequently told OCR that she had learned that the professor apologized for the statements, and that the student was satisfied with the outcome with respect to the written work product in question. The Compliance Coordinator notified the Dean about the incident, and assumed the Dean would follow-up on the incident with the professor. The Compliance Coordinator stated that she did not interpret the reporting faculty member's email to mean that the professor had subjected other students to discrimination or harassment based on a protected category but rather to bullying on non-protected bases. OCR identified a concern that the Compliance Coordinator did not make any inquiries of the reporting faculty member or allegedly impacted students to assess whether they were alleging discrimination or harassment on a protected basis, and that the Compliance Coordinator did not follow-up to ensure that the Dean had followed through on the outreach to the professor about the conduct in question and assess whether any additional response was necessary. Prior to completing its investigation with respect to the concerns raised related to the aforementioned matters, the University expressed an interest in entering into a voluntary resolution agreement, and OCR determined that it was appropriate to do so.

As a matter of technical assistance, OCR also recommends that when closing a matter where the final contact with the student is to provide information about resources, rights and options, the University include notice of the University's determination with respect to whether it intends to proceed with an investigation of the matter. In addition, where interim measures and/or a "check-in" has been used to resolve a matter without an investigation, OCR recommends that the University maintain adequate documentation of any interim or final measures implemented and any follow-up with the party or parties to provide them with notice of the outcome of the grievance process. Some case files reviewed did not contain written information about or notes memorializing verbal contacts with the party or parties to convey this information, making it difficult in several cases for OCR to assess where a prompt and equitable resolution had been provided.

#### Overall Conclusion

The University has entered into the enclosed Agreement to address the compliance concerns and areas of noncompliance identified in this compliance review. The Agreement requires the University to: review and revise the relevant notice of nondiscrimination and policies and procedures governing discrimination and harassment; provide notice of policy and procedure revisions to the University community; and submit information about and a self-assessment of the University's handling of reports of discrimination and harassment for the 2017-2018 academic year.

This concludes OCR's compliance review and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination with respect to the issues investigated in this compliance review. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. OCR is closing the investigation of this compliance review as of the date of this letter.

OCR will monitor the implementation of the enclosed Agreement until the University has fulfilled its terms. When fully implemented, the Agreement is intended to address all of OCR's compliance findings and concerns in this investigation.

Please be advised that the University may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by the law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Civil Rights Attorney, Maria Asturias at the San Francisco OCR office at (415) 486-5555.

Sincerely,

/s/

Laura Faer  
Regional Director

Enc.

cc: XXXXX XXXXXXXXX and XXXX XXXXXXXXX, Counsel for the CSU and University