

THE CALIFORNIA STATE UNIVERSITY
OFFICE OF THE CHANCELLOR



October 23, 2013

BAKERSFIELD

CHANNEL ISLANDS

CHICO

DOMINGUEZ HILLS

EAST BAY

FRESNO

FULLERTON

HUMBOLDT

LONG BEACH

LOS ANGELES

MARITIME ACADEMY

MONTEREY BAY

NORTHRIDGE

POMONA

SACRAMENTO

SAN BERNARDINO

SAN DIEGO

SAN FRANCISCO

SAN JOSÉ

SAN LUIS OBISPO

SAN MARCOS

SONOMA

STANISLAUS

MEMORANDUM

TO: CSU Presidents

FROM: Timothy P. White
Chancellor

SUBJECT: Systemwide *Policy* Prohibiting Discrimination, Harassment and Retaliation Against Employees and Third Parties and *Procedures* for Handling Discrimination, Harassment and Retaliation Allegations by Employees and Third Parties – Executive Order 1089

Attached is a copy of Executive Order 1089 relating to the systemwide policy and procedure for handling discrimination, harassment and retaliation allegations by employees and third parties.

This executive order reaffirms California State University's commitment to providing equal opportunities and maintaining an environment free of discrimination, harassment and retaliation in accordance with applicable state and federal laws.

For clarity, Executive Order 1089 brings together in one document the systemwide nondiscrimination, anti-harassment, and anti-retaliation policies, and the systemwide discrimination, harassment and retaliation complaint procedures. This executive order also covers employee and third party discrimination, harassment and retaliation complaints and training requirements for all employees.

Executive Order 1089 supersedes Executive Orders 883, 927, and 928. Any local campus employment discrimination, harassment and retaliation policies and/or procedures that conflict with this executive order are now superseded and should be rescinded.

Complaints filed on or after the effective date of this executive order shall be processed in accordance with the policy and procedure specified herein. Complaints filed before the effective date of this executive order shall proceed under other procedures, as applicable, until the conclusion of the other procedures.

CSU Presidents
October 23, 2013
Page 2

In accordance with the 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.

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

TPW/eb

Attachment

- c: CSU Office of the Chancellor Leadership
- Associate Vice Presidents, Faculty Affairs
- DHR Administrators
- Equity & Diversity Directors
- Human Resources Officers
- Title IX Coordinators

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

Executive Order: 1089

Effective Date: October 23, 2013

Supersedes: Executive Orders 883, 927 and 928 and HR/EEO 2011-01

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 does not constitute an adverse action.
- C. **Advisor.** The Complainant and the Accused may each elect to be accompanied by an Advisor to any meeting or interview regarding the allegations. The Advisor may be anyone, 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 actions 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. 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), (l), and (m) 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(q), means sex, and includes a person's gender identity and gender expression.
- N. **Gender expression**, as defined in Cal. Govt. Code §12926(q), 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 family members of the person.
 3. The manifestation of a disease or disorder in family members of the person.
 4. Any request for, or receipt of genetic services, or participation in clinical research that includes genetic services, by a person or any family member of the person.

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).

1. **Sexual Harassment** consists of both non-sexual conduct based on sex or sex-stereotyping and conduct that is sexual in nature. It includes unwelcome sexual advances or propositions, offering employment benefits or giving preferential treatment in exchange for sexual favors, and other verbal, visual, or physical conduct of a sexual nature 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*
 - b. 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 decisions or actions affecting the Complainant; *or*
 - c. 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.
2. **Sexual Violence** is a form of Sexual Harassment. Sexual Violence means physical sexual acts (such as unwelcome sexual touching, sexual assault, sexual battery and rape) perpetrated against a Complainant who did not give consent or is incapable of giving consent due to age, Disability or use of drugs or alcohol.
- Q. **Investigator** means the person tasked with investigating a Complaint at Level I - Campus Level. The Investigator shall have relevant experience or shall receive appropriate training regarding such issues as the investigatory process and the laws governing Discrimination, Harassment and Retaliation. 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 outside 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
 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. **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.
- T. **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 veteran status.
- U. **Religion**, as defined in Cal. Govt. Code §12926(p), includes all aspects of religious belief, observance, and practice, and includes agnosticism and atheism. Religious dress and

grooming practices, such as wearing religious clothing, head or face covering, jewelry, and artifacts, are part of a Complainant's religious observance or belief.

- V. **Remedies** 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 may 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. 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 or informal resolution is completed.
- W. **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.
- X. **Sex**, as defined in Cal. Govt. Code §12926(q), includes but is not limited to gender, pregnancy, childbirth or medical condition(s) related to pregnancy or childbirth.
- Y. **Sexual Orientation**, as defined in Cal. Govt. Code §12926(r), means heterosexuality, homosexuality, or bisexuality.
- Z. **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 is pending.
- AA. **Third Party** means a person other than an Employee or a Student. Examples include employees of auxiliary organizations (as defined in Cal. Code Regs. Title 5 §42406), volunteers, independent contractors, vendors and their employees, and visitors.
- BB. **Title IX Coordinator** means the Campus MPP Employee appointed by the Campus president to coordinate compliance with Title IX of the Education Amendments of 1972 in cases alleging Sexual Discrimination, including Sexual Harassment and Sexual Violence. The Title IX Coordinator 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.

CC. **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 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 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 of the Education Amendments of 1972, 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 in the case of a privilege recognized under California law (examples of which include Evidence Code §§1014 (psychotherapist-patient); 1035.8 (sexual assault counselor-victim); and 1037.5 (domestic violence counselor-victim)), any Employee who knows of, or has reason to know of, allegations or acts that violate this policy, shall promptly inform the DHR Administrator.

Employees and Students who violate this policy may be subject to discipline. If discipline is appropriate, it shall be administered in a manner consistent with applicable collective bargaining agreements and/or CSU policies and legal requirements.

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. Each Campus shall make the contact information for the DHR Administrator available to Employees 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.

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 Allegations of Violations of the Policy

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 at a Campus. 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 1074 (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). The Complainant, the Accused or the University may at any time elect to terminate the Informal Resolution process.

During 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.

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. 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.

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, the Accused, and their Advisors (if any) in writing that the Informal Resolution process is terminated, and the termination effective date. 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

- 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, the Complainant shall submit a written signed statement containing the following information:
1. The Complainant’s full name, relationship to the University, and contact information;
 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 Sexual Discrimination, including Sexual Harassment and Sexual Violence) shall promptly meet with the Complainant after receiving the Complaint. The Complainant shall make himself/herself available for this meeting.

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);
 - 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 and 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.
- E. **Advisor.** The Complainant 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.
- G. **Investigation Procedure.** The DHR Administrator or the Title IX Coordinator (in cases alleging Sexual 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 have relevant experience or shall receive appropriate training regarding such issues as the investigatory process and the laws governing Discrimination, Harassment and Retaliation. If delegated, the DHR Administrator or the Title IX Coordinator (in cases alleging Sexual 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 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 it does not relieve a Campus of its responsibility to handle complaints under this Executive Order.

Thus, a Campus may not wait until the conclusion of a police investigation to commence its own investigation under this Executive Order. Although it may be necessary to temporarily delay the fact-finding portion of an investigation while the police are gathering evidence, once notified that the police have completed the fact gathering portion of their investigation, the Campus must promptly resume and complete its own investigation.

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 (and 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 Sexual 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. A copy of the notice shall be provided to the Complainant's Advisor, if any.

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. A copy of the notice shall be provided to the Accused's Advisor, if any.

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.

Level II appeals shall be addressed to: CSU Chancellor's Office, Equal Opportunity and Whistleblower Compliance Unit, Systemwide Human Resources, 401 Golden Shore, Long Beach, California 90802.

The CO shall provide prompt written notice to the Accused and the DHR Administrator (and 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 of the CO Response shall be provided to the Complainant's Advisor, if any, and a copy shall be forwarded to the DHR Administrator (and Title IX Coordinator, where the allegations involve Sex Discrimination, Sexual Harassment or Sexual Violence). 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 the Accused's Advisor, if any, 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.

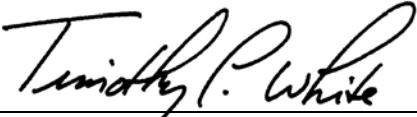
Article VIII. General Provisions for Investigation/Review of Complaints

- 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 will 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. 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 may in its discretion investigate the underlying allegations of any Discrimination, Harassment or

Retaliation complaint. In that event, any such investigation shall be subject to Article VI. D through I and Article VIII. A through H of this Executive Order, but shall not be subject to Article VII. The University may also 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 such facts do not warrant an investigation, then the reasons for that decision shall be reduced to writing and retained by the University according to appropriate record retention policies.

- H. Nothing contained herein is intended or should be construed to interfere with an Employee's right to consult with a representative.
- I. 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.
- J. 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 personnel files of another without the written consent of that person.
- K. 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: CSU Employment Discrimination/Harassment/Retaliation Complaint Form
CSU Employment Discrimination/Harassment/Retaliation Complaint Timeline



Timothy P. White, Chancellor

Dated: October 23, 2013