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ABBREVIATIONS

AVP       Associate Vice President
CSU       California State University
DCL       Dear Colleague Letter
DFEH      Department of Fair Employment and Housing
DOE       Department of Education
EADA      Equity in Athletics Disclosure Act
EO        Executive Order
OCR       Office of Civil Rights
OUA       Office of the University Auditor
VSM       Voluntary Self-Monitoring (Report)
EXECUTIVE SUMMARY

As a result of a systemwide risk assessment conducted by the Office of the University Auditor (OUA) during the last quarter of 2011, the Board of Trustees, at its January 2012 meeting, directed that Title IX Compliance be reviewed. The OUA had previously reviewed Title IX Compliance in 1982.

We visited the San Diego State University campus from April 2, 2012, through May 4, 2012, and audited the procedures in effect at that time.

Our study and evaluation did not reveal any significant internal control problems or weaknesses that would be considered pervasive in their effects on Title IX compliance activities. However, we did identify other reportable weaknesses that are described in the executive summary and body of this report. In our opinion, the operational and administrative controls for Title IX compliance activities in effect as of May 4, 2012, taken as a whole, were sufficient to meet the objectives stated in the “Purpose” section of this report.

As a result of changing conditions and the degree of compliance with procedures, the effectiveness of controls changes over time. Specific limitations that may hinder the effectiveness of an otherwise adequate system of controls include, but are not limited to, resource constraints, faulty judgments, unintentional errors, circumvention by collusion, and management overrides. Establishing controls that would prevent all these limitations would not be cost-effective; moreover, an audit may not always detect these limitations.

The following summary provides management with an overview of conditions requiring attention. Areas of review not mentioned in this section were found to be satisfactory. Numbers in brackets [ ] refer to page numbers in the report.

CONTROL ENVIRONMENT [6]

Campus delegations of authority were not always documented or current. In addition, campus nondiscrimination notifications were incomplete. Finally, education and prevention training on sexual assault and information relating to student complaints of discrimination, harassment, and retaliation was not provided to incoming extended education students taking classes on campus.
INTRODUCTION

BACKGROUND

In 1972, Congress passed Title IX of the Education Amendments to the Civil Rights Act of 1964, prohibiting discrimination on the basis of sex in all federally assisted educational programs and activities. Title IX states: “No person in the United States shall, on the basis of sex, be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

Title IX provides legal protection against gender-based discrimination for both students and employees and, with some exceptions, covers all aspects of educational programs and activities that receive federal funds. This includes admissions, access to programs and courses, counseling and guidance, housing, financial assistance, employment, and athletics, among other areas.

Regulations implementing Title IX were issued in 1975 by the Department of Health, Education and Welfare and were codified in Code of Federal Regulations, Title 34, Part 106. High schools and colleges had three years to comply with the implementing regulations. When the Department of Education (DOE) was established in 1980, primary oversight for Title IX compliance was transferred to the department’s Office of Civil Rights (OCR). Then, in 1994, Congress passed the Equity in Athletics Disclosure Act (EADA), requiring federally assisted, co-educational institutions of higher education to annually report information on the gender breakdown of their intercollegiate athletic programs to the DOE.

In addition to specific legislation, federal policy materials and case law influence how Title IX laws are interpreted and applied. Recent policy materials have focused on bullying and sexual harassment in the education environment. On October 26, 2010, OCR issued a Dear Colleague Letter (DCL) discussing how bullying could result in discriminatory harassment that could trigger Title IX responsibilities. On April 4, 2011, OCR issued a DCL discussing sexual harassment and sexual violence in the educational environment and schools’ responsibilities under Title IX to investigate and respond to these types of incidents.

The California State University (CSU) is committed to creating an atmosphere where all individuals can work and study free of unlawful discrimination. A number of CSU policies address Title IX issues relating to discrimination and harassment.

Executive Order (EO) 883, Systemwide Guidelines for Nondiscrimination and Affirmative Action Programs in Employment, dated October 31, 2003, discusses the requirement for each campus to develop and implement nondiscrimination policies and affirmative action programs in employment.

EO 927, Systemwide Policy Prohibiting Harassment in Employment and Retaliation for Reporting Harassment or Participation in a Harassment Investigation, dated January 6, 2005, and EO 928, Systemwide Complaint Procedure for Discrimination, Harassment and Retaliation Complaints for Employees, dated January 6, 2005, provide grievance procedures for employees, employee applicants, and independent contractors who believe they have been subjected to harassment. These policies also prohibit retaliation against any such individuals for reporting harassment or participating in a harassment investigation.
EO 993, *Implementation of the “California Campus Blueprint to Address Sexual Assault” and other Sexual Assault Legislation*, dated October 23, 2006, discusses the requirement for campuses to have a sexual assault policy, plan to prevent sexual assaults, and education and prevention programs relating to sexual assault. This was expanded and superseded by EO 1072, *Implementation of Title IX of the Education Amendments of 1972 and Related Sexual Harassment/Violence Legislation for CSU Students*, dated April 6, 2012, which provided additional legislative requirements specific to Title IX. These include the requirement to post a Title IX notice of nondiscrimination, designate a Title IX coordinator, and adopt and publish complaint procedures for sexual discrimination, harassment and violence complaints.

EO 1043, *Student Conduct Procedures*, dated August 3, 2009, discusses the complaint and investigation process for students who violate the student conduct code. Violations of the student conduct code, such as intimidation, harassment, or sexual misconduct, may trigger Title IX responsibilities.

EO 1045, *Systemwide Policy Prohibiting Discrimination, Harassment and Retaliation Against Students and Applicants for Admission and Systemwide Procedure for Handling Discrimination, Harassment and Retaliation Complaints by Students and Applicants for Admission Against the CSU and/or CSU Employees*, dated March 1, 2010, addresses complaint and grievance procedures for students and applicants for admission who believe they have been subjected to discrimination, harassment, or retaliation.

EO 1043 and EO 1045 were superseded by EO 1073, *Student Conduct Procedures*, and EO 1074, *Systemwide Policy Prohibiting Discrimination, Harassment and Retaliation Against Students and Systemwide Procedure for Handling Discrimination, Harassment and Retaliation Complaints by Students*, respectively, on April 6, 2012. The revised policies were issued in response to the April 2011 DCL issued by OCR relating to sexual harassment and assault. They streamlined the complaint and investigation process for student complaints relating to discrimination, harassment, and retaliation and provided for all student complaints of this nature to be processed in accordance with the policy and procedures stated in EO 1074.

The CSU also voluntarily monitors gender equity in its athletics programs through the *Voluntary Self-Monitoring Report Regarding Equal Opportunity in Athletics for Women Students* (VSM). The origins of this report, which is published on an annual basis, stem from a 1993 consent decree between the CSU and the California National Organization for Women that required the CSU to increase female student participation in intercollegiate athletics, expenditures for women’s athletics programs, and grants-in-aid for female student athletes. After the consent decree was satisfied in 2000, the chancellor and CSU presidents decided to voluntarily continue to report on and monitor progress in these areas. Although the VSM and its goals are not specifically tied to Title IX, they demonstrate the CSU’s commitment to providing equal athletic opportunities for members of both sexes.
PURPOSE

Our overall audit objective was to ascertain the effectiveness of existing policies and procedures related to Title IX compliance and to determine the adequacy of controls over related processes to ensure compliance with relevant government regulations, Trustee policy, Office of the Chancellor directives, and campus procedures.

Within the overall audit objective, specific goals included determining whether:

- Administration of Title IX compliance is well-defined and includes clear lines of organizational authority and responsibility and documented delegations of authority.
- Processes and procedures ensure timely and effective notification and communication of Title IX legislation and CSU policies and directives.
- Individuals and campus areas involved in Title IX coordination, complaints, and investigations are appropriately trained and aware of their roles and responsibilities.
- Policies and procedures pursuant to Title IX are current and comprehensive, and distribution procedures are effective.
- Processes and procedures exist to ensure timely and adequate response to complaints from the OCR and other external entities.
- The processing of complaints and grievances ensures timely and adequate resolution of issues related to Title IX.
- Coordination and communication between campus departments and law enforcement personnel relating to Title IX incidents is adequate.
- Confidential hardcopy and system information assets, such as information pertaining to Title IX complaints and investigations, are reasonably secure.
- Management and oversight of athletics provides an adequate control environment for Title IX compliance.
- Data reported in the EADA report is accurate and can be supported by the campus.
- Campus controls provide reasonable assurance that the athletic interests and abilities of students of both sexes are effectively accommodated, that athletic scholarships are awarded on an equitable basis, and that the provision and maintenance of locker rooms and practice/competitive facilities are equitable.
SCOPE AND METHODOLOGY

The proposed scope of the audit as presented in Attachment A, Audit Agenda Item 2 of the January 24 and 25, 2012, meeting of the Committee on Audit stated that Title IX Compliance includes compliance with federal, state, and local rules and regulations that relate to the Education Amendments of 1972. Proposed audit scope would include, but was not limited to, review of compliance with federal and state laws, Trustee policy, systemwide directives, and campus policies and procedures; roles and responsibilities of Title IX coordinators; Title IX notification requirements; grievance and complaint procedures for students, faculty, staff, and third parties; testing of campus efforts to investigate and resolve complaints; processes to monitor and report gender equity in campus programs, including athletics; collection, analysis, and reporting of campus statistics; and protection of sensitive and confidential information.

Our study and evaluation were conducted in accordance with the International Standards for the Professional Practice of Internal Auditing issued by the Institute of Internal Auditors and included the audit tests we considered necessary in determining whether operational and administrative controls are in place and operative. This review emphasized, but was not limited to, compliance with Board of Trustee policies and Office of the Chancellor and campus policies, letters, and directives. The audit focused on procedures in effect from January 1, 2010, through May 4, 2012.

We focused primarily on the internal administrative, compliance, and operations controls over Title IX compliance activities. Specifically, we reviewed and tested:

- The campus framework for Title IX compliance, including designation of a Title IX coordinator, notice of nondiscrimination, and published grievance procedures.
- Qualifications of employees involved in the Title IX complaints process and campuswide training practices for Title IX issues.
- Resolution of student complaints and grievances related to discrimination, harassment, and retaliation.
- Coordination and communication with campus law enforcement personnel when Title IX violations involve a criminal complaint.
- Safeguards to secure confidential information pertaining to Title IX complaints and investigations.
- Management and oversight mechanisms to monitor gender equity in intercollegiate athletics.
- Accuracy of information reported in the EADA and the CSU VSM reports.
- Campus controls to provide reasonable assurance that athletic participation opportunities, financial aid, and locker rooms and facilities are provided in an equitable manner.
OBSERVATIONS, RECOMMENDATIONS, AND CAMPUS RESPONSES

CONTROL ENVIRONMENT

DELEGATIONS OF AUTHORITY

Campus delegations of authority were not always documented or current.

We found that:

- The campus lacked a written delegation of authority identifying the student conduct administrator.

- The campus delegation of authority pursuant to Executive Order (EO) 927, naming the associate vice president (AVP) of administration as the campus administrator responsible for receiving and investigating complaints of unlawful discrimination and harassment, was outdated, as the position was no longer responsible for those duties.

- The campus delegation of authority pursuant to EO 1045 named the AVP of administration as the campus administrator responsible for administering the systemwide policy and procedure prohibiting discrimination, harassment, and retaliation against students and applicants for admission. However, the AVP shared some of the assigned duties required under the EO with another individual, without a further written delegation of authority.

EO 1043, Student Conduct Procedures, dated August 3, 2009, states that each campus president assigns a campus official(s) to be the Student Conduct Administrator, whose responsibilities are to determine whether to initiate disciplinary action under the Student Conduct Code.

EO 927, Systemwide Policy Prohibiting Harassment in Employment and Retaliation for Reporting Harassment or Participation in a Harassment Investigation, dated January 6, 2005, states that the chancellor and the presidents, or their designees, shall designate individuals responsible for receiving and investigating complaints of harassment on their respective campuses.

EO 1045, Systemwide Policy Prohibiting Discrimination, Harassment and Retaliation Against Students and Applicants for Admission and Systemwide Procedure for Handling Discrimination, Harassment and Retaliation Complaints by Students and Applicants for Admission Against the CSU and/or CSU Employees, dated January 27, 2010, states that each campus president shall designate a management personnel plan employee who shall be responsible for the implementation of, and compliance with, this policy. In addition, each campus shall designate specific employees to receive complaints filed against the California State University (CSU) and/or CSU employees under this EO.

The AVP of administration stated that the absence of a written delegation letter for the student conduct administrator was due to administrative oversight. She further stated that due to recent promotions, the delegation letters currently in place regarding compliance with EO 927 and EO 1045 did not correctly delineate the roles of the AVP of administration and the director of employee relations.
Failure to maintain complete and current delegations of authority increases the risk that personnel lacking the proper qualifications will perform sensitive tasks involving student conduct hearings and investigations, and the risk of misunderstandings in expectations and responsibilities relating to these tasks.

**Recommendation 1**

We recommend that the campus:

a. Document a written delegation of authority identifying the student conduct administrator.

b. Update the delegation of authority from the campus president to the administrator responsible for receiving and investigating employee complaints of discrimination, harassment, and retaliation.

c. Update the delegation of authority from the campus president to the administrator responsible for administering the systemwide policy and procedure prohibiting discrimination, harassment, and retaliation against students and applicants for admission.

**Campus Response**

We concur. The university will:

a. Document a delegation of authority identifying the student conduct administrator by October 1, 2012.

b. Update the delegation of authority identifying the administrator responsible for receiving and investigating employee complaints of discrimination, harassment, and retaliation. This will be completed by October 1, 2012.

c. Update the delegation of authority identifying the administrator responsible for the systemwide policy and procedure prohibiting discrimination, harassment, and retaliation against students and applicants for admission. This will be completed by October 1, 2012.

**Nondiscrimination Notifications**

Campus nondiscrimination notifications were incomplete.

We found that:

- The statement of nondiscrimination that the campus had published in various areas, including the student catalog, employee application forms, and campus websites, did not always include the name or title and contact information of the campus Title IX coordinator. For example, this information was not included in the graduate bulletin or the College of Extended Studies catalog.
The campus did not distribute a copy of the Department of Fair Employment and Housing (DFEH) pamphlet “Discrimination and Harassment in Employment are Prohibited by Law” to all employees upon their first arrival at the campus.

Code of Federal Regulations, Title 34, Part 106, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, §106.9 states that (a) each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students, and employees that it does not discriminate on the basis of sex in the educational program or activity which it operates. Such notification shall state at least that the requirement not to discriminate extends to employment and to admission, and that inquiries concerning the application of Title IX can be referred to the employee designated as the Title IX coordinator or to the assistant secretary. It further states that (b) each recipient shall prominently include a statement of the policy described in paragraph (a) in each announcement, bulletin, catalog, or application form which is used in connection with the recruitment of students or employees.

Office of Civil Rights (OCR) Dear Colleague Letter (DCL) dated April 4, 2011, states that the Title IX regulations require that each recipient publish a notice of nondiscrimination stating that the recipient does not discriminate on the basis of sex in its education programs and activities, and that Title IX requires it not to discriminate in such a manner. The notice must state that inquiries concerning the application of Title IX may be referred to the recipient’s Title IX coordinator or to OCR. It should include the name or title, office address, telephone number, and email address for the recipient’s designated Title IX coordinator. The notice must be widely distributed to all students, employees, applicants for admission and employment, and other relevant persons.

EO 927, Systemwide Policy Prohibiting Harassment in Employment and Retaliation for Reporting Harassment or Participation in a Harassment Investigation, dated January 6, 2005, states that each campus shall distribute a copy of the following documents to all employees upon their first arrival at the campus: the DFEH pamphlet “Discrimination and Harassment in Employment are Prohibited by Law,” this EO or superseding document, EO 883 or superseding document, and EO 675 or superseding document.

The AVP of administration stated that in response to clarification provided in the OCR DCL, attempts were made to list the name and contact information for the Title IX coordinator in course catalogs and the graduate bulletin; however, the revisions to the policy were not provided until after the publication deadline for the 2011/12 academic year. She further stated that efforts had already been made to ensure that future publications would have the complete information. Finally, she stated that failure to distribute the DFEH pamphlet was due to administrative oversight.

Failure to include contact information for the Title IX coordinator in campus nondiscrimination statements and failure to distribute required materials on nondiscrimination to new employees increases the risk of non-compliance with CSU and campus nondiscrimination and harassment policies, and with federal and state regulations.
Recommendation 2

We recommend that the campus:

a. Include the name or title and contact information of the campus Title IX coordinator in all published statements of nondiscrimination.

b. Distribute a copy of the DFEH pamphlet to all employees upon their first arrival at the campus.

Campus Response

We concur.

a. The university will include the Title IX coordinator’s contact information in nondiscrimination published statements by October 1, 2012.

b. Effective June 1, 2012, all new employees now receive a copy of the DFEH pamphlet.

EDUCATION AND PREVENTION PROGRAMS

Education and prevention training on sexual assault and information relating to student complaints of discrimination, harassment, and retaliation was not provided to incoming extended education students taking classes on campus.

EO 993, Implementation of the “California Campus Blueprint to Address Sexual Assault” and other Sexual Assault Legislation, dated October 23, 2006, states that California Education Code 67385.7 requires campus administrators to provide, as part of all campus orientations, educational and preventative information about sexual violence to students. The education and prevention information provided should include, but is not limited to: common facts and myths about the causes of sexual violence; dating violence, rape, sexual assault, domestic violence, and stalking crimes, including information on how to file internal administrative complaints with the campus and how to file criminal charges with local law enforcement officials; the availability of, and contact information for, campus and community resources for students who are victims of sexual violence; methods of encouraging peer support for victims and the imposition of sanctions on offenders; and information regarding campus, criminal, and civil consequences of committing acts of sexual violence.

The AVP of administration stated that information, education, and training on sexual assault prevention were available to all members of the campus community, including extended education students. She further stated that due to the nature of their status, extended education students were not provided with an orientation; however, information relating to sexual assault prevention was readily available.

Failure to provide education and prevention training on sexual assault or to provide information on complaints of discrimination, harassment, and retaliation to extended education students increases the risk of noncompliance with CSU and campus policies, and with federal and state regulations.
Recommendation 3

We recommend that the campus provide education and prevention training on sexual assault and information relating to student complaints of discrimination, harassment, and retaliation to incoming extended education students taking classes on campus.

Campus Response

We concur. The university will provide to incoming extended education students information regarding sexual assault and student complaint information for discrimination, harassment, and retaliation. This information will be available beginning December 1, 2012.
APPENDIX A: PERSONNEL CONTACTED

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
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<tbody>
<tr>
<td>Elliot Hirshman</td>
<td>President</td>
</tr>
<tr>
<td>Jenny Bramer</td>
<td>Associate Athletic Director/Senior Woman Administrator</td>
</tr>
<tr>
<td>Christopher Bronsdon</td>
<td>Director, Financial Reporting</td>
</tr>
<tr>
<td>Valerie Carter</td>
<td>Director, Audit and Tax</td>
</tr>
<tr>
<td>Julie Fitzgerald</td>
<td>Financial Aid Coordinator, Athletics</td>
</tr>
<tr>
<td>Thom Harpole</td>
<td>Director, Office of Employee Relations and Compliance</td>
</tr>
<tr>
<td>Sandy Jorgensen-Funk</td>
<td>Director, Counseling and Psychological Services</td>
</tr>
<tr>
<td>Chuck Lang</td>
<td>Associate Athletic Director, Business Administration</td>
</tr>
<tr>
<td>Joshua Mays</td>
<td>Lieutenant, Public Safety</td>
</tr>
<tr>
<td>Lee Mintz</td>
<td>Director, Center for Student Rights and Responsibilities</td>
</tr>
<tr>
<td>Jessica Rentto</td>
<td>Associate Vice President, Administration</td>
</tr>
<tr>
<td>Sally Roush</td>
<td>Vice President, Business and Financial Affairs</td>
</tr>
<tr>
<td>Christy Samarkos</td>
<td>Director, Residential Education</td>
</tr>
</tbody>
</table>
July 9, 2012

Mr. Larry Mandel
University Auditor
The California State University
401 Golden Shore, 4th Floor
Long Beach, CA 90802

Dear Mr. Mandel:

Attached is San Diego State University’s response to Audit Report 12-18, *Title IX Compliance*. Documentation of policy and control changes will follow under separate cover.

Should you have any questions or require additional information, please contact Valerie Carter, Audit and Tax Director, at 619-594-5901.

Sincerely,

Sally F. Roush
Vice President, Business and Financial Affairs

Attachment

c: Elliot Hirshman, President
   Jessica Rentto, Associate Vice President, Administration
   Scott Burns, Associate Vice President, Financial Operations
   Valerie Carter, Director, Audit and Tax
CONTROL ENVIRONMENT

DELEGATIONS OF AUTHORITY

Recommendation 1

We recommend that the campus:

a. Document a written delegation of authority identifying the student conduct administrator.

b. Update the delegation of authority from the campus president to the administrator responsible for receiving and investigating employee complaints of discrimination, harassment, and retaliation.

c. Update the delegation of authority from the campus president to the administrator responsible for administering the systemwide policy and procedure prohibiting discrimination, harassment, and retaliation against students and applicants for admission.

Campus Response

We concur. The University will:

a. Document a delegation of authority identifying the student conduct administrator by October 1, 2012.

b. Update the delegation of authority identifying the administrator responsible for receiving and investigating employee complaints of discrimination, harassment, and retaliation. This will be completed by October 1, 2012.

c. Update the delegation of authority identifying the administrator responsible for the systemwide policy and procedure prohibiting discrimination, harassment, and retaliation against students and applicants for admission. This will be completed by October 1, 2012.

NONDISCRIMINATION NOTIFICATIONS

Recommendation 2

We recommend that the campus:

a. Include the name or title and contact information of the campus Title IX coordinator in all published statements of nondiscrimination.
b. Distribute a copy of the DFEH pamphlet to all employees upon their first arrival at the campus.

**Campus Response**

We concur.

a. The University will include the Title IX coordinator’s contact information in nondiscrimination published statements by October 1, 2012.

b. Effective June 1, 2012, all new employees now receive a copy of the DFEH pamphlet.

**EDUCATION AND PREVENTION PROGRAMS**

**Recommendation 3**

We recommend that the campus provide education and prevention training on sexual assault and information relating to student complaints of discrimination, harassment, and retaliation to incoming extended education students taking classes on campus.

**Campus Response**

We concur. The University will provide to incoming extended education students information regarding sexual assault and student complaint information for discrimination, harassment, and retaliation. This information will be available beginning December 1, 2012.
July 19, 2012

MEMORANDUM

TO: Mr. Larry Mandel
    University Auditor

FROM: Charles B. Reed
      Chancellor

SUBJECT: Draft Final Report 12-18 on Title IX Compliance,
          San Diego State University

In response to your memorandum of July 19, 2012, I accept the response as submitted with the draft final report on Title IX Compliance, San Diego State University.

CBR/amd