TITLE IX COMPLIANCE

CALIFORNIA STATE UNIVERSITY,
FULLERTON

Audit Report 12-20
July 31, 2012

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ABBREVIATIONS

CSU California State University
DCL Dear Colleague Letter
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 California State University, Fullerton campus from May 21, 2012, through June 22, 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 June 22, 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. In addition, the campus did not have a method to document the communication of all Title IX complaints investigated by judicial affairs to the Title IX coordinator. Also, campus policies and procedures relating to discrimination, harassment, and retaliation needed improvement. For example, several of the procedures related to discrimination, harassment, and retaliation referenced on the office of diversity and equity website were outdated.
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, a 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.
INTRODUCTION

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 June 22, 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.

We found that written delegation letters were not available for the following roles related to Title IX:

- The individual responsible for the development and implementation of campus nondiscrimination policies.
- The campus administrator responsible for implementing systemwide policy prohibiting harassment in employment and retaliation for reporting harassment or participating in a harassment investigation.
- The individuals responsible for receiving and investigating harassment complaints from employees.
- The management personnel plan employee responsible for implementation of, and compliance with, California State University (CSU) discrimination, harassment, and retaliation policies for students and applicants.
- The employees designated to receive discrimination, harassment, and retaliation complaints from students and applicants.

Executive Order (EO) 883, Systemwide Guidelines for Nondiscrimination and Affirmative Action Programs in Employment, dated October 31, 2003, states that the president or his/her designee at each campus shall be responsible for the development and implementation of the campus’ nondiscrimination policies and affirmative action programs.

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 president or designee shall be responsible for implementing this systemwide policy at each campus. It further states that the president or designee shall designate the individuals responsible for receiving and investigating complaints of harassment on the campus.

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 EO. It further states that each campus shall designate specific employees to receive complaints filed against the CSU and/or CSU employees under this EO.
The interim associate vice president for human resources and risk management stated that certain delegations had not been formalized in writing due to oversight.

Failure to maintain complete and current delegations of authority relating to Title IX duties increases the risk that personnel lacking the proper qualifications will perform sensitive tasks relating to complaints and investigations, as well as the risk of misunderstandings in expectations and responsibilities relating to these tasks.

**Recommendation 1**

We recommend that the campus document delegation of authority for:

a. The individual responsible for the development and implementation of campus nondiscrimination policies.

b. The campus administrator responsible for implementing systemwide policy prohibiting harassment in employment and retaliation for reporting harassment or participating in a harassment investigation.

c. The individuals responsible for receiving and investigating harassment complaints from employees.

d. The management personnel plan employee responsible for implementation of, and compliance with, CSU discrimination, harassment, and retaliation policies for students and applicants.

e. The employees designated to receive discrimination, harassment, and retaliation complaints from students and applicants.

**Campus Response**

We concur. The campus will document delegation of authority for all roles related to Title IX by October 31, 2012.

**COMPLAINT MONITORING**

The campus did not have a method to document the communication of all Title IX complaints investigated by judicial affairs to the Title IX coordinator.

Code of Federal Regulations Title 34, Part 106.8(a), *Nondiscrimination on the Basis of Sex in Education Programs or Activates Receiving Federal Financial Assistance*, states that each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part.
The interim associate vice president for human resources and risk management stated his belief that the communication of Title IX complaints to the Title IX coordinator was sufficient, but that tracking completion of those complaints could be improved.

Failure to document communication of Title IX complaints to the Title IX coordinator increases the risk that the Title IX coordinator will be unaware of discrimination, harassment, or retaliation incidents occurring on campus.

**Recommendation 2**

We recommend that the campus develop a method to document the communication of all Title IX complaints investigated by judicial affairs to the Title IX coordinator.

**Campus Response**

We concur. A process to document the communication of Title IX complaints investigated by judicial affairs to the Title IX coordinator will be completed by November 30, 2012.

**POLICIES AND PROCEDURES**

Campus policies and procedures relating to discrimination, harassment, and retaliation needed improvement.

We found that:

- Several of the procedures related to discrimination, harassment, and retaliation referenced on the office of diversity and equity website, including some executive orders and university policy statements, were outdated.

- The campus did not have a written complaint procedure for handling allegations of discrimination, harassment, and retaliation from applicants and independent contractors.

State Administrative Manual §20050 states that one symptom of a deficient internal control system is policy and procedural or operational manuals that are either not currently maintained or are nonexistent.

**EO 928, Systemwide Complaint Procedure for Discrimination, Harassment and Retaliation Complaints from Employees Not Eligible to File a Complaint or Grievance Under a Collective Bargaining Agreement or Whose Collective Bargaining Agreement Incorporates CSU Systemwide Complaint Procedure,** dated January 6, 2005, states, in part, that there is no systemwide complaint procedure for applicants and independent contractors. Consequently, each campus shall provide for these by having in place a complaint procedure to handle allegations from applicants and independent contractors. Such a procedure shall designate several persons to whom an allegation can be brought.
The director of diversity and equity programs stated that the campus had been updating certain policies and procedures on an ongoing basis, but it had not yet completed the project due to competing priorities.

Failure to communicate and maintain current campus policies increases the risk of misunderstandings and inconsistencies in compliance with campus and CSU policies for receiving and investigating complaints of discrimination, harassment, and retaliation.

**Recommendation 3**

We recommend that the campus:

a. Update the office of diversity and equity website so that all policies and procedures relating to discrimination, harassment, and retaliation are current.

b. Develop a written complaint procedure for handling allegations of discrimination, harassment, and retaliation from applicants and independent contractors.

**Campus Response**

We concur. By December 31, 2012, the campus will update the office of diversity and equity website with current policies and procedures and develop written procedures for handling allegations of discrimination, harassment, and retaliation from applicants and independent contractors.
## APPENDIX A:
### PERSONNEL CONTACTED

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
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<tbody>
<tr>
<td>Mildred Garcia</td>
<td>President</td>
</tr>
<tr>
<td>Willie Hagan</td>
<td>Interim President (At time of review)</td>
</tr>
<tr>
<td>Ryan Alcantara</td>
<td>Associate Vice President for Student Affairs</td>
</tr>
<tr>
<td>William C. Barrett</td>
<td>Interim Vice President, Administration and Finance and Chief Financial Officer</td>
</tr>
<tr>
<td>Meredith Basil</td>
<td>Associate Athletics Director and Director, Athletics Academic Services</td>
</tr>
<tr>
<td>John Beisner</td>
<td>Interim Associate Vice President, Human Resources and Risk Management</td>
</tr>
<tr>
<td>Julie Bowse</td>
<td>Associate Athletics Director and Senior Woman Administrator</td>
</tr>
<tr>
<td>John Brockie</td>
<td>Administrative Lieutenant, University Police Department</td>
</tr>
<tr>
<td>Rosamaria Gomez-Amaro</td>
<td>Director of Diversity and Equity Programs and University Title IX Coordinator</td>
</tr>
<tr>
<td>Susan Leavy</td>
<td>Director, WoMen’s Center</td>
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<tr>
<td>Fred Lipscomb</td>
<td>Director, Housing and Residence Life</td>
</tr>
<tr>
<td>Sandra Rhoten</td>
<td>Associate Dean for Judicial Affairs</td>
</tr>
<tr>
<td>Robert Scialdone</td>
<td>Associate Athletics Director, Business Affairs</td>
</tr>
<tr>
<td>Aaron Tapper</td>
<td>Assistant Athletics Director, Facilities/Events</td>
</tr>
<tr>
<td>Scott Willey</td>
<td>Operations Lieutenant, University Police Department</td>
</tr>
<tr>
<td>Steven Yim</td>
<td>Controller</td>
</tr>
</tbody>
</table>
August 24, 2012

Larry Mandel, University Auditor
Office of the University Auditor
The California State University
400 Golden Shore, Suite 210
Long Beach, CA 90802-4210

SUBJECT: Campus Responses to Recommendations of Title IX Compliance Audit, Report 12-20

Dear Mr. Mandel:

Please find enclosed California State University, Fullerton’s official response to the three (3) recommendations contained in the Title IX Compliance Audit, Report 12-20.

We would like to thank the University Auditor and his staff for conducting the audit in a professional manner and identifying areas where our procedures or internal controls could be strengthened. The campus is committed to addressing the issues identified in the audit report.

If you have any questions or require additional information, please contact Steven Yim, Controller, at (657) 278-4075 or syim@fullerton.edu.

Sincerely,

William C. Barrett
Interim Vice President for Administration & Finance/
Chief Financial Officer

Attachments

cc: Mildred Garcia, President
John Beisner, Interim Associate Vice President, Human Resources and Risk Management
Rosamaria Gomez-Amareo, Director of Diversity and Equity Programs and University Title IX Coordinator
Steven Yim, Controller
TITLE IX COMPLIANCE
CALIFORNIA STATE UNIVERSITY,
FULLERTON
Audit Report 12-20

CONTROL ENVIRONMENT

DELEGATIONS OF AUTHORITY

Recommendation 1

We recommend that the campus document delegation of authority for:

a. The individual responsible for the development and implementation of campus nondiscrimination policies.

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d. The management personnel plan employee responsible for implementation of, and compliance with, CSU discrimination, harassment, and retaliation policies for students and applicants.

e. The employees designated to receive discrimination, harassment, and retaliation complaints from students and applicants.

Campus Response

We concur. The campus will document delegation of authority for all roles related to Title IX by October 31, 2012.

COMPLAINT MONITORING

Recommendation 2

We recommend that the campus develop a method to document the communication of all Title IX complaints investigated by judicial affairs to the Title IX coordinator.

Campus Response

We concur. A process to document the communication of Title IX complaints investigated by judicial affairs to the Title IX coordinator will be completed by November 30, 2012.
POLICIES AND PROCEDURES

Recommendation 3

We recommend that the campus:

a. Update the office of diversity and equity website so that all policies and procedures relating to discrimination, harassment, and retaliation are current.

b. Develop a written complaint procedure for handling allegations of discrimination, harassment, and retaliation from applicants and independent contractors.

Campus Response

We concur. By December 31, 2012, the campus will update the office of diversity and equity website with current policies and procedures and develop written procedures for handling allegations of discrimination, harassment, and retaliation from applicants and independent contractors.
September 6, 2012

MEMORANDUM

TO: Mr. Larry Mandel
   University Auditor

FROM: Charles B. Reed
       Chancellor

SUBJECT: Draft Final Report 12-20 on Title IX Compliance,
         California State University, Fullerton

In response to your memorandum of September 6, 2012, I accept the response as submitted with the draft final report on Title IX Compliance, California State University, Fullerton.

CBR/amd