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## ABBREVIATIONS

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<td>CSU</td>
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<td>PD</td>
<td>Presidential Directive</td>
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<td>SJSU</td>
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<td>UPD</td>
<td>University Police Department</td>
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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 José State University campus from February 20, 2012, through March 23, 2012, and audited the procedures in effect at that time.

Our study and evaluation revealed certain conditions that, in our opinion, could result in significant errors and irregularities if not corrected. Specifically, the campus did not maintain adequate internal control over the following areas: the general control environment, complaints process, and athletics reporting and oversight. These conditions, along with other weaknesses, are described in the executive summary and body of this report. In our opinion, except for the effect of the weaknesses described above, the operational and administrative controls for Title IX compliance activities in effect as of March 23, 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.

GENERAL ENVIRONMENT [7]

Campus nondiscrimination notifications were incomplete, and campus delegations of authority were not always documented. In addition, campus education and prevention orientation programs for students needed improvement. Specifically, the undergraduate freshman orientation program did not include information on how or where to file internal campus complaints for discrimination and harassment, and education and prevention training on sexual assault were not provided to incoming transfer, graduate, and extended education students taking classes on campus. Also, campus procedures relating to discrimination, harassment and retaliation needed improvement. For example, campus procedures relating to the investigation of complaints of discrimination, harassment and retaliation by students and student applicants referenced in new employee orientation materials and brochures were outdated.

COMPLAINTS PROCESS [13]

Coordination between the University Police Department (UPD) and the campus needed improvement. Specifically, policies did not exist to ensure that complainants were informed of their right to file a civil complaint with campus human resources, and to establish when complaints should be referred by UPD to the campus human resources department.
ATHLETICS REPORTING AND OVERSIGHT [14]

Administration of student complaints and surveys needed improvement. Specifically, we found that the student-athlete complete process was not documented in the student-athlete handbook, and that the results of student-athlete exit interview surveys were not reviewed by athletics staff. In addition, the campus NCAA revenues and expenditures report did not incorporate all revenues and expenditures made from Tower Foundation athletic accounts.
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 (HEW) 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.
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 March 23, 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.
GENERAL ENVIRONMENT

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 include the name or title and contact information of the campus Title IX coordinator.

- Application materials for extended education students attending classes on campus through Open University did not include the statement of nondiscrimination.

- 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 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 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.

Executive Order (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 associate vice president of human resources and campus Title IX coordinator stated that contact information for the Title IX coordinator was located on the human resources website and was not included in nondiscrimination notifications due to oversight. She further stated that because new employees received information regarding California State University’s (CSU) specific discrimination and harassment policies, she had not realized that it was also necessary to provide a copy of the DFEH pamphlet. The associate dean for international and extended studies stated that the campus nondiscrimination statement was not included in extended education application materials due to oversight.

Failure to include contact information for the Title IX coordinator in campus nondiscrimination statements, provide nondiscrimination statements in all application materials, and 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 1**

We recommend that the campus:

a. Include the name or title and contact information of the campus Title IX coordinator in its statement of nondiscrimination.

b. Include the statement of nondiscrimination in application materials for extended education students attending classes on campus through Open University.

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

**Campus Response**

We concur. We will complete compliance action by the end of August 2012 to:

a. Include full contact information of the Title IX coordinator in the statement of nondiscrimination.

b. Include the statement of nondiscrimination in application materials for extended education students attending classes on campus through Open University.

c. Distribute a copy of the DFEH pamphlet to all employees upon their first arrival.
DELEGATIONS OF AUTHORITY

Campus delegations of authority needed improvement.

We found that:

- Per San José State University (SJSU) Presidential Directive (PD) 2009-04, the vice president for student affairs was responsible for appointing student conduct hearing officers; however, written documentation of the appointment of these officers by the vice president of student affairs could not be located.

- The campus delegation of authority pursuant to EO 1045 named the vice president of student affairs (VPSA) as the campus administrator responsible for administering the systemwide policy and procedure prohibiting discrimination, harassment, and retaliation against students and applicants for admission. However, there was no further delegation from the VPSA to the employees in the equal opportunity and workforce planning office who were responsible for receiving these complaints and performing the investigations, or to the associate vice president of human resources, who reviewed and approved the investigation results.

SJSU PD 2009-04, Student Conduct Procedures, dated August 18, 2009, states that the duties of the president in EO 1043 are delegated to the vice president for student affairs, including the appointment of hearing officers, review of final reports of hearing officers, and issuing notice of the final decision and the imposition of interim suspension.

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 CSU and/or CSU employees under this EO. It further states that the campus designated management personnel plan employee shall review the investigative report and notify the student/applicant in writing of the campus investigation.

The assistant vice president for student affairs stated that delegation letters for hearing officers could not be located, and the most likely reason for this was turnover in personnel. She further stated that no formal written assignment of Title IX duties from the vice president for student affairs had been issued to employees in the equal opportunity and workforce planning office due to oversight.

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 increases the risk of misunderstandings in expectations and responsibilities relating to these tasks.
Recommendation 2

We recommend that the campus:

a. Maintain documentation of the appointment of student conduct hearing officers.

b. Document by way of internal memo or written assignment all appointments from the VPSA to those employees who receive and perform investigations of student discrimination, harassment, and retaliation complaints, and those who review and approve the investigation results.

Campus Response

We concur. We will complete compliance action by the end of August 2012 to implement management practice to:

a. Maintain documentation of the appointment of student conduct hearing officers.

b. Document by way of internal memo or written assignment all appointments from the VPSA to those employees who receive and investigate student discrimination, harassment, and retaliation complaints, as well as those who review and approve the investigation results.

EDUCATION AND PREVENTION PROGRAMS

Campus education and prevention orientation programs for students needed improvement.

We found that:

- Although some information on sexual assault was incorporated in the undergraduate freshman orientation program, the program did not incorporate information on how or where to file internal campus complaints for discrimination and harassment, including sexual harassment and assault.

- Education and prevention training on sexual assault and information relating to student complaints of discrimination, harassment, and retaliation was not provided to incoming transfer, graduate, and extended education students taking classes on 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 the contents of the EO shall be made readily available to students and applicants for admission, using multiple media of communication, including student orientations.

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 preventive 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 assistant vice president for student affairs stated that although the undergraduate freshman orientation did not specifically provide information on how and where to file internal campus complaints, this information was included in the student catalog and on the campus website. She further stated that annual campus resource fairs included booths hosted by the Wellness and Health Promotion Center and the Women’s Resource Center that provided such information. The associate vice president for graduate studies and research stated that budgets had precluded general graduate student orientations from being held. The director of academic advising and retention services stated that sexual assault education and prevention training had not been included in the transfer student orientation due to lack of awareness of the requirement.

Failure to provide information on how or where to file internal campus complaints in student orientation programs and failure to provide education and prevention training on sexual assault to transfer, graduate, and extended education students increases the risk of noncompliance with CSU and campus policies and federal and state regulations.

**Recommendation 3**

We recommend that the campus:

a. Incorporate information on how and where to file internal campus complaints for discrimination and harassment in the undergraduate freshman orientation program.

b. Provide education and prevention training on sexual assault and information relating to student complaints of discrimination, harassment, and retaliation to incoming transfer, graduate, and extended education students taking classes on campus.

**Campus Response**

We concur. We will complete compliance action by the end of August 2012 to:

a. Include in the undergraduate freshman orientation program how and where to file internal campus complaints for discrimination and harassment.

b. Provide education and prevention training on sexual assault and information relating to student complaints of discrimination, harassment, and retaliation to incoming transfer, graduate, and extended education students taking classes on campus.
POLICIES AND PROCEDURES

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

We found that:

- SJSU PD 2007-07, relating to the investigation of complaints of discrimination, harassment, and retaliation by students and student applicants, was referenced in new employee orientation materials and equal opportunity brochures as the internal complaint procedure for students and applicants for admission, although it was outdated and no longer used by the campus, which was correctly following current systemwide procedures.

- The campus did not have written procedures for investigating discrimination, harassment, and retaliation claims from employees in situations where an investigation is warranted but the claimant declines to file a formal complaint.

SJSU PD 2007-07, *San José State University Discrimination Complaint Procedure for Students and Applicants for Admission*, dated November 30, 2007, provides students and applicants for admission procedures to request and receive an investigation of any on-campus perceived discriminatory act or incident that is believed to be harassment or discriminatory in nature on the basis of race, color, national origin, disability, sex, age, sexual orientation, gender identification, religion, marital status, or pregnancy.

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 student/applicant for admission complaints filed on or after the effective date of EO 1045 shall be processed in accordance with the policy and procedures outlined in the EO. It further states that discrimination, harassment, and retaliation complaints against visitors, vendors, or independent contractors who are not CSU employees shall be filed under campus procedures.

EO 928, *Systemwide Complaint Procedure for Discrimination, Harassment and Retaliation Complaints for 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 that each campus shall have in place a procedure for investigating discrimination, harassment, and retaliation claims where the campus administrator concludes that an investigation is warranted but the claimant declines to file a formal written complaint at the time. The procedure is to be consistent with Section VIII of this EO.

The associate vice president of human resources and campus Title IX coordinator stated that her staff had identified the need to print new employee orientation materials and brochures, but had not yet had time to do so. She further stated that she did not know why the presidential directive was still active on the campus website, but her staff was aware of and did follow current systemwide policy. She also stated that separate written procedures for investigations where the claimant declines to file a
formal written complaint had not been written because her staff would follow the same basic guidelines as detailed in EO 928 to perform these investigations.

Failure to 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 4**

We recommend that the campus:

a. Update or supersede PD 2007-07 to clarify current campus policy relating to the investigation of complaints of discrimination, harassment, and retaliation by students and student applicants, and ensure that the updates are included in new employee orientation materials and brochures.

b. Document written procedures for investigating discrimination, harassment, and retaliation claims from employees in situations where an investigation is warranted, but the claimant declines to file a formal complaint.

**Campus Response**

We concur. We will complete compliance action by the end of August 2012 to:

a. Update and include in new employee orientation materials and brochures the PD 2007-07 to clarify campus policy relating to the investigation of complaints by students and student applicants regarding discrimination, harassment, and retaliation.

b. Document written procedures for investigating discrimination, harassment, and retaliation claims from employees in situations where an investigation is warranted, but the claimant declines to file a formal complaint.

**COMPLAINTS PROCESS**

Coordination between the University Police Department (UPD) and the campus needed improvement.

We found that, when Title IX-related complaints were filed against employees who were not UPD personnel, policies did not exist to ensure that:

- Complainants were informed of their right to also file a civil complaint with campus human resources.
- UPD referred complaints to campus human resources for additional review when necessary.

OCR Dear Colleague Letter dated April 4, 2011, states that because sexual violence complaints often are filed with the school’s law enforcement unit, all school law enforcement unit employees should
receive training on the school’s Title IX grievance procedures and any other procedures used for investigating reports of sexual violence. In addition, these employees should receive copies of the school’s Title IX policies. Schools should instruct law enforcement unit employees both to notify complainants of their right to file a Title IX sex discrimination complaint with the school in addition to filing a criminal complaint, and to report incidents of sexual violence to the Title IX coordinator if the complainant consents.

The chief of police stated that although all complaints against UPD personnel were referred to human resources, he had not identified the need to refer discrimination, harassment, and retaliation complaints against other employees to human resources as well. He further stated that now that the issue has been identified, he planned to update the UPD policy and procedure manual.

Failure to inform complainants of their right to file a complaint with the campus, as well as with law enforcement, and failure to refer UPD complaints to campus human resources for review as necessary increases the risk that valid complaints determined to be non-criminal in nature will not be acted upon by the campus and that the Title IX coordinator will be unaware of discrimination, harassment, or retaliation incidents occurring on campus.

**Recommendation 5**

We recommend that UPD document policies to:

a. Ensure that complainants of discrimination, harassment, or retaliation are informed of their rights to also file a civil complaint with campus human resources.

b. Establish when UPD should refer complaints to campus human resources.

**Campus Response**

We concur. We will complete compliance action by the end of August 2012 to:

a. Ensure that complainants of discrimination, harassment, or retaliation are informed of their rights to also file a civil complaint with campus human resources.

b. Establish clear criteria when UPD should refer complaints to campus human resources.

**ATHLETICS REPORTING AND OVERSIGHT**

**STUDENT-ATHLETE COMMUNICATIONS**

Administration of student complaints and surveys needed improvement.

We found that the student-athlete complaint process was not documented in the student-athlete handbook, and although student-athletes completed exit interview surveys, the results of these surveys were not reviewed by athletics staff.
National Collegiate Athletic Association (NCAA) Division I Manual §22.2.3.3, *Student-Athlete Well Being*, effective August 1, 2008, states that conducting the intercollegiate athletics program in a manner designed to protect and enhance the physical and educational well-being of student-athletes is a basic principle of the association. In accordance with this fundamental principle, the institution shall (a) provide evidence that the well-being of student-athletes and the fairness of their treatment is monitored, evaluated, and addressed on a continuing basis and (b) have established grievance or appeal procedures available to student-athletes in appropriate areas.

NCAA Division I Manual, §6.3.2, *Exit Interviews*, effective August 1, 1991, states that the institution’s director of athletics, senior woman administrator, or designated representatives shall conduct exit interviews in each sport with a sample of student-athletes whose eligibility has expired.

The associate athletic director for student services and senior woman administrator stated her belief that the gaps in the student complaints process and the exit interview process were due to turnover in campus personnel.

Failure to document the student-athlete complaint process increases the risk that student-athletes will not know how or where to file complaints, including complaints relating to gender equity, and failure to review student-athlete exit surveys increases the risk that the well-being of student-athletes and the fairness of their treatment will not be appropriately addressed.

**Recommendation 6**

We recommend that the campus:

a. Update the student-athlete handbook to document the student-athlete complaint process.

b. Implement a process to review the results of student-athlete exit surveys and address comments and suggestions as necessary.

**Campus Response**

We concur. We will complete compliance action by the end of August 2012 to:

a. Update the student-athlete complaint process in the student-athlete handbook.

b. Implement a process to review the results of student-athlete exit surveys and address comments and suggestions as necessary.

**NCAA REVENUES AND EXPENSES REPORT**

The campus NCAA revenues and expenditures report did not incorporate all revenues and expenditures made from Tower Foundation athletics accounts.

We found that although the campus NCAA revenues and expenditures report included certain key categories of athletics revenues and expenditures made from Tower Foundation athletics accounts,
such as financial aid and salaries, the report did not include all athletics revenues and expenditures made from these accounts. We noted that this practice was approved by the independent audit firm that performs the agreed-upon-procedures review of the NCAA revenues and expenditures report.

NCAA Division I Manual, §3.2.4.16, Operating and Capital Financial Data Report, effective August 1, 2009, states that an institution shall submit financial data detailing operating revenues, expenses and capital related to its intercollegiate athletics program to the NCAA on an annual basis in accordance with the financial reporting policies and procedures. The required data shall include, but is not limited to, all expenses and revenues for or on behalf of an institution’s intercollegiate athletics program, including those by any affiliated or outside organization, agency, or group of individuals.

The associate athletics director for business and operations stated that although some revenues and expenses associated with the Tower Foundation did not show up in the NCAA revenues and expenditures report, the independent auditor, as designated by the chancellor’s office, did review the Tower Foundation financials as part of the agreed-upon procedures process. He further stated that this interpretation provided by the independent auditor of the NCAA requirements has been used consistently for athletics reporting for many years.

Failure to include all athletics revenues and expenditures in the NCAA revenues and expenditures report, including revenues and expenditures made by affiliated organizations, increases the risk that inequities in expenditures between men’s and women’s athletics programs will not be recognized and that the campus will be out of compliance with NCAA regulations.

**Recommendation 7**

We recommend that the campus include all revenues and expenditures related to its intercollegiate athletics program in the NCAA revenues and expenditures report, including revenues and expenditures made by affiliated or auxiliary organizations such as the Tower Foundation.

**Campus Response**

We concur. We will complete compliance action by the end of August 2012 to ensure inclusion of all revenues and expenditures in the intercollegiate athletics program, including those made by affiliated or auxiliary organizations such as the Tower Foundation, in the NCAA revenues and expenditures report.
# APPENDIX A: PERSONNEL CONTACTED

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mohammad H. Qayoumi</td>
<td>President</td>
</tr>
<tr>
<td>Shawn Bib</td>
<td>Vice President for Administration and Finance</td>
</tr>
<tr>
<td>Demerris Brooks</td>
<td>University Ombudsman</td>
</tr>
<tr>
<td>Rosalinda Calderon</td>
<td>Senior Equal Opportunity and Workforce Planning Analyst</td>
</tr>
<tr>
<td>Leann Cherkasky Makhni</td>
<td>Director, International House</td>
</tr>
<tr>
<td>Maria De Guevara</td>
<td>Associate Vice President of Human Resources/Title IX Coordinator</td>
</tr>
<tr>
<td>Peter Decena</td>
<td>Chief of Police</td>
</tr>
<tr>
<td>Richard Dillon</td>
<td>Assistant Director, Student Organization Development</td>
</tr>
<tr>
<td>Wendy Dunn</td>
<td>Director of Compliance</td>
</tr>
<tr>
<td>Sandra Escalante</td>
<td>Personnel Services Representative</td>
</tr>
<tr>
<td>Jennifer Gacutan-Galang</td>
<td>Wellness and Health Promotion Coordinator</td>
</tr>
<tr>
<td>Matt Goudreau</td>
<td>Facilities Operations and Events Specialist</td>
</tr>
<tr>
<td>Staci Gunner</td>
<td>Director, Student Conduct and Ethical Development</td>
</tr>
<tr>
<td>Natalie Harding</td>
<td>Director, Academic Budgets</td>
</tr>
<tr>
<td>Jessica Hernandez</td>
<td>Interim Student Conduct Coordinator</td>
</tr>
<tr>
<td>Connie Hernandez-Robbins</td>
<td>Assistant Director, Guardian Scholars Program</td>
</tr>
<tr>
<td>Stephanie Hubbard</td>
<td>Associate Director, Resident Life</td>
</tr>
<tr>
<td>Liz Jarnigan</td>
<td>Associate Athletics Director for Student Services/</td>
</tr>
<tr>
<td></td>
<td>Senior Woman Administrator</td>
</tr>
<tr>
<td>Cynthia Kato</td>
<td>Director, Academic Advising and Retention Services</td>
</tr>
<tr>
<td>Elizabeth Martinez</td>
<td>Assistant to the Associate Vice President of Human Resources</td>
</tr>
<tr>
<td>Lynn Meade</td>
<td>Associate Athletics Director for Compliance</td>
</tr>
<tr>
<td>Robin Moore</td>
<td>Director, Equal Opportunity and Workforce Planning</td>
</tr>
<tr>
<td>Ninh Pham-Hi</td>
<td>Director of Internal Controls</td>
</tr>
<tr>
<td>Alicia Samis</td>
<td>Administrative Assistant to the Student Conduct Administrator</td>
</tr>
<tr>
<td>Pam Stacks</td>
<td>Associate Vice President, Graduate Studies and Research</td>
</tr>
<tr>
<td>Sharon Willey</td>
<td>Assistant Vice President for Student Affairs</td>
</tr>
<tr>
<td>Matt Witty</td>
<td>Associate Athletics Director for Business Operations</td>
</tr>
<tr>
<td>Steve Zlotolow</td>
<td>Associate Dean, International and Extended Studies</td>
</tr>
</tbody>
</table>
July 13, 2012

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

Re: Campus Response to **Title IX Compliance (#12-17) audit report at San José State University.**

Enclosed is San José State University’s response to the Title IX Compliance (#12-17) audit report. The campus is committed to addressing the issues identified in this audit report.

Please let me know if I can provide you with additional information.

[Signature]

Shawn Bibb
Vice President for Administration and Finance

Enclosure

cc: Mo Qayoumi, President
    Ninh Pham-Hi, Director, Internal Control
GENERAL ENVIRONMENT

NONDISCRIMINATION NOTIFICATIONS

Recommendation 1

We recommend that the campus:

a. Include the name or title and contact information of the campus Title IX coordinator in its statement of nondiscrimination.

b. Include the statement of nondiscrimination in application materials for extended education students attending classes on campus through Open University.

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

Campus Response

We concur. We will complete compliance action by end of August 2012 to (a) include full contact information of the Title IX Coordinator in the statement of nondiscrimination; (b) include the statement of nondiscrimination in application materials for extended education students attending classes on campus through Open University; (c) distribute a copy of the DFEH pamphlet to all employees upon their first arrival.

DELEGATIONS OF AUTHORITY

Recommendation 2

We recommend that the campus:

a. Maintain documentation of the appointment of student conduct hearing officers.

b. Document by way of internal memo or written assignment all appointments from the VPSA to those employees who receive and perform investigations of student discrimination, harassment, and retaliation complaints, and those who review and approve the investigation results.

Campus Response

We concur. We will complete compliance action by end of August 2012 to implement management practice to (a) maintain documentation of the appointment of student conduct hearing officers; (b) document by way of internal memo or written assignment all appointments from the VPSA to those
employees who receive and investigate of student discrimination, harassment, and retaliation complaints, as well as those who review and approve the investigation results.

EDUCATION AND PREVENTION PROGRAMS

Recommendation 3

We recommend that the campus:

a. Incorporate information on how and where to file internal campus complaints for discrimination and harassment in the undergraduate freshman orientation program.

b. Provide education and prevention training on sexual assault and information relating to student complaints of discrimination, harassment, and retaliation to incoming transfer, graduate, and extended education students taking classes on campus.

Campus Response

We concur. We will complete compliance action by end of August 2012 to (a) include in the undergraduate freshman orientation program on how and where to file internal campus complaints for discrimination and harassment; (b) provide education and prevention training on sexual assault and information relating to student complaints of discrimination, harassment, and retaliation to incoming transfer, graduate, and extended education students taking classes on campus.

POLICIES AND PROCEDURES

Recommendation 4

We recommend that the campus:

a. Update or supersede PD 2007-07 to clarify current campus policy relating to the investigation of complaints of discrimination, harassment, and retaliation by students and student applicants, and ensure that the updates are included in new employee orientation materials and brochures.

b. Document written procedures for investigating discrimination, harassment, and retaliation claims from employees in situations where an investigation is warranted, but the claimant declines to file a formal complaint.

Campus Response

We concur. We will complete compliance action by end of August 2012 to (a) update and include in new employee orientation materials and brochures the PD 2007-07 to clarify campus policy relating to the investigation of complaints by students and student applicants regarding discrimination, harassment, and retaliation; (b) document written procedures for investigating discrimination, harassment, and retaliation claims from employees in situations where an investigation is warranted, but the claimant declines to file a formal complaint.
COMPLAINTS PROCESS

Recommendation 5

We recommend that UPD document policies to:

a. Ensure that complainants of discrimination, harassment, or retaliation are informed of their rights to also file a civil complaint with campus human resources.

b. Establish when UPD should refer complaints to campus human resources.

Campus Response

We concur. We will complete compliance action by end of August 2012 to (a) ensure that complainants of discrimination, harassment, or retaliation are informed of their rights to also file a civil complaint with campus human resources; (b) establish clear criteria when UPD should refer complaints to campus human resources.

ATHLETICS REPORTING AND OVERSIGHT

STUDENT-ATHLETE COMMUNICATIONS

Recommendation 6

We recommend that the campus:

a. Update the student-athlete handbook to document the student-athlete complaint process.

b. Implement a process to review the results of student-athlete exit surveys and address comments and suggestions as necessary.

Campus Response

We concur. We will complete compliance action by end of August 2012 to (a) update the student-athlete complaint process in the student-athlete handbook; (b) implement a process to review the results of student-athlete exit surveys and address comments and suggestions as necessary.

NCAA REVENUES AND EXPENSES REPORT

Recommendation 7

We recommend that the campus include all revenues and expenditures related to its intercollegiate athletics program in the NCAA revenues and expenditures report, including revenues and expenditures made by affiliated or auxiliary organizations such as the Tower Foundation.
Campus Response

We concur. We will complete compliance action by end of August 2012 to ensure inclusion of all revenues and expenditures in the intercollegiate athletics program, including those made by affiliated or auxiliary organizations such as the Tower Foundation, in the NCAA revenues and expenditures report.
August 3, 2012

MEMORANDUM

TO: Mr. Larry Mandel
    University Auditor

FROM: Charles B. Reed
      Chancellor

SUBJECT: Draft Final Report 12-17 on Title IX Compliance, San José State University

In response to your memorandum of August 3, 2012, I accept the response as submitted with the draft final report on Title IX Compliance, San José State University.

CBR/amd