

Training for CSU Hearing Officers

Part A

Systemwide Title IX Compliance and the Office of General Counsel

Office of the Chancellor
The California State University
April 2023

The CSU – Overview



The CSU is the nation's largest four-year public university system

23 campuses stretching 800 miles from Humboldt in the north to San Diego in the south.

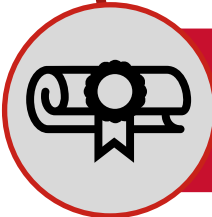
The CSU educates the most ethnically, economically and academically diverse student body in the nation.

The CSU – Overview

Source: [CSU Fact Book 2022](#)



477,466 students enrolled in the CSU in fall 2021



Nearly half of California's bachelor's degrees are awarded by the CSU



The CSU employs nearly 56,000 faculty and staff

Cultural Humility and Particular Considerations When Interacting With College Students

Cultural Humility

"Cultural humility is a humble and respectful attitude toward individuals of other cultures that pushes one to challenge their own cultural biases, realize they cannot possibly know everything about other cultures, and approach learning about other cultures as a lifelong goal and process."

(Gonzalez & Levitas, 2020)

Other Considerations

- The effect of social/peer pressure on willingness of parties and witnesses to participate in process
- Relationship with and influence of family
- Cultural influences
- English is not the first language
- Socioeconomic differences
- Immigration/undocumented status
- Perception by either party or witnesses that the process is not fair

Complications Arising from Social Media and Texts/Slang/Emojis

- Understanding the diversity of social media platforms and terminology
 - Snapchat, Instagram, TikTok, BeReal
- Impact of texting on communication
- Heavy use of slang
 - Terms such as: Agro, Cheugy, Cuffed, Emo, Finsta, Simp, Ship, Smash, Snatched, Sus,
 - Abbreviations: lol, smh, fomo, idk, ttyl, tbh, v, p
 - Emojis don't always mean what they seem
- Complexity around labeling of sexual acts or behaviors
- Don't hesitate to ask for clarification!



Trauma-Informed Principles

- Acknowledge that some questions might seem unusual or may feel uncomfortable.
- Explain that questions serve to help us understand your experience of the event.
- Phrasing of questions is important.
- In general consider reframing:
 - Questions that start with "why"
 - Directives such as "explain to me..."
 - Requests for a chronological account with prompts such as "and then what happened?"

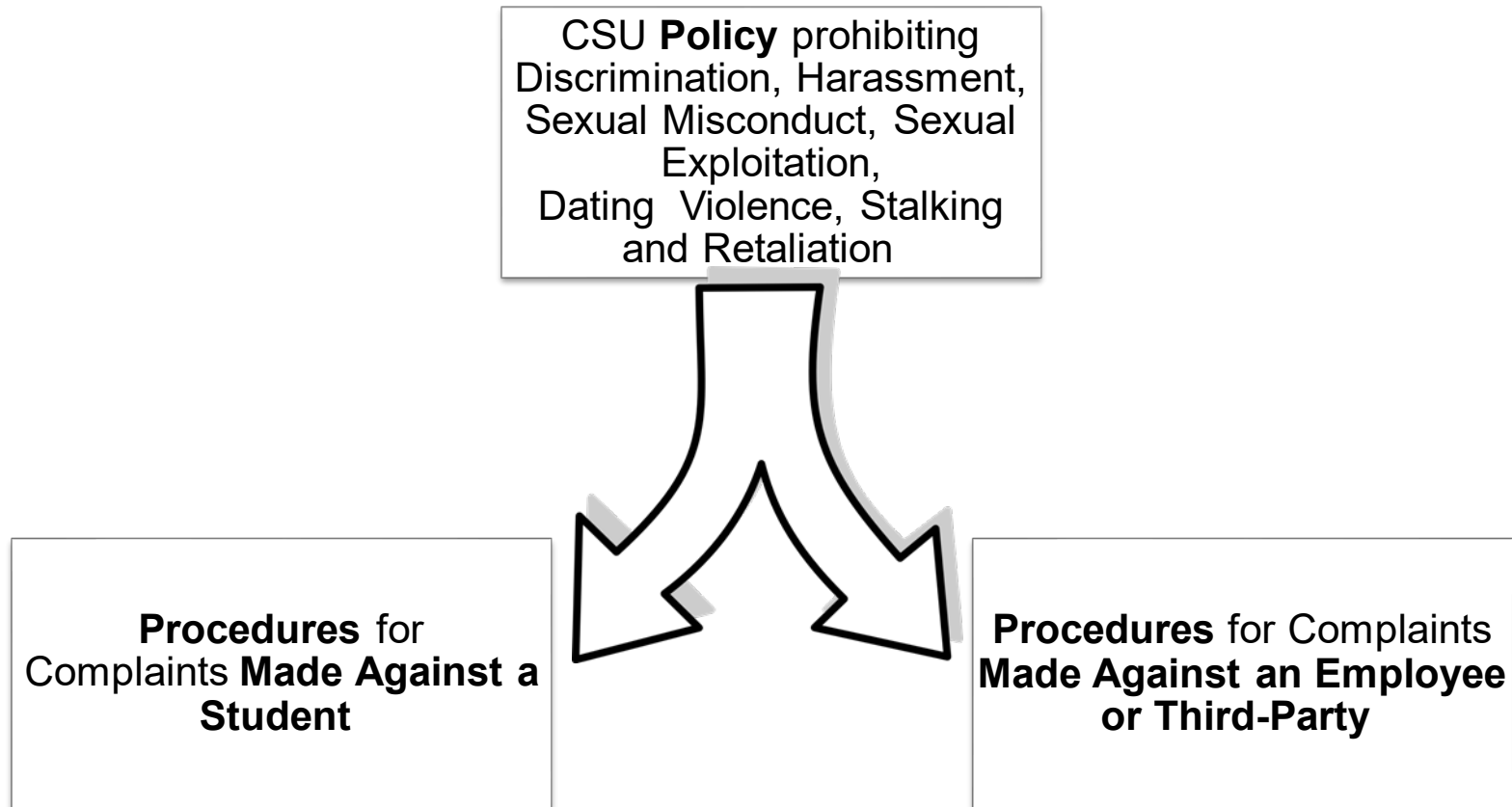
Reflection Exercise

Imagine a recent sexual experience, and then being asked to discuss that experience in graphic detail ...

- How would these factors impact the experience:
 - The other person is a stranger
 - The other person has authority over you
 - The other person is a different age, gender, race/ethnicity, sexual orientation or socioeconomic status from you

CSU Policy and Procedures

CSU Policy and Procedures - Structure



INTRODUCING TRACKS 1, 2, AND 3

Track 1 – Federal Mandated Hearing Process

- Formerly Addendum B
- Applies when the alleged conduct:
 - Meets the definition of Sexual Harassment under Article VII.C of the Policy; **and**
 - Occurred in the United States; **and**
 - Occurred in an education program or activity at the university, as defined in Track 1.

Track 2 – State Mandated Hearing Process

- Formerly Addendum A
- Applies when:
 - The complaint is against a **student**; **and**
 - The complaint is one of Sexual Misconduct, Dating Violence, or Domestic Violence; **and**
 - The credibility of one (or both) of the Complainant and the Respondent ("the Parties") , or any witness is central to the determination as to whether the Student violated the policy; **and**
 - The Student is facing a severe disciplinary sanction (expulsion or suspension) if found to be in violation of university Policy.

Track 3 – Non-Hearing Process

- Applies to all other complaints that allege a Policy violation (Title IX and DHR)
- No hearing involved
- Investigator determines whether a violation of Policy occurred

Hearings – Creating a New Process

- Historically, the primary purpose of the disciplinary process was educational
- OCR Guidance and VAWA increased the rights of Complainants and added other procedural requirements
- Court cases heightened the procedural due process requirements
- Federal Title IX Regulations – 2020 (anticipated new regulations in summer 2023)
- CA SB-493 – January 1, 2022

Prohibited Conduct

Track 1	Track 2
Sexual Harassment <ul style="list-style-type: none"> • Quid Pro Quo • Hostile Environment 	Sexual Misconduct
Sexual Assault <ul style="list-style-type: none"> • Rape • Fondling • Incest • Statutory Rape 	Dating Violence
Dating Violence	Domestic Violence
Domestic Violence	
Stalking	

Track 2

Physical violence or threat of physical violence committed by a person—

- a) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
- b) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship.
 - The type of relationship.
 - The frequency of interaction between the persons involved in the relationship.

Track 2

Physical violence or threat of physical violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant.

Who attends the hearing?

- Hearing Officer
- Complainant
- Respondent
- Witnesses
- Hearing Advisor(s)
- Support Person(s) (called an "Advisor" in Track 1 cases)
- Title IX Coordinator
- Title IX Investigator (if not also the Title IX Coordinator)
- Hearing Coordinator
- Student Conduct Administrator or other appropriate University administrator
- An administrator from the CSU Chancellor's Office
- Technology support/Interpreter/Security, if needed

The Hearing Process

**Conducted via
videoconference in
most cases**

**Parties must be able
to simultaneously
see and hear all the
proceedings and
testimony**

**Ensure all evidence
provided during the
investigation is
available**

**Hearing Officer provides
overview of the
proceedings and Parties
can ask questions of the
Hearing Officer about the
process**

**Each Party has the
opportunity to make an
opening statement of no
more than 10 minutes –
must be made by party
themselves, not the
Hearing Advisor/Advisor**

**No closing
statements under
procedures**

Hearing Process (*cont.*)

Opening

- Hearing Officer gives overview of process
- Parties may ask procedural questions

Testimony

- Investigator/Title IX Coordinator is **generally** first witness
- Parties provide opening statements

Questioning

- Hearing Officer asks questions of Parties and witnesses (including questions proposed by Parties)
- Hearing Officer gives Parties the opportunity to ask additional questions through Hearing Advisor (Track 1) or the Hearing Officer (Track 2)

Closing

- Hearing Officer closes hearing with explanation of remaining procedural steps

Non-Participation in the Hearing

What if a Party or Witness does not participate in the hearing?

Parties are not required to participate in a hearing, but there is risk in them not attending:

- Absent extenuating circumstances, the Hearing Officer will not rely on prior statements made by the Parties or witnesses during the investigation whose credibility is central to the determination unless those Parties or witnesses make themselves available for examination by the Hearing Officer
- **Track 1 only:** Non-appearing Party's Hearing Advisor will still be able to question the other Party and Witnesses

The Disruptive Party or Advisor

- The Hearing Officer may excuse from the hearing anyone (including either Party or their Hearing Advisor/Advisor/Support Person) whose behavior causes a material disruption
- Should a Hearing Advisor be removed from a Track 1 proceeding, the University will provide a Hearing Advisor
- The Hearing Officer, in their discretion, may postpone the hearing
- In making a determination whether to postpone the hearing, the Hearing Officer will consider the equity of postponement as to both Parties
- Apply approach to disruptive Parties and Advisors for both Parties

Questioning

Questioning

Where a Party has a question or objection regarding an inquiry, they may communicate with the Hearing Officer, preferably in writing.

Hearing Advisors, Advisors, and Support Persons are not permitted to engage in discussions with the Hearing Officer regarding questioning at any time during the hearing.

Hearing Officers should encourage Parties to seek clarification if they do not understand a question or why it is being asked.

Parties **cannot** propose questions to be asked of themselves.

For any questions proposed by a Party that the Hearing Officer does not ask or that is deemed not relevant when posed by a Hearing Advisor, the Hearing Officer should document in some manner (on the “record” so that the issue can be reviewed on appeal) why the questions were not asked or deemed not relevant, whether before the hearing, during the hearing or after the hearing.

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