

THE CALIFORNIA STATE UNIVERSITY
OFFICE OF THE CHANCELLOR



BAKERSFIELD

June 23, 2015

CHANNEL ISLANDS

MEMORANDUM

CHICO

DOMINGUEZ HILLS

TO: CSU Presidents

EAST BAY

FROM: Timothy P. White
Chancellor

FRESNO

FULLERTON

SUBJECT: Systemwide Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking Policy
Executive Order 1095 Revised June 23, 2015

HUMBOLDT

LONG BEACH

Attached is a copy of Executive Order 1095 Revised June 23, 2015 – relating to implementation of Title IX, the Campus SaVE Act, and related legislation on sex discrimination, sexual harassment and sexual violence. Executive Order 1095 Revised June 23, 2015 supersedes Executive Order 1095 Effective June 3, 2014.

LOS ANGELES

MARITIME ACADEMY

In accordance with policy of the California State University, the campus president has the responsibility for implementing executive orders where applicable and for maintaining the campus repository and index for all executive orders.

MONTEREY BAY

NORTHRIDGE

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

POMONA

SACRAMENTO

TPW/lh

SAN BERNARDINO

SAN DIEGO

Attachments

SAN FRANCISCO

c: CSU Office of the Chancellor Leadership
Provosts
Vice Presidents, Administration and Finance
Vice Presidents, Student Affairs
DHR Administrators
Human Resources Officers
Title IX Coordinators

SAN JOSÉ

SAN LUIS OBISPO

SAN MARCOS

SONOMA

STANISLAUS

THE CALIFORNIA STATE UNIVERSITY
Office of the Chancellor
401 Golden Shore
Long Beach, California 90802-4210
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Executive Order: 1095 Revised June 23, 2015

Effective Date: June 23, 2015

Supersedes: Executive Order 1095 Effective June 3, 2014

Title: Systemwide Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking Policy

The California State University (CSU) is committed to creating and sustaining an educational and working environment free of Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking.¹ The safety and well-being of our Campus communities is a priority for the University.

This Executive Order, and Executive Orders 1096, 1097 and 1098, provide direction on implementing Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*); the Violence Against Women Reauthorization Act of 2013 (which amends the Jeanne Clery Disclosure of Campus Security and Campus Crimes Statistics Act, commonly known as the Clery Act) (20 U.S.C. 1092(f)) (VAWA) under its Campus Sexual Violence Elimination Act provision (Campus SaVE Act); Title IV of the 1964 Civil Rights Act (42 U.S.C. § 2000c *et seq.*); the California Equity in Higher Education Act (Cal. Educ. Code § 66250 *et seq.*); the California Donahoe Higher Education Act (Cal. Educ. §§ 66000 *et seq.*); and the Governor's *California Campus Blueprint to Address Sexual Assault*, among other applicable state and federal laws and related regulations.

Legislative Requirements

Title IX is a federal law that applies to educational institutions receiving federal financial assistance and prohibits discrimination on the basis of sex in an educational institution's programs or activities, including employment, academic, educational, extracurricular and athletic activities (both on and off Campus). Title IX protects all people regardless of their Gender, Sexual Orientation, or Gender Identity or Expression, from Sex Discrimination, including Sexual Harassment and Sexual Misconduct, which are forms of Sex Discrimination. Title IX requires institutions to take necessary steps to prevent Sex Discrimination on their Campuses, and to respond promptly and effectively when Sex Discrimination is reported. The Clery Act requires colleges and universities to report annual statistics on crime, including Sexual Assault and Rape, on or near their Campuses, and to develop and disseminate prevention policies. VAWA/Campus

¹ These and other key capitalized terms are defined in Executive Orders 1096 and 1097. Terms contained within this Executive Order are intended to be gender neutral.

SaVE Act provides that Dating and Domestic Violence, and Stalking must be included in Campus Clery reports, and also requires that institutional policies address and prevent Sexual Misconduct, Dating and Domestic Violence, and Stalking through training, education, and certain discipline procedures.² California Education Code § 67386 requires other institutional policies, including the adoption of an Affirmative Consent standard in assessing Sexual Misconduct. The California Equity in Higher Education Act prohibits discrimination based on any Protected Status, including Gender or Sex, in all postsecondary institutions in the state. California Education Code § 67385.7 *et seq.* requires the CSU to provide educational and preventive information about Sexual Misconduct to Students. The *California Campus Blueprint to Address Sexual Assault* provides guidance on steps that can be taken to improve individual Campus responses to sexual violence.³

Together, these laws require CSU Campuses to (1) publish and widely disseminate a Notice of Nondiscrimination on the Basis of Gender or Sex; (2) designate one Employee to coordinate Title IX compliance (including compliance with VAWA/Campus SaVE Act, and all other relevant Sexual Discrimination/Harassment/Misconduct legislation); (3) adopt appropriate complaint and investigation procedures; (4) implement education and prevention programs for Students and Employees, as well as victim resource programs for victims of Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking; (5) provide written rights and options information to victims of Sexual Misconduct; (6) provide training to the Campus community on how to prevent, identify and report Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking; (7) provide training on how to conduct investigations to those Employees who investigate such allegations of Sexual Misconduct; and (8) provide training to student conduct Hearing Officers.

Confidentiality and Duty to Report

The University encourages victims of Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking to talk to someone about what happened – so they can get the support they need, and so the University can respond appropriately. Whether – and the extent to which – a University Employee may agree to maintain confidentiality (and not disclose information to the Title IX Coordinator) depends on the Employee’s position and responsibilities at the University. The following information is intended to make persons aware of the various reporting and confidential disclosure options available so that everyone can make informed choices. The University strongly encourages victims to talk to someone identified in one or more of these groups.

Certain University Employees, described below, are required by law to maintain near or complete confidentiality; talking to them is sometimes called a “privileged communication.”

University Police, the Title IX Coordinator, University-employed physicians, professional counselors, sexual assault and domestic violence counselors and advocates, and certain other

² Clery reporting and discipline procedures are addressed in other systemwide policy communications.

³ Copies of the Blueprint may be obtained from <http://www.calcasa.org/wp-content/uploads/2012/06/OES-2004-CA-Campus-Blueprint.pdf>.

University Employees are required to explain to persons reporting Sexual Misconduct, Dating or Domestic Violence, or Stalking their rights and options with respect to confidentiality.

Privileged and Confidential Communications

*Physicians, Psychotherapists, Professional Counselors, Licensed Clinical Social Workers, and Clergy*⁴ – Physicians, psychotherapists, professional licensed counselors, licensed clinical social workers, and clergy who work or volunteer on or off Campus, who provide medical or mental health treatment or counseling and are acting in that role as part of their employment (*and those who act under their supervision, including all individuals who work or volunteer in these centers and offices*) may not report any information about an incident of Sexual Misconduct, Dating or Domestic Violence or Stalking to anyone else at the University, including the Title IX Coordinator, without the victim’s consent. A person can seek assistance and support from physicians, psychotherapists, professional licensed counselors, licensed clinical social workers, and clergy without triggering a University investigation that could reveal the person’s identity or the fact of the person’s disclosure. *However, see limited exceptions below regarding when these practitioners must report to local law enforcement agencies. These practitioners should explain these limited exceptions, if applicable.*

*Sexual Assault and Domestic Violence Counselors and Advocates*⁵ – Sexual assault and domestic violence counselors and advocates who work or volunteer on or off Campus in sexual assault centers, victim advocacy offices, women’s centers, gender equity centers, and health centers and who are acting in that role (*including all individuals who work or volunteer in these centers and offices, as well as non-professional counselors or advocates, and those who act in that role under their supervision*) may talk to a victim of Sexual Misconduct, Dating or Domestic Violence, or Stalking without revealing any information about the victim and the incident to anyone else at the University, including the Title IX Coordinator and law enforcement (police), without the victim’s consent. A victim can seek assistance and support from these counselors and advocates without triggering a University investigation or a law enforcement (police) investigation that could reveal his/her identity or that a victim disclosed an incident to them. *However, see limited exceptions below regarding when sexual assault and domestic violence counselors and advocates must report to local law enforcement agencies. Counselors and advocates should explain these limited exceptions to victims, if applicable.*

Union Representatives -- A CSU employee/union representative is not required to report a possible violation of Executive Orders 1095, 1096 or 1097 if the information is provided to the union representative, acting in that role, in a confidential setting by a union member seeking advice about a possible violation or representation in a matter within the scope of representation. However, CSU employee/union representatives are **strongly encouraged** to report the information to the DHR Administrator or Title IX Coordinator.

The University will be unable to conduct an investigation into a particular incident or pursue disciplinary action if a victim chooses to: (1) speak only to a physician, professional counselor,

⁴ See Cal. Evid. Code § 990 *et seq.*, § 1010 *et seq.*, and § 1030 *et seq.*

⁵ See Cal. Evid. Code § 1035 *et seq.* and § 1037 *et seq.*

clergy member, sexual assault counselor, domestic violence counselor or advocate; and, (2) maintain complete confidentiality. Even so, these individuals will assist victims in receiving other necessary protection and support, such as victim advocacy, disability, medical/health or mental health services, or legal services, and will advise victims regarding their right to file a complaint with the University and a separate complaint with local or University police. If a victim insists on confidentiality, such professionals, counselors, and advocates may not be able to assist with: University academic support or accommodations; changes to University-based living or working schedules; or adjustments to course schedules. A victim who at first requests confidentiality may later decide to file a complaint with the University or report the incident to the police, and thus have the incident fully investigated. These counselors and advocates can provide victims with that assistance if requested as well as explain that University policy and the law include protections against retaliation. They should also explain that the University will not only take steps to prevent retaliation when it knows or reasonably should know of possible retaliation, but will also take strong responsive action if retaliation occurs.

EXCEPTIONS: Under California law, any health practitioner employed in a health facility, clinic, physician's office, or local or state public health department or clinic is required to make a report to local law enforcement if he or she provides medical services for a *physical condition* to a person who he or she knows or reasonably suspects is suffering from: (1) a wound or physical injury inflicted by a firearm; or (2) any wound or other physical injury where the injury is the result of assaultive or abusive conduct (including Rape, Sexual Assault, and Dating and Domestic Violence).⁶ This exception does *not* apply to sexual assault and domestic violence counselors and advocates. Health care practitioners should explain this limited exception, if applicable.

Additionally, under California law, *all* professionals described above (physicians, psychotherapists, professional counselors, clergy, and sexual assault and domestic violence counselors and advocates) are mandatory child abuse and neglect reporters, and are required to report incidents involving victims under 18 years of age to local law enforcement.⁷ These professionals will explain this limited exception, if applicable.

Finally, some or all of these professionals may also have reporting obligations under California law to: (1) local law enforcement in cases involving threats of immediate or imminent harm to self or others where disclosure of the information is necessary to prevent the threatened danger;⁸ or (2) to the court if compelled by court order or subpoena in a criminal proceeding related to Sexual Misconduct, Dating or Domestic Violence, or Stalking.⁹ If applicable, these professionals will explain this limited exception.

⁶ Assaultive or abusive conduct is defined to include a list of 24 criminal offenses, including Sexual Battery, incest, Rape, spousal Rape, abuse of a spouse or cohabitant, and any attempt to commit these crimes. See Cal. Penal Code §§ 11160-11163.2.

⁷ See Cal. Penal Code §§ 11164-11174.3; see also CSU Executive Order 1083 or any superseding executive order.

⁸ See Cal. Evid. Code § 1024.

⁹ See Cal. Evid. Code § 1035.4.

Reporting to University or Local Police

If a victim makes a report of a sex offense as enumerated in California Government Code § 6254(f)(2) to local or University Police, the police are required to notify the victim that his/her name will become a matter of public record ***unless confidentiality is requested***.¹⁰ If a victim requests that his/her identity be kept confidential, his/her name will not become a matter of public record and the police will not report the victim's identity to anyone else at the University, including the Title IX Coordinator. University Police will, however, report the facts of the incident itself to the Title IX Coordinator being sure not to reveal to the Title IX Coordinator the victim's name/identity, or compromise their own criminal/police investigation. The University is required by the federal Clery Act to report certain types of crimes (including certain sex offenses) in statistical reports. However, while the University will report the ***type*** of incident in the annual crime statistics report known as the Annual Security Report, victim names/identities will not be disclosed. Likewise, the University is required by state law to report certain types of crimes to local law enforcement (including certain sex offenses). However, the victim's identity may not be disclosed to local law enforcement unless the victim consents after being informed of his/her right to have identifying information withheld. If a victim does not consent, the alleged assailant's identity may also not be disclosed to local law enforcement.¹¹

Reporting to the Title IX Coordinator and Other University Employees

Most University Employees have a duty to report Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking incidents when they are on notice of them. When a victim tells the Title IX Coordinator or another University Employee about a Sexual Misconduct, Dating or Domestic Violence, or Stalking incident, the victim has the right to expect the University to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably. ***In all cases, the University strongly encourages victims to report Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking incidents directly to the Campus Title IX Coordinator.***

As detailed above in the Privileged and Confidential Communications section of this policy, all University Employees ***except*** physicians, licensed counselors, sexual assault counselors and advocates, and their staffs must report to the Title IX Coordinator all known details about any Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking incidents of which they become aware. The University will need to determine what happened – and will need to know the names of the person(s) involved, any witnesses, and any other relevant facts, including the date, time and specific location of the incident.

¹⁰ See Cal. Penal Code § 293; Cal. Gov. Code § 6254(f)(2) (“The name of a victim of any crime defined by § 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by [Section 6](#) of Proposition 83 of the November 7, 2006, statewide general election), [288.5](#), [288.7](#), [289](#), [422.6](#), [422.7](#), [422.75](#), [646.9](#), or [647.6 of the Penal Code](#) may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor.”)

¹¹ See Cal. Educ. Code § 67380(a)(6)(A).

To the extent possible, information reported to the Title IX Coordinator or other University Employees will be shared only with individuals responsible for handling the University's response to the incident. The University will protect the privacy of individuals involved in the incident except as otherwise required by law or University policy. A Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking report may result in the gathering of extremely sensitive information about individuals in the Campus community. While such information is considered confidential, University policy regarding access to public records and disclosure of personal information may require disclosure of certain information concerning a report. In such cases, efforts will be made to redact the records, as appropriate, in order to protect the victim's identity and privacy and the privacy of other involved individuals. Except as detailed in the section on Privileged and Confidential Communications above, no University Employee, including the Title IX Coordinator, should disclose the victim's identity or the facts of the incident to the police without the victim's consent or unless the victim has also reported the incident to the police.

If a victim requests of the Title IX Coordinator or another University Employee that his/her identity remain completely confidential, the Title IX Coordinator or University Employee will explain that the University cannot always honor that request and guarantee complete confidentiality. If a victim wishes to remain confidential or request that no investigation be conducted or disciplinary action taken, the University must weigh that request against the University's obligation to provide a safe, non-discriminatory environment for all Students, Employees and Third Parties, including the victim requesting confidentiality. Under those circumstances, only the Title IX Coordinator will determine whether the victim's request for complete confidentiality and/or no investigation can be honored under the facts and circumstances of the particular case, including whether the University has a legal obligation to report the incident, conduct an investigation or take other appropriate steps. Without information about a victim's identity, the University's ability to meaningfully investigate the incident and pursue disciplinary action against a perpetrator may be severely limited.

The Title IX Coordinator will inform the victim of the initiation of an investigation prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the University's response to the incident. The Title IX Coordinator will remain mindful of the victim's well-being, and will take ongoing steps, as warranted and appropriate, to protect the victim from retaliation or harm, and work with the victim to create a safety plan. Retaliation against persons reporting misconduct, whether by Students, Employees or Third Parties, will not be tolerated. The University and Title IX Coordinator will also:

- Provide Interim Remedies requested by the victim, if they are reasonably available, regardless of whether the victim chooses to report the incident to Campus or local police;
- Assist victims in accessing available victim advocacy, academic support, counseling, disability, medical/health or mental health services, and legal assistance both on and off Campus;
- Provide security and support, which could include issuing a no-contact order, helping arrange a change of Campus-based living or working arrangements or course schedules

(including for the Respondent pending the outcome of the investigation), or adjustments for assignments, tests, or work duties; and

- Inform victims of their right to report a crime to University or local police – and provide assistance if desired.

The University will not require a victim who reports Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking to participate in any investigation or disciplinary proceeding if the victim does not wish to participate.

The University will not generally notify parents or legal guardians of a Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence or Stalking report unless the victim is under 18 years old or the person provides the University with written permission to do so.¹²

Under California law, and pursuant to University policy, certain University Employees, including the Title IX Coordinator, are mandatory child abuse and neglect reporters and should explain to victims under 18 years of age that they may be required to report the Sexual Misconduct, Dating or Domestic Violence, or Stalking incident to the police.¹³ However, the identity of the person who reports and the report itself are confidential and disclosed only among appropriate agencies.¹⁴

Because the University may be required to address the issue of Sex Discrimination, Sexual Harassment, Sexual Misconduct Dating or Domestic Violence, or Stalking Campus-wide, reports (including non-identifying reports) may also require the University to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported incident occurred; increased education, training and prevention efforts, including to targeted population groups; climate assessments/victimization surveys; and/or revision of policies and practices.

The Office of the Ombuds, if available on a specific Campus, provides confidential, neutral, and informal dispute resolution services, provides information about University policies and procedures, and makes referrals. However, in Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking cases, the Ombuds must report incidents to the Title IX Coordinator.

NOTE: If the University determines that the Respondent poses a serious and immediate threat to the Campus community, a designated Campus Security Authority under the Clery Act may be called upon to issue a timely warning to the community. Any such warning will not include any information that identifies the victim.

¹² If there is a health and safety issue (e.g., immediate threat to self or others), the University may notify parents or legal guardians, regardless of the victim's age, as allowed under the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g).

¹³ See Cal. Penal Code §§ 11164-11174.3; see also CSU Executive Order 1083 or any superseding executive order.

¹⁴ See Cal. Penal Code § 11167(d).

Notice of Nondiscrimination on the Basis of Gender or Sex

Each CSU Campus is required to post a *Notice of Nondiscrimination on the Basis of Gender or Sex* prominently on its website. The Notice must also be: (1) posted at Campus locations where other notices regarding Campus policies are posted, as well as published in electronic and printed publications of general distribution that provide information to Students and Employees about the University's services and policies; and, (2) distributed to all Employees and all Students at the beginning of the fall term every academic year (no earlier than two weeks before and no later than two weeks after the first day of classes.) Distribution may be electronic.

The Notice must contain specific information, including contact information for the U.S. Department of Education, Office for Civil Rights, and the Campus Title IX Coordinator, as well as any Deputy Title IX Coordinator(s).

Attachment A is the *Notice of Nondiscrimination on the Basis of Gender or Sex* form Campuses shall make available in the manner described above. Aside from inserting information regarding Campus administrators and on and off Campus/local resources where indicated on the form, Campuses *shall not* make any other changes to the Notice. The Notice must identify the Campus Title IX Coordinator and any Deputy Title IX Coordinator(s), and their respective roles and responsibilities on Campus.¹⁵

Notice of Rights and Options for Victims of Sexual Misconduct, Dating or Domestic Violence or Stalking

A *written* explanation of rights and options must be provided to a Student, Employee or Third Party *who reports to the University that s/he has been a victim* of Sexual Misconduct, Dating or Domestic Violence, or Stalking, whether the offense occurred on or off Campus. It is the Title IX Coordinator's responsibility to ensure this written Notice is provided to the complainant/victim(s).

Attachment C is the written explanation of *Rights and Options for Victims of Sexual Misconduct, Dating or Domestic Violence, or Stalking* form Campuses shall provide to Complainants/victims. Aside from inserting information regarding Campus administrators or local resources where indicated on the form, Campuses *shall not* make any other changes to the form.

Complaint Procedures

The CSU is required to adopt and publish complaint procedures that provide for prompt and equitable resolution of Sex Discrimination complaints, including Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking.

Complaints made by Employees, former Employees, and applicants for employment.
Executive Order 1096, entitled "Systemwide *Policy* Prohibiting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking Against

¹⁵ See also **Attachment B, *Myths and Facts about Sexual Misconduct***, which should be published and distributed alongside **Attachment A, *Notice of Nondiscrimination on the Basis of Gender or Sex***.

Employees and Third Parties and *Procedure* for Addressing Such Complaints by Employees and Third Parties” is the appropriate systemwide procedure for all complaints of Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking made by Employees and Third Parties against the CSU, another CSU Employee, a CSU Student or a Third Party. Employees covered by a collective bargaining agreement that provides a grievance procedure for raising allegations of Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking shall use the grievance procedure specified in their collective bargaining agreement.

Complaints made by Students.¹⁶ Executive Order 1097, entitled "Systemwide *Policy* Prohibiting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking Against Students and Systemwide *Procedure* for Addressing Such Complaints by Students" is the appropriate systemwide procedure for all complaints of Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking made by CSU Students against the CSU, a CSU Employee, another CSU Student, or a Third Party.

Complaints made by Student-Employees. Executive Order 1096 is the appropriate systemwide procedure for all complaints of Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking made by Student-Employees where the alleged violation arose out of the person’s status as an Employee and not his/her status as a Student.

Complaints made by Third Parties. Executive Order 1096 is the appropriate systemwide procedure for all complaints of Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking filed by Third Parties against the CSU, a CSU Employee or a CSU Student.

Regardless of whether an Employee, a Student or a Third Party ultimately files a complaint under the applicable complaint procedure, if a Campus knows or has reason to know about possible Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking, it must review the matter to determine if an investigation is warranted. When warranted, all such investigations must be prompt, thorough and impartial, and shall comply with the procedure outlined in the relevant Executive Order. The Campus must then take appropriate steps to eliminate the misconduct, prevent its recurrence, and remedy its effects.

Confidential Sexual Assault Victim’s Advocates

Designation and Appointment

Each Campus is required to designate at least one confidential Sexual Assault Victim’s Advocate (Advocate). The Advocate should be a full-time Employee of the University or a recognized University auxiliary, whose primary responsibility is rendering advice and assistance to victims of Sexual Misconduct. The Advocate may also be appointed by way of a written agreement with a local community-based sexual violence service provider, such as a rape crisis center, to provide the services described herein. The Advocate shall be confidential, independent, and certified, as

¹⁶ For purposes of this Executive Order, the term "Students" includes applicants for admission.

described below, and shall be appointed based on experience and a demonstrated ability to effectively provide sexual violence victim services and response.

Confidentiality

It is essential that the Advocate be an individual who has protection under state law to engage in privileged communications, as described below in the section on Certification.

While it would be appropriate for the Advocate to report to and be supervised by Campus Student counseling services or health services, Campus placement of the Advocate in a different division, department or office would be acceptable as long as the provisions of this section are followed.

Because of their confidential nature, Advocates are not required to report Sexual Misconduct incidents to the University (e.g., to the Title IX Coordinator) or to police without the written consent of the victim, unless an exception applies as described above.

Roles and Responsibilities

The Advocate will provide the emergency and ongoing support services and assistance outlined below in order to ensure the well-being and safety of victims. These services shall be available 24 hours a day.

- Advocate services need to be flexible, varied, and provided by well-trained, certified sexual assault counselors to address the variability of victim needs.

- The Advocate may accompany victims, at their request and with their permission, and be with them as a support person:
 - Throughout all stages of the University's investigation and discipline proceedings, including acting as an Advisor at any related meeting or hearing.
 - When giving reports to or meeting with University Police, local law enforcement, the Title IX Coordinator, and any other University administrator related to a Sexual Misconduct complaint.
 - When going to medical/counseling appointments and treatments (including medical-forensic evidentiary examinations by a Sexual Assault Forensic Examiner).
 - When going to legal appointments and hearings in court or with legal representatives, including assistance with obtaining a restraining or other protective order.

- When going to meetings and appointments with University personnel, including the Title IX Coordinator, regarding Interim Remedies (e.g., academic, employment, and housing).
- The Advocate may assist victims, with their permission:
 - In seeking reasonable and available Interim Remedies from the University, even where the victim has elected not to file a Complaint. Such reasonable and available Interim Remedies may include but not be limited to: academic support, adjustments/changes to course schedules, changes to University-based housing and work schedules, and stay away orders issued to the Respondent.
 - With other related reasonable and available on and off Campus services that ensure their well-being and safety.
- Regardless of whether victims wish to remain confidential, the Advocate shall carry out the following:
 - Ensure victims, with their consent, receive information about 24 hour-a-day sexual violence assistance services:
 - Information on how to report to law enforcement and to the University's Title IX Coordinator;
 - Emergency medical care, including follow-up medical care, as requested; and,
 - Medical forensic or evidentiary examinations.
 - Ensure victims, with their consent, receive the following sexual assault assistance services:
 - Crisis intervention counseling and ongoing counseling;
 - Information on victim rights and options, including referrals to additional support services; and,
 - Information on legal services, and the availability of restraining and/or no-contact orders.
 - Guide those who request assistance through the reporting, counseling, administrative, medical and health, academic accommodation, or legal processes of the University, University Police, and/or local law enforcement.

- Attend as an Advisor, at their request, any University adjudication proceeding related to the Sexual Misconduct. Assist with arranging transportation services, as appropriate. Maintain privacy and confidentiality.
- Regardless of whether victims wish to remain confidential, the Advocate shall not notify the University or any other authority, including law enforcement, of the identity of the victim or any witness or of the alleged circumstances surrounding the reported Sexual Misconduct unless otherwise required by applicable state or federal laws.
- Advocates may also serve on Campus-based Sexual Misconduct task force committees/teams to provide general advice and consulting, and to participate in prevention and awareness activities and programs. However, it would not be appropriate for the Advocate to discuss or communicate about confidential or private information related to specific victims.
- The Advocate may play an active role in assisting, coordinating, and collaborating with the Title IX Coordinator in developing and providing Campus-wide awareness and outreach activities, possibly including prevention activities.
 - The Title IX Coordinator remains primarily responsible for all Campus-based prevention and awareness activities.
 - All awareness outreach activities will comply and be consistent with University policies.
 - Before initiating any awareness and outreach activities, the Advocate will partner and collaborate with the Title IX Coordinator to ensure the activities comply with CSU policy, and are consistent with Campus-based practices.

Supervision

To assure the independence and support needed for the Advocate to represent the interests of the victim independent of the University, the Advocate must report to and be supervised by an individual outside the office(s) handling the investigation and adjudication of Sexual Misconduct

complaints. Thus, the Advocate may not be under the direct control or supervision of the University's Title IX office, Student Conduct office, or Police Department.

If the Advocate is appointed by way of written agreement with a local community-based sexual violence service provider, such as a rape crisis center, supervision shall be provided by the outside service provider in accordance with the terms and conditions set forth in the written agreement.

Certification

If employed by the University, the Advocate shall be a person whose primary responsibilities are rendering advice and assistance to Sexual Misconduct victims. The Advocate must have received a certificate evidencing completion of a training program in the counseling of Sexual Assault victims issued by a counseling center that meets the criteria for the award of a grant established pursuant to California Penal Code §13837 and who meets one of the following requirements:

1) Is a psychotherapist as defined in California Evidence Code § 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape crisis counseling; or

2) Has 40 hours of training as described below and is supervised by an individual who qualifies as a psychotherapist or counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include but not be limited to the following areas:

- Law
- Medicine
- Societal attitudes
- Crisis intervention and counseling techniques
- Role playing
- Referral services
- Sexuality

Alternatively, the Advocate may be a person who is employed by any organization providing the programs specified in California Penal Code § 13835.2 for the purpose of counseling and assisting Sexual Assault victims, and who meets one of the following requirements:

1) Is a psychotherapist as defined in California Evidence Code § 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape crisis counseling; or

2) Has the minimum training for sexual assault counseling required by the guidelines established by the employing agency pursuant to California Penal Code § 13835.10(c), and is supervised by an individual who qualifies as a psychotherapist or counselor under

paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include but not be limited to the following areas:

- Law
- Medicine
- Societal attitudes
- Crisis intervention and counseling techniques
- Role playing
- Referral services
- Sexuality

Location and Availability of Services

The Advocate shall provide effective and accessible victim-advocacy services, in a safe, private, and confidential environment.

The Advocate should be physically housed on Campus in a gender-neutral location which allows for privacy and confidentiality when meeting with victims. The Advocate should not be housed in a women's center, as some victims are men or gender-nonconforming and might not be comfortable seeking assistance in a women's center. A gender equity or similar inclusive center would be appropriate, but is not mandatory if a Campus has no such office.

Advocates will provide services to all Student and Employee victims. If a Student or Employee victim leaves the University, the Advocate may assist with referrals to off-Campus resources and services to ensure sustained support.

Advocacy services should be available 24 hours a day, and should be provided via a 24/7 telephone and web-based hotline. However, one employee Advocate cannot provide 24/7 coverage. Therefore, where Campus staffing, resources or funding are insufficient, a memorandum of understanding (MOU) with a local rape crisis or treatment center should be considered for after-business hours advocacy services. The MOU should provide that the local rape crisis or treatment center will coordinate and communicate with the Campus-based Advocate, in accordance with these guidelines.

Online advocacy services should also be available 24 hours a day. A prominently displayed, clear and plainly written website should be created and utilized so victims can anonymously and privately obtain all relevant information, any time of day or night.

Annual Report

The Advocate shall submit to the Campus President and Title IX Coordinator an annual report summarizing how the resources supplied to the Advocate were used, including the number of Sexual Misconduct victims assisted. No personally identifying information will be included in

the report. These annual Campus reports will also be submitted to the Systemwide Title IX Compliance Officer.

Campus Title IX Coordinators

Each Campus is required to designate one Title IX Coordinator with primary responsibility to monitor, supervise, and oversee overall Campus-wide implementation of and compliance with Title IX and this Executive Order,¹⁷ including coordination of training, education, communications, and administration of complaint procedures for Employees, Students and Third Parties in the areas of Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking. The Title IX Coordinator shall have authority across *all* Campus-based divisions and programs (e.g., Human Resources, Academic Affairs, Student Affairs, Athletics, Housing, University Police, etc.) to monitor, supervise, oversee, and ensure implementation of this Executive Order in all areas, including the duties listed below. The Title IX Coordinator and any Deputy Title IX Coordinator(s) shall be Management Personnel Plan (MPP) employees. The designated coordinator should be someone without other institutional responsibilities that could create a conflict of interest (e.g., someone serving as University counsel or as a disciplinary decision maker) and should report directly to a vice-president or higher. The Title IX Coordinator must have the qualifications, authority and time to address all complaints throughout the Campus involving Title IX issues.

Each Campus may designate one or more Deputy Title IX Coordinators. The Title IX Coordinator may delegate training, education, communications, complaint procedure administration, investigations, and related Title IX duties to one or more Deputy Title IX Coordinators. However, all Deputy Title IX Coordinators must report to the Title IX Coordinator in their capacity as Deputy Title IX Coordinators. The Title IX Coordinator shall monitor, supervise, and oversee all such delegated tasks, including reviewing all investigative reports before they are final to ensure that the investigation was sufficient, appropriate, impartial, and in compliance with all relevant Executive Orders.

The Title IX Coordinator and any Deputy Title IX Coordinator(s) must have adequate training on what constitutes Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking, as well as how to investigate such complaints. The Title IX Coordinator and any Deputy Title IX Coordinator(s) must also understand how Campus and systemwide complaint procedures operate.

The Title IX Coordinator is responsible for ensuring the *Notice of Non-Discrimination on the Basis of Gender or Sex (Notice) (Attachment A)* and the *Myths and Facts About Sexual Misconduct (Attachment B)* are widely published and distributed as set forth above. Also, the Notice must identify the Campus Title IX Coordinator and any Deputy Title IX Coordinator(s), and their respective roles and responsibilities on Campus. The Title IX Coordinator is also responsible for ensuring the written explanation of *Rights and Options for Victims of Sexual Misconduct, Dating or Domestic Violence, or Stalking (Attachment C)* is provided to all Sexual Misconduct, Dating or Domestic Violence, or Stalking victims.

¹⁷ Again, this includes compliance with VAWA/Campus SaVE Act and all other related sexual harassment/violence legislation.

Title IX prohibits sex-based discrimination in all University programs and activities, including athletics. Title IX measures gender equity in athletics in three distinct areas: (1) participation; (2) scholarships; and, (3) other benefits, including the provision of equipment and supplies, scheduling, travel, tutoring, coaching, locker rooms, facilities, medical and training facilities, and services, publicity, recruiting, and support services. The Title IX Coordinator is responsible for comparing the Campus's enrollment data to the number of athletic participation opportunities for Students of the underrepresented sex; and evaluating whether there is unmet interest in a particular sport, whether there is sufficient ability to sustain a team in the sport, and whether there is a reasonable expectation of competition for the team. The Title IX Coordinator should also coordinate the Campus's efforts to ensure that athletic financial assistance awards and the distribution of athletic benefits, including financial expenditures, comply with Title IX regulations. Because the Title IX requirements governing gender equity in athletics are complex and require coordination with NCAA and other rules, Campuses may wish to consider designating a Deputy Title IX Coordinator to handle only gender equity in athletics issues under the supervision of the Title IX Coordinator, who remains ultimately responsible for Campus-wide compliance.

In addition to coordinating training, education and preventive measures in the areas of Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking, the Campus Title IX Coordinator's mandatory duties include:

- Ensuring that victims reporting Sexual Misconduct, Dating or Domestic Violence, or Stalking are notified of the right to file a criminal complaint;
- Providing reasonable Interim Remedies, if requested and available, regardless of whether the victim chooses to report the conduct to Campus police or local law enforcement;
- Meeting on a regular basis, as appropriate, with victims reporting Sexual Misconduct, Dating or Domestic Violence, or Stalking to determine what steps (interim and ultimate) should be taken to protect him/her from any resulting hostile or unsafe environment, and ensuring that such steps are taken;
- Working with all Campus divisions (e.g., University Police, Human Resources, Academic Affairs, Student Affairs, and Athletics) to provide Employees and Students all required education programs and information;
- Monitoring, supervising, and overseeing **all** complaints of Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking, including related investigations, reports, interim and/or ultimate remedies, resolution, and coordination with disciplinary decision-makers regarding any resulting discipline against the Respondent;
- Creating a case management team responsible for coordinating and monitoring reports and investigations to assure that responses are timely, appropriate, impartial, and in compliance with this and all relevant Executive Orders;
- Reviewing all investigative reports before they are final to ensure that they are sufficient, appropriate, impartial, and in compliance with this and all relevant Executive Orders;

- Ensuring that appropriate disciplinary sanctions are imposed against Employees or Students who have violated Executive Orders 1096 or 1097;
- Reviewing the outcome of Employee and Student disciplinary proceedings involving cases of alleged Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking to determine whether they resolve all complaints, and whether any additional remedies need to be provided;
- Creating a committee of Employees, Students and Campus officials to identify strategies for ensuring that Employees and Students know how to identify and report Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking, and know what Remedies are available to victims;
- Regularly assessing Employee and Student activities to ensure that no practices or behaviors violate policies against Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking, and using the results of such assessments to inform proactive remedial steps;
- Assisting the campus in developing a method to survey the school climate and coordinate the collection and analysis of information from that survey;
- Creating a website, with a link prominently displayed on the Campus's homepage, that includes the name and contact information of the Title IX Coordinator and any deputies, relevant policies and grievance procedures, and other resources related to Title IX compliance and gender equity;
- Identifying and addressing any systemic or other patterns of Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking, and implementing corrective measures, as appropriate;
- Reviewing recruitment materials, admission forms, and policies and practices to ensure that the Campus does not discriminate on the basis of sex or Gender in recruitment and admissions;
- Reviewing materials used in counseling or guiding students or applicants for admission to ensure that the Campus does not use different materials for students based on sex or Gender or use materials that permit or require different treatment of students based on sex or Gender;
- Monitoring sex-based disparities in enrollment, including in nontraditional fields, by reviewing enrollment data, counseling practices, and appraisal materials, to ensure that disparities are not the result of discrimination on the basis of sex or Gender;
- Monitoring procedures and practices for awarding financial assistance to ensure compliance with Title IX regulatory requirements;

- Providing training to Students, administrators, faculty and other staff so that they know that Title IX prohibits discrimination against pregnant and parenting Students, and assisting the Campus in helping to meet the unique educational, child care, and health care needs of pregnant and parenting Students;
- Monitoring the Campus's administration of discipline to ensure that similarly situated students are not disciplined differently based on sex or Gender for the same offense and that the disciplinary policies do not have an unlawful disparate impact on Students based on sex, Gender Identity, or for failing to conform to stereotypical notions of masculinity or femininity in their behavior or appearance; and,
- Regularly evaluating the timeliness of investigations in a systematic manner to ensure that investigations are conducted as promptly as possible.

Training, Education and Preventive Measures

Each Campus must implement preventive education programs to promote the awareness of CSU policies against Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking, and to make victim resources available, including comprehensive victim services. Programs must include primary prevention and awareness programs: (1) for all *new* Students¹⁸ and *new* Employees; (2) refresher programs at least annually for all Students; (3) twice a year for all Students who serve as Advisors in residence halls; (4) annually for all Student members of fraternities and sororities; (5) annually for all Student athletes and coaches; and, (6) annually for all Employees consistent with their role in responding to and reporting incidents. Ongoing prevention and awareness campaigns for *all* Students and Employees shall also be conducted.

Each Campus must assess which Student organizations participate in activities that may place Students at risk and ensure that they receive annual supplemental trainings focused on situations the group's members may encounter.

Primary prevention programs include programming, initiatives, and strategies informed by research or assessed for value, effectiveness or outcome that are intended to stop Sexual Misconduct, Dating or Domestic Violence, or Stalking before they occur through the promotion of positive and healthy behaviors that foster mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.

Bystander intervention means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of Sexual Misconduct, Dating or Domestic Violence, or Stalking. It includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening and identifying safe and effective intervention options, and taking action to intervene.

¹⁸ This includes incoming transfer, graduate, online, and extended education Students. The programs should occur no later than the first few weeks of the first semester.

Awareness programs include community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration.

To ensure that all Students receive the necessary information and training enumerated above on Sexual Misconduct, Dating and Domestic Violence, and Stalking, Campuses should impose consequences, such as registration holds, on those Students who do not participate in and complete such mandatory training.

These education and training programs shall include the following information:

- A statement that the CSU prohibits Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking.
- What constitutes Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking.
- The definition of Affirmative Consent.
- A statement that Sexual Misconduct, Dating and Domestic Violence, and Stalking violate University policy and may also violate criminal law.
- Common facts and myths about the causes of Sexual Misconduct. (See **Attachment B, *Myths and Facts about Sexual Misconduct***, to be posted and published alongside **Attachment A, *Notice of Nondiscrimination on the Basis of Gender or Sex***.)
- Safe and positive options for bystander intervention that may be taken by an individual to prevent harm or intervene in risky situations involving these offenses.
- Methods of encouraging peer support for victims.
- Information regarding Campus, criminal, and civil consequences of committing acts of Sexual Misconduct, Dating and Domestic Violence, and Stalking.
- A statement explaining that the University's primary concern is the safety of members of the Campus community; that the use of alcohol or drugs never makes the victim at fault for Sexual Misconduct; that Students or Employees who experience or witness Sexual Misconduct should not be deterred from reporting incidents out of a concern that they might be disciplined for related violations of drug, alcohol, or other University policies; and that Students or Employees who experience or witness Sexual Misconduct shall not be subject to discipline for related violations of conduct policies at or near the time of the misconduct unless the violation is egregious (including actions that place the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.)
- A statement that "CSU policy prohibits retaliation against a person who: reports Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking; assists someone with a report of such conduct; or participates in any manner in a related investigation or resolution. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education."
- How to recognize warning signs of abusive behavior and how to avoid potential attacks.

- Information on risk reduction, including options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.
- What someone should do if s/he has experienced or witnessed Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking.
- Individuals to whom incidents may be reported along with information regarding what degree of confidentiality may be maintained by those individuals.
- The availability of, and contact information for, Campus and community resources for victims of Sexual Misconduct, Dating or Domestic Violence, or Stalking.
- A description of Campus and systemwide policies and disciplinary procedures available for addressing alleged violations and the consequences of violating these policies, including the fact that such proceedings shall:
 - Provide a prompt, fair, and impartial investigation and resolution; and,
 - Be conducted by officials who receive annual training on issues related to Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.
- The fact that the victim and the Respondent will be afforded the same opportunities to have others present during a disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the Advisor of their choice.
- The fact that both the victim and the Respondent shall be simultaneously informed in writing of:
 - The outcome of any disciplinary proceedings that arises from an allegation of a Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking;
 - The University's procedures for the victim or Respondent to appeal the results of the disciplinary proceeding;
 - Any change to the disciplinary results that occurs prior to the time such results become final; and,
 - When disciplinary results become final.
- Possible sanctions or protective measures the University may impose following the final determination of a University disciplinary procedure regarding Sexual Misconduct, Dating or Domestic Violence, or Stalking.
- How the University will protect the confidentiality of victims, including how publicly-available recordkeeping (e.g., Campus Clery reports) will be accomplished without the inclusion of identifying information about the victim to the extent permissible by law.
- That persons who report being a victim of Sexual Misconduct, Dating or Domestic Violence, or Stalking ***must receive written*** notification of:

- Existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims, both on Campus and in the community.
 - Options for, and available assistance in, changing academic, living, transportation, and working situations, if requested and if such accommodations are reasonably available, regardless of whether the victim chooses to report the incident to Campus police or local law enforcement.
- Procedures victims should follow if Sexual Misconduct, Dating or Domestic Violence, or Stalking has occurred, as well as the fact that the following *written* information must be provided to victims:
 - The importance of preserving evidence as may be necessary to prove Sexual Misconduct, Dating or Domestic Violence, or Stalking, or to obtain a temporary restraining or other protective order;
 - The name and contact information of the University Employee(s) to whom the alleged offense should be reported;
 - Reporting to law enforcement and Campus authorities, including the option to: (a) notify law enforcement authorities, including on-Campus and local police; (b) be assisted by Campus authorities in notifying law enforcement authorities if the victim so chooses; and, (c) decline to notify such authorities;
 - Where applicable, the rights of victims and the University's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court.

The above information is also contained in the *Notice of Nondiscrimination on the Basis of Gender or Sex (Attachment A)*. As previously stated, Campuses shall post the Notice prominently on the Campus website and include the Notice in handbooks/policies applicable to Employees, Students, Student athletes and members of Student activity groups and organizations, along with *Myths and Facts About Sexual Misconduct (Attachment B.)*

All persons involved in implementing these procedures (e.g., the Campus Title IX Coordinator and any Deputy Title IX Coordinator(s), investigators, Human Resource Directors and Hearing Officers presiding over student conduct hearings) shall have relevant annual training on issues related to Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking. Such annual training shall include the CSU complaint processes, as well as the handling, investigation and analysis of complaints of Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking. The annual training shall also address applicable confidentiality issues, especially with respect to the Title IX Coordinator's duty to weigh any victim's request for confidentiality against the duty to provide a safe and nondiscriminatory environment for all members of the Campus community. For matters involving Sexual Misconduct, Dating and Domestic Violence, and Stalking, the training shall also include how to conduct an investigation and hearing process that protects the safety of the person(s) involved and promotes accountability.

Remedies and Enforcement

Interim and Ultimate Remedies. The University is required to provide victims who experience Sexual Misconduct, Dating or Domestic Violence, or Stalking with reasonably available Interim Remedies, if requested, regardless of whether the victim chooses to report the misconduct to Campus police or local law enforcement. Victims should be notified of options for avoiding contact with the Respondent, including changes to the Respondent's or purported victim's employment, academic or living situations, as appropriate. For example, the Campus may prohibit the parties from having any contact with each other pending the outcome of the Campus investigation and any ensuing discipline proceeding. Campuses should minimize the burden on the victim and should not, as a matter of course, remove victims from work assignments, job sites, classes or housing while allowing the Respondent to maintain the status quo. Other possible interim (and ultimate) steps may include providing an escort between Campus locations in extraordinary cases where safety may be endangered; changes to Employee work areas, work assignments or reporting relationships; providing Students with academic support services such as tutoring or allowing Students to re-take a course or withdraw from a course without penalty and without adverse effect on their academic records; and reviewing any disciplinary actions proposed to be taken against an alleged victim to see if there is a causal connection between the misconduct forming the basis for the proposed discipline and the alleged Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking. The Title IX Coordinator shall assist and provide the purported victim with reasonable Remedies as requested throughout the reporting, investigative, and disciplinary processes, and thereafter.

Victim Rights and Resources. Victims also should be made aware of their rights under Title IX, VAWA/Campus SaVE Act and related legislation, and any available resources, such as counseling, health, and mental health services, as well as the right to file a complaint with University and/or local law enforcement. Campuses must also ensure that persons know how to report any subsequent problems, and the Campus Title IX Coordinator or other appropriate Campus representatives should follow-up to determine whether any retaliation or new incidents of misconduct have occurred.

When addressing Sexual Misconduct, Dating or Domestic Violence or Stalking, Campuses should consider both on and off Campus resources, including local rape crisis centers, municipal law enforcement agencies, district attorneys' offices, and forensic medical examination sites. This allows Campuses to draw upon the expertise and resources of a broader group of professionals, thereby marshalling and maximizing time-sensitive services and resources.

Coordination with Criminal Investigations and Proceedings

A pending (Campus or local) police criminal investigation does not relieve a Campus of its responsibility to resolve Sexual Misconduct, Dating or Domestic Violence, or Stalking complaints: a Campus may not wait until the conclusion of a police investigation to commence its own administrative investigation, and must take immediate steps to protect the victim(s). Although it may be necessary to temporarily delay the administrative investigation while the police are gathering evidence conducting their criminal investigation, once notified that the police have completed the fact gathering portion of their investigation, the Campus must promptly resume and complete its own investigation. Subject to applicable law, the Title IX Coordinator should normally be given access to Campus law enforcement investigation notes,

reports and findings as necessary for the administrative investigation, so long as it does not compromise the police/criminal investigation.

Campus police shall encourage the victim to file a complaint with the Title IX Coordinator (in addition to filing a criminal complaint). Unless the victim has already notified and/or consented to the disclosure of his/her identity to the Title IX Coordinator, Campus law enforcement shall redact all identity information before providing the Title IX Coordinator access to its investigation notes, reports and findings. Campus police shall also report the incident itself to the Title IX Coordinator while maintaining the confidentiality of the victim's identity (if anonymity is requested).

Campus police should receive copies of, and training on, this and all relevant Executive Orders, including the University's Sexual Misconduct, Dating and Domestic Violence, and Stalking investigation and complaint procedures.

Campus agreements with local law enforcement must allow the Campus to meet its obligations under this and all related Executive Orders to resolve complaints promptly and equitably.

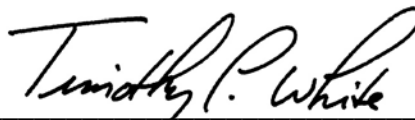
Annual Report

Each Campus will report the following annually on October 1, for the prior fiscal year (July 1 to June 30), without disclosing any information that would reveal the identities of the parties involved:

- (1) The number of Sexual Misconduct, Dating and Domestic Violence, and Stalking reports received in which a Student is the Respondent;
- (2) The number of Sexual Misconduct, Dating and Domestic Violence, and Stalking reports received in which an Employee is the Respondent;
- (3) The number of Sexual Misconduct, Dating and Domestic Violence, and Stalking reports investigated;
- (4) The number of Sexual Misconduct, Dating and Domestic Violence, and Stalking reports resolved without investigation, including a description of the resolution and/or reason for no investigation;
- (5) The number of Sexual Misconduct, Dating and Domestic Violence, and Stalking investigations in which the Respondent was held responsible, including a description of the final sanction; and,
- (6) The number of Sexual Misconduct, Dating and Domestic Violence, and Stalking investigations in which the evidence was found insufficient to hold the Respondent responsible.

The information shall be reported in a manner that protects the privacy of the persons involved, including victims, Respondents, and witnesses, and shall be posted on the Campus web site.

The Title IX Coordinator is responsible for preparing and publishing the annual report.



Timothy P. White, Chancellor

Dated: June 23, 2015

Attachments:

Attachment A – Notice of Non-Discrimination on the Basis of Gender or Sex

Attachment B – Myths and Facts about Sexual Misconduct

Attachment C – Rights and Options for Victims of Sexual Misconduct, Dating and Domestic Violence, and Stalking

Revision History:

As a result of the issuance of this Executive Order, the following documents are superseded as of the effective date of this Executive Order and are no longer applicable:

- Executive Order 1095 (*Implementation of Title IX, VAWA/Campus SaVE Act, and Related Sex Discrimination, Sexual Harassment and Sexual Violence Legislation*), dated June 3, 2014
- Executive Order 1072 (*Implementation of Title IX of the Education Amendments of 1972 and Related Sexual Harassment/Violence Legislation for CSU Students*), dated April 6, 2012
- Executive Order 993 (*Implementation of the "California Campus Blueprint to Address Sexual Assault" and other Sexual Assault Legislation*), dated October 23, 2006

NOTICE OF NON-DISCRIMINATION ON THE BASIS
OF GENDER OR SEX

The California State University does not discriminate on the basis of gender, which includes sex and gender identity or expression, or sexual orientation in its education programs or activities. Title IX of the Education Amendments of 1972, and certain other federal and state laws, prohibit discrimination on the basis of gender or sexual orientation in employment, as well as in all education programs and activities operated by the University (both on and off campus). The protection against discrimination on the basis of gender or sexual orientation includes sexual harassment, sexual misconduct, and gender based dating and domestic violence and stalking. The following person has been designated to handle inquiries regarding the non-discrimination policies:

[Insert contact information for all campus Title IX Coordinator/Coordinators, including additional information that would help Students and Employees identify which Title IX Coordinator to contact and identifying the lead Title IX Coordinator.]

Questions may also be addressed to:

Office for Civil Rights
U.S. Department of Education
50 Beale Street, Suite 7200
San Francisco, CA 94105-1813
Telephone: 415-486-5555
FAX: 415-486-5570; TDD: 800-877-8339
Email: ocr.sanfrancisco@ed.gov

Myths and Facts about Sexual Misconduct

Common Myths and Facts about the Causes of Sexual Misconduct

- 1) **Myth**: Victims provoke Sexual Assaults when they dress provocatively or act in a promiscuous manner.¹

Fact: Rape and Sexual Assault are crimes of violence and control that stem from a person's determination to exercise power over another. Neither provocative dress nor promiscuous behaviors are invitations for unwanted sexual activity. Forcing someone to engage in non-consensual sexual activity is Sexual Assault; regardless of the way that person dresses or acts.

- 2) **Myth**: If a person goes to someone's room or house or goes to a bar, s/he assumes the risk of Sexual Assault. If something happens later, s/he can't claim that s/he was raped or sexually assaulted because s/he should have known not to go to those places.

Fact: This "assumption of risk" wrongfully places the responsibility of the offender's action with the victim. Even if a person went voluntarily to someone's home or room and consented to engage in some sexual activity, it does not serve as blanket consent for **all** sexual activity. University policy defines Sexual Misconduct to include any sexual activity that is engaged in without Affirmative Consent. Affirmative Consent means informed, affirmative, voluntary, and mutual agreement to engage in sexual activity. Each person involved is responsible to ensure that they have the Affirmative Consent of the other participant(s). When in doubt if the person is comfortable with an elevated level of sexual activity, stop and ask. When someone says "no" or "stop," that means "STOP!" Sexual activity forced upon another without valid consent is Sexual Assault.

- 3) **Myth**: It is not Sexual Misconduct if it happens after drinking or taking drugs.

Fact: Being under the influence of alcohol or drugs is not an invitation for sexual activity. A person under the influence does not cause others to assault her/him; others choose to take advantage of the situation and sexually assault her/him because s/he is in a vulnerable position. **A person who is incapacitated due to the influence of alcohol or drugs is not able to consent to sexual activity.**

- 4) **Myth**: Most Sexual Assaults are committed by strangers. It's not rape if the people involved know each other.

¹ Key capitalized terms are defined on pp. 6 - 11.

Fact: Most Sexual Assaults and Rape are committed by someone the victim knows. A study of sexual victimization of college women showed that about 90% of victims knew the person who sexually victimized them. Most often, a boyfriend, ex-boyfriend, classmate, friend, acquaintance or co-worker sexually victimized the person. It is important to remember that Sexual Misconduct can occur in both heterosexual and same-gender relationships.

- 5) **Myth:** Rape can be avoided if women avoid dark alleys or other “dangerous” places where strangers might be hiding or lurking.

Fact: Rape and other Sexual Misconduct can occur at any time, in many places, to anyone.

- 6) **Myth:** A person who has really been sexually assaulted will be hysterical.

Fact: Victims of Sexual Assault exhibit a spectrum of responses to the assault which can include: calm, hysteria, withdrawal, anxiety, anger, apathy, denial, and shock. Being sexually assaulted is a very traumatic experience. Reaction to the assault and the length of time needed to process through the experience vary with each person. There is no “right way” to react to being sexually assaulted. Assumptions about the way a victim “should act” may be detrimental to the victim because each victim copes in different ways.

- 7) **Myth:** All victims will report the crime immediately to the police. If they do not report it or delay in reporting it, then they must have changed their minds after it happened, wanted revenge or didn’t want to look like they were sexually active.

Fact: There are many reasons why a victim may not report the assault to the police or campus officials. It is not easy to talk about being sexually assaulted and can feel very shameful. The experience of retelling what happened may cause the person to relive the trauma. Another reason for delaying a report or not making a report is the fear of retaliation by the offender. There is also the fear of being blamed, not being believed and being required to go through judicial proceedings. Just because a person does not report the incident does not mean it did not happen.

- 8) **Myth:** Only young, pretty women are assaulted.

Fact: The belief that only young, pretty women are sexually assaulted stems from the myth that Sexual Misconduct is based on sex and physical attraction. Sexual Assault is a crime of power and control. Offenders often choose people whom they perceive as most vulnerable to attack or over whom they believe they can assert power. Men and boys are also sexually assaulted, as well as persons with disabilities. Assumptions about

the “typical” victim might lead others not to report the assault because they do not fit the stereotypical victim profile.

- 9) **Myth**: It’s only Rape if the victim puts up a fight and resists.

Fact: Many states do not require the victim to resist in order to charge the offender with Rape or Sexual Assault. Those who do not resist may feel if they do so, they will anger their attacker, resulting in more severe injury. Many assault experts say that victims should trust their instincts and intuition and do what they believe will most likely keep them alive. Not fighting or resisting an attack does not equal consent.

- 10) **Myth**: Someone can only be sexually assaulted if a weapon was involved.

Fact: In many cases of Sexual Assault, a weapon is not involved. The offender often uses physical strength, physical violence, intimidation, threats or a combination of these tactics to overpower the victim. Although the presence of a weapon while committing the assault may result in a higher penalty or criminal charge, the absence of a weapon does not mean that the offender cannot be held criminally responsible for a Sexual Assault.

What You Can Do To Help Stop Sexual Misconduct

- Sexual contact requires mutual and Affirmative Consent. An incapacitated person (for example, a person under the influence of drugs or alcohol) may be incapable of giving consent. Whether an *intoxicated* person (as a result of using alcohol or other drugs) is *incapacitated* depends on the extent to which the alcohol or other drugs impact the person’s decision-making capacity, awareness of consequences, and ability to make fully informed judgments.
- No one deserves to be sexually assaulted, stalked or victimized in any way.
- Don’t engage in any behavior that may be considered Sexual Assault, Domestic Violence, Dating Violence, Stalking or any other form of Sexual Misconduct or violence.
- Never use force, coercion, threats, alcohol or other drugs to engage in sexual activity.
- Take responsibility for your actions.
- Avoid alcohol and other drugs.
- Remember “no” means “No!” and “stop” means “Stop!”
- Report incidents of violence (including coercion) to law enforcement and campus authorities.

- Discuss Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking with friends—speak out against non-consensual sex or violence and clear up misconceptions.
- Don't mistake submission or silence for Affirmative Consent.

What You Can Do To Help Minimize Your Risk of Becoming a Victim

- Be aware. Does your partner: Threaten to hurt you or your children? Say it's your fault if he or she hits you and then promises it won't happen again (but it does)? Put you down in public? Force you to have sex when you don't want to? Follow you? Send you unwanted messages and gifts?
- Be assertive. Speak up.
- Stay sober and watch out for dates and/or anyone who tries to get you drunk or high.
- Clearly communicate limits to partners, friends, and acquaintances.
- Never leave a party with someone you don't know well and trust.
- Trust your feelings; if it feels wrong, it probably is.
- Learn all you can and talk with your friends. Help them stay safe.
- Report incidents of violence to law enforcement and campus authorities.

What You Can Do If You Are a Victim, in General

- Go to a safe place as soon as possible.
- Preserve evidence.
- Report the incident to University Police or local law enforcement.
- Report the incident to your campus Title IX Coordinator.
- Call/visit the campus Sexual Assault Victim's Advocate
- Call a Domestic Violence, Sexual Assault or Stalking hotline.
- Call a friend or family member for help.
- Know that you are not at fault. You did not cause the abuse to occur and you are not responsible for someone else's violent behavior.

Sexual Misconduct - Risk Reduction Tips

All sexual activity between members of the CSU community must be based on Affirmative Consent.² Engaging in any sexual activity without first obtaining Affirmative Consent to the specific activity is Sexual Misconduct, whether or not the conduct violates any civil or criminal law.

Sexual activity includes, but is not limited to, kissing, touching intimate body parts, fondling, intercourse, penetration of any body part, and oral sex. It also includes any unwelcome physical sexual acts, such as unwelcome sexual touching, Sexual Assault, Sexual Battery, Rape, and Dating Violence. When based on Gender, Domestic Violence and Stalking also constitute Sexual Misconduct. Sexual Misconduct may include using physical force, violence, threat, or intimidation, ignoring the objections of the other person, causing the other person's intoxication or incapacitation through the use of drugs or alcohol, or taking advantage of the other person's incapacitation (including voluntary intoxication) to engage in sexual activity. Men as well as women can be victims of these forms of Sexual Misconduct. Sexual activity with a minor is never consensual when a person is under 18 years old, because a minor is considered incapable of giving legal consent due to age.

"What can I do in order to help reduce my risk of being a victim of Sexual Misconduct?"

Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to victim-blame and with recognition that only those who commit Sexual Misconduct are responsible for those actions, these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor "NO" clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.
- ***In an emergency, call 9-1-1***

² See definition of Affirmative Consent below.

“What can I do in order to help reduce my risk of being an initiator of Sexual Misconduct?”

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk of being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent, about someone's sexual availability, about whether they are attracted to you, about how far you can go or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity then you DO NOT have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves. **Incapacitation means a person is unable to give valid consent.**
- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

Rape, Acquaintance Rape, Sexual Assault, Sexual Battery

Rape is a form of Sexual Misconduct and is non-consensual sexual intercourse that may also involve the use of threat of force, violence, or immediate and unlawful bodily injury or threats of future retaliation and duress. Any sexual penetration, however slight, is sufficient to constitute Rape. Sexual acts including intercourse are considered non-consensual when a person is incapable of giving consent because s/he is incapacitated from alcohol and/or drugs, is under 18 years old, or if a mental disorder or developmental or physical Disability renders a person incapable of giving consent. The Respondent's relationship to the person (such as family

member, spouse, friend, acquaintance or stranger) is not determinative.³ (See complete definition of Affirmative Consent below.)

Acquaintance Rape is a form of Sexual Misconduct committed by an individual known to the victim. This includes a person the victim may have just met; i.e., at a party, introduced through a friend, or on a social networking website.

Sexual Assault is a form of Sexual Misconduct and is an attempt, coupled with the ability, to commit a violent injury on the person of another because of that person's gender or sex.⁴

Sexual Battery is a form of Sexual Misconduct and is any willful and unlawful use of force or violence upon the person of another because of that person's gender or sex as well as touching an intimate part of another person against that person's will and for the purpose of sexual arousal, gratification, or abuse.⁵

In order for a sexual act to be considered Rape or Sexual Assault, the act must be non-consensual.

Crimes of a sexual nature may be reported to campus or local law enforcement in addition to being reported administratively on campus to the Title IX Coordinator. **Both men and women can be victims of Rape or Sexual Assault.**

Affirmative Consent

Affirmative Consent means an informed, affirmative, conscious, voluntary, and mutual agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the Affirmative Consent of the other participant(s) to engage in the sexual activity. Lack of protest or resistance does not mean Affirmative Consent, nor does silence mean Affirmative Consent. Affirmative Consent must be voluntary, and given without coercion, force, threats, or intimidation.

The existence of a dating or social relationship between those involved, or the fact of past sexual activities between them, should never by itself be assumed to be an indicator of Affirmative Consent. A request for someone to use a condom or birth control does not, in and of itself, constitute Affirmative Consent.

Affirmative Consent can be withdrawn or revoked. Consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms of sexual activity. Consent given to sexual activity on one occasion does not constitute consent on another occasion. There must

³ See Cal. Penal Code §§ 261, 263.

⁴ See Cal. Penal Code § 240.

⁵ See Cal. Penal Code § 242

always be mutual and Affirmative Consent to engage in sexual activity. Consent must be ongoing throughout a sexual activity and can be revoked at any time, including after penetration. Once consent is withdrawn or revoked, the sexual activity must stop immediately.

Affirmative Consent cannot be given by a person who is incapacitated. A person is unable to consent when s/he is asleep, unconscious, or is incapacitated due to the influence of drugs, alcohol or medication so that s/he could not understand the fact, nature, or extent of the sexual activity. A person is incapacitated if s/he lacks the physical and/or mental ability to make informed, rational decisions.

Whether an intoxicated person (as a result of using alcohol or other drugs) is incapacitated depends on the extent to which the alcohol or other drugs impact the person's decision-making ability, awareness of consequences, and ability to make informed judgments. A person's own intoxication or incapacitation from drugs or alcohol does not diminish that person's responsibility to obtain Affirmative Consent before engaging in sexual activity.

A person with a medical or mental disability may also lack the capacity to give consent.

Sexual activity with a minor (a person under 18 years old) is never consensual, because a minor is considered incapable of giving consent due to age.

It shall not be a valid excuse that a person affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the person was unable to consent to the sexual activity under any of the following circumstances:

- The person was asleep or unconscious;
- The person was incapacitated due to the influence of drugs, alcohol, or medication, so that the person could not understand the fact, nature, or extent of the sexual activity;
- The person was unable to communicate due to a mental or physical condition.

It shall not be a valid excuse to alleged lack of Affirmative Consent that the Respondent believed that the person consented to the sexual activity under either of the following circumstances:

- The Respondent's belief in Affirmative Consent arose from the intoxication or recklessness of the Respondent;
- The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the person affirmatively consented to the sexual activity.

What is Dating Violence or Domestic Violence?

Domestic Violence is abuse committed against someone who is a current or former spouse; current or former cohabitant; someone with whom the abuser has a child; someone with whom the abuser has or had a dating or engagement relationship; or a person similarly situated under California domestic or family violence law. Cohabitant means two unrelated persons living together for a substantial period of time, resulting in some permanency of relationship. It does not include roommates who do not have a romantic, intimate, or sexual relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship. For purposes of this definition, “abuse” means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another. Abuse does not include non-physical, emotional distress or injury.⁶

Dating Violence is abuse committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the victim.⁷ This may include someone the victim just met; i.e., at a party, introduced through a friend, or on a social networking website. For purposes of this definition, “abuse” means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another. Abuse does not include non-physical, emotional distress or injury.

Types of Dating/Domestic Violence That Constitute Sexual Misconduct

There usually is a pattern or a repeated cycle of Dating Violence, starting with the first instance of abuse.

General Pattern of Behavior:

- **Tension Building:** Relationship begins to get strained or tense between partners.
- **Explosion:** Outburst that includes verbal, emotional, or physical abuse.
- **Honeymoon:** Apologies where the abuser tries to re-connect with his/her partner by shifting the blame onto someone or something else.

⁶ See Cal. Penal Code § 13700(b) and Cal. Family Code § 6211.

⁷ See Cal. Penal Code § 13700(b).

What Dating/Domestic Violence Looks Like

- **Physical Abuse:** any use of physical force with the intent to cause injury (i.e. grabbing in a way to inflict pain, hitting, shoving, strangling, kicking)
- **Sexual Abuse:** any action that impacts the partner's ability to control his/her sexual activity or the circumstance in which sexual activity occurs, including Rape, coercion or restricting access to birth control

Warnings or Signs of Potential Dating/Domestic Violence

- Any actions used for the intent of gaining power and control over a person. Checks my cell phone or email without my permission.
- Monitors where I'm going, who I'm going with, what I'm doing.
- Repeatedly says or does things to make me feel inadequate or inferior to him/her.
- Extreme jealousy or insecurity.
- Isolates me from my friends and family.
- Explosive temper.
- Mood swings.
- Assumes control over my access to financial resources.
- Tells me what to do.
- Possessiveness.
- Physically hurts me in any way.

Stalking

Stalking means a repeated course of conduct directed at a specific person (when based on gender or sex) that places that person in reasonable fear for his/her or others' safety, or to suffer substantial emotional distress.⁸

Stalking is a pattern of behavior that makes you feel afraid, nervous, harassed or in danger. It is when someone repeatedly contacts you, follows you, sends you things, talks to you when you don't want them to or threatens you. Stalking behaviors can include:

- Damaging your property.
- Knowing your schedule.

⁸ See Cal. Penal Code § 646.9.

- Showing up at places you go.
- Sending mail, e-mail, texts and pictures.
- Creating a website about you.
- Sending gifts.
- Stealing things that belong to you.
- Calling you repeatedly.
- Any other actions that the stalker takes to contact, harass, track or frighten you.

You can be stalked by someone you know casually, a current boyfriend or girlfriend, someone you dated in the past or a stranger. Getting notes and gifts at your home, on your car or other places might seem sweet and harmless to other people, but if you don't want the gifts, phone calls, messages, letters or e-mails, it doesn't feel sweet or harmless. It can be scary and frustrating.

Sometimes people stalk their boyfriends or girlfriends while they're dating. They check up on them, text or call them all the time, expect instant responses, follow them, use GPS to secretly monitor them and generally keep track of them, even when they haven't made plans to be together. These Stalking behaviors can be part of an abusive relationship. If this is happening to you or someone you know, you should talk to a trusted person.

Stalking is a crime and can be dangerous. California Penal Code section 646.9, in part, states, "Any person who willfully, maliciously and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking....."

How You Can Help Yourself

Think about ways you can be safer. This means thinking about what to do, where to go for help and who to call ahead of time:

- Where can you go for help?
- Who can you call?
- Who will help you?
- How will you escape a violent situation?

Other Things You Can Do

- ***In an emergency, call 911*** or University Police or the local police department.

- Let friends or family members know when you are afraid or need help.
- Be aware of your surroundings. Knowing where you are and who is around you may help you find a way to get out of a bad situation.
- Avoid isolated areas.
- Avoid putting headphones in both ears so you can be more aware of your surroundings.
- Trust your instincts. If a situation or location feels unsafe or uncomfortable, remove yourself.
- Vary your routine, your driving routes and where you park your car.
- When you go out, tell someone where you are going and when you'll be back. Memorize the phone numbers of people to contact or places to go in an emergency.
- Don't load yourself down with packages or bags restricting your movement.
- Keep your cell phone handy; check to see that you have reception and that your cell phone is charged, but, then pay attention to your surroundings instead of the phone.
- Have money for a cab or other transportation.
- Save notes, letters or other items that the stalker sends to you. Keep a record of all contact that the stalker has with you; these items will be very useful in an investigation.

How You Can Help Someone Else

If you know someone who is being stalked, you can:

- Encourage your friend to seek help.
- Be a good listener.
- Offer your support.
- Ask how you can help.
- Educate yourself about stalking.
- Avoid any confrontations with the stalker; this could be dangerous for you and your friend.

[campus logo]

RIGHTS AND OPTIONS FOR VICTIMS OF SEXUAL MISCONDUCT, DATING AND DOMESTIC VIOLENCE, AND STALKING¹

The University is committed to creating and sustaining an educational and working environment free of sexual misconduct, dating and domestic violence, and stalking. If you experience any of these forms of misconduct, you are strongly encouraged to utilize the various on and off campus resources described below. Your safety and well-being is the University's priority. This publication is intended to help you understand your rights and options, as well as provide you with information regarding support and assistance.²

WHAT SHOULD I DO?

Call 9-1-1 if you are in the midst of any kind of emergency, immediate harm or threat of harm.

If you have experienced sexual misconduct (e.g., rape, acquaintance rape, or sexual battery), dating or domestic violence, or stalking, you are encouraged to ***seek immediate assistance from police and healthcare providers*** for your physical safety, emotional support and medical care.

University police can escort you to a safe place and transport you to a hospital or a sexual assault response center for a medical examination, if needed. University police can also provide access to a confidential Sexual Assault Victim's Advocate. If you would prefer not to notify the police, you are strongly encouraged to seek assistance from the campus Title IX Coordinator who can provide you with information on your options, rights and remedies, and/or the Campus Sexual Assault Victim's Advocate. The campus Title IX Coordinator is available to assist you in notifying the police, if you wish. The Sexual Assault Victim's Advocate listed below can also assist you in notifying the police and/or the campus Title IX Coordinator.

You have the right to decide whom and when to tell about what happened. However, it is very important that you get confidential medical attention after being assaulted. Following the incident, you may be physically injured, there may be a chance you contracted a sexually transmitted disease or that you may become pregnant.

¹ As required by the Violence Against Women Reauthorization Act of 2013 (20 U.S.C. 1092(f))(VAWA), pursuant to its Campus Sexual Violence Elimination Act provision (Campus SaVE Act) and related laws and regulations.

² Terms contained within this Notice are intended to be gender neutral.

WHOM SHOULD I CONTACT?

The University has designated a Title IX Coordinator to provide you with assistance and support, and to monitor and oversee overall compliance with laws and policies related to sexual misconduct, dating and domestic violence, and stalking. Your Campus Title IX Coordinator is available to explain and discuss your right to file a criminal complaint; the University's relevant complaint process, and your right to receive assistance with that process, including the investigation process; how confidentiality is handled; available resources, both on and off Campus; and other related matters.

[Campus name] Title IX Coordinator and Deputy Coordinator(s) [If there is one or more Deputy Coordinator you must list each one, along with respective roles and responsibilities for each]:

- Name
- Address (including email address)
- Phone
- Office hours

University Police

- Name
- Address (including email address)
- Phone

Local Police

- Name
- Address (including email address)
- Phone

Campus Sexual Assault Victim's Advocate

- Name
- Address (including email address)
- Phone

U.S. Department of Education, Office for Civil Rights:

- (800) 421-3481 or ocr@ed.gov
- If you wish to fill out a complaint form online with the OCR, you may do so at: <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

The White House Task Force to Protect Students From Sexual Assault

- <https://www.notalone.gov/>

Medical & Counseling Services

Campus Services

[Insert Campus health/counseling/women's center(s) name and contact info]
[ADD WEB LINK(S)]

Off-Campus Services

[Insert health/counseling/women's centers(s), community rape crisis center's name and contact info]
[ADD WEB LINK(S)]

THE IMPORTANCE OF PRESERVING EVIDENCE

It is important that you take steps to preserve and collect evidence; doing so preserves the full range of options available to you, be it through the University's administrative complaint procedures or criminal prosecution. To preserve evidence: (1) do not wash your face or hands; (2) do not shower or bathe; (3) do not brush your teeth; (4) do not change clothes or straighten up the area where the assault took place; (5) do not dispose of clothes or other items that were present during the assault, or use the restroom; and, (6) seek a medical exam immediately. If you already cleaned up from the assault, you can still report the crime, as well as seek medical or counseling treatment. You may consult with the Campus Title IX Coordinator or Sexual Assault Victim's Advocate (see contact information above) for assistance as well.

WHAT REPORTING OPTIONS DO I HAVE?

The University's primary concern is your safety and the safety of the Campus community. The use of alcohol or drugs never makes the victim at fault for sexual misconduct. If you have experienced sexual misconduct, dating or domestic violence, or stalking you should not be deterred from reporting the incident out of a concern that you might be disciplined for related violations of drug, alcohol or other University policies. Except in egregious circumstances, University students or employees who are victims of sexual misconduct will not be subject to discipline.

You have several reporting options, and you may pursue one or more of these options at any time. It is your right to have a friend, family member, Sexual Assault Victim's Advocate, or other representative present with you while reporting the incident. You also have the right to

have a sexual assault counselor, Sexual Assault Victim's Advocate and/or support person of your choice present with you during a rape examination.

The Campus Title IX Coordinator or Sexual Assault Victim's Advocate can assist you in notifying the police if you choose.

Criminal: Reporting to University Police and/or local police is an option at any time. If you choose not to report to the police immediately following an incident, you can still make the report at a later time. However, with the passage of time, the ability to gather evidence to assist with criminal prosecution may be limited. Depending on the circumstances, the police may be able to obtain a criminal restraining order on your behalf.

Administrative: You may report to the Campus Title IX Coordinator, who will provide you with written and verbal information regarding applicable University complaint procedures for investigating and addressing the incident. The Title IX Coordinator will also provide you with information regarding resources available to you, as well as information regarding your rights and options. Contact information for the Title IX Coordinator is listed above.

The Campus Title IX Coordinator will also discuss with you any reasonable interim remedies the University may offer prior to conclusion of an investigation or potential disciplinary action to reduce or eliminate negative impact on you and provide you with available assistance. Examples include: adjustment to work assignments, course schedules or supervisory reporting relationship; requiring the Respondent to move from University-owned or affiliated housing; immediately prohibiting the Respondent from coming to the University; or prohibiting the Respondent from contacting the parties involved in the reported incident. These options may be available to you whether or not you choose to report the incident to Campus police or law enforcement. The Title IX Coordinator remains available to assist you and provide you with reasonable remedies requested by you throughout the reporting, investigative, and disciplinary processes, and thereafter.

If it is determined that University policy³ was violated, the Respondent will be subject to discipline, up to and including dismissal from University employment or expulsion from the University. You are entitled to be accompanied to any related meeting or proceeding by an advisor of your choice, including a Sexual Assault Victim's Advocate or domestic violence

³ Executive Order 1096 (Systemwide *Policy* Prohibiting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking Against Employees and Third Parties and *Procedure* for Addressing Such Complaints by Employees and Third Parties); Executive Order 1097 (Systemwide *Policy* Prohibiting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking Against Students and Systemwide *Procedure* for Addressing Such Complaints by Students).

counselor. However, if you do not wish to participate in an investigation or hearing process, you have the right to decline to do so.

Health/Counseling/Clergy: You may choose to seek advice and assistance from physicians, psychotherapists, professional counselors, clergy, sexual assault and domestic violence counselors and advocates, including individuals who work or volunteer for them.

Civil Lawsuit: You may choose to file a civil lawsuit against the Respondent, whether or not criminal charges have been filed. A civil lawsuit provides you the opportunity to recover actual damages, which may include compensation for medical expenses, lost wages, pain, suffering, and emotional distress.

You may also choose to obtain a protective or restraining order (such as a domestic violence restraining order or a civil harassment restraining order). Restraining orders must be obtained from a court in the jurisdiction where the incident occurred. Restraining orders can protect victims who have experienced or are reasonably in fear of physical violence, sexual misconduct, dating or domestic violence, or stalking. University Police and your Campus Title IX Coordinator can offer assistance with obtaining a protective or restraining order.

Non-reporting: You are strongly encouraged to report any incidents to the police and/or Campus Title IX Coordinator so that steps may be taken to protect you and the rest of the campus community. However, non-reporting is also an option.

CONFIDENTIALITY – KNOW YOUR OPTIONS

We encourage victims of sexual misconduct, dating or domestic violence, or stalking to talk to someone about what happened – so you can get the support you need, and so the University can respond appropriately. Whether – and the extent to which – a University employee may agree to maintain confidentiality (and not disclose information to the Title IX Coordinator) depends on the Employee’s position and responsibilities at the University. This information is intended to make you aware of the various reporting and confidential disclosure options available to you – so you can make informed choices about where to turn for help. The University encourages victims to talk to someone identified in one or more of these groups.

As explained below, some employees are required by law to maintain near complete confidentiality; talking to them is sometimes called a “privileged communication.” Other Employees may talk to a victim in confidence, and generally only report to the University that an incident occurred without revealing any personally identifying information. Some employees are required to report all details of an incident (including the identities of both the victim and alleged

perpetrator) to the Title IX Coordinator. A report to these employees constitutes a report to the University, and generally creates a legal obligation for the University to investigate the incident and take appropriate steps to address the situation.

Privileged and Confidential Communications

*Physicians, Psychotherapists, Professional Counselors and Clergy*⁴ – Physicians, psychotherapists, professional, licensed counselors, and clergy who work or volunteer on or off campus acting solely in those roles or capacity, in the provision of medical or mental health treatment or counseling (*including those who work or volunteer in those offices*) may **not** report **any** information about an incident of sexual misconduct to anyone else at the University, including the Title IX Coordinator, without your consent. You can seek assistance and support from physicians; psychotherapists, professional, licensed counselors, and clergy without triggering a University investigation that could reveal your identity or the fact of your disclosure. *However, see limited exceptions below regarding when health care practitioners must report to local law enforcement agencies. Health care practitioners should explain these limited exceptions to you, if applicable.* Following is the contact information for professional counselors and physicians (if any) on campus:

[INSERT LIST OF NAMES AND CONTACT INFO]

*Sexual Assault and Domestic Violence Counselors and Advocates*⁵ – Sexual assault and domestic violence counselors and advocates who work or volunteer on or off campus in sexual assault centers, victim advocacy offices, women’s centers, and health centers (*including all individuals who work or volunteer in these centers and offices, as well as non-professional counselors or advocates, and those who act in that role under their supervision*) may talk to you without revealing any information about you or the incident of sexual misconduct to anyone else at the University, including the Title IX Coordinator, without your consent. You can seek assistance and support from these counselors and advocates without triggering a University investigation that could reveal your identity or that you disclosed an incident to them. *However, see limited exceptions below regarding when sexual assault and domestic violence counselors and advocates must report to local law enforcement agencies. Counselors and advocates should explain these limited exceptions to you, if applicable.* Following is contact information for sexual assault and domestic violence counselors and advocates:

[INSERT LIST OF NAMES AND CONTACT INFO]

⁴ See Cal. Evid. Code § 990 *et seq.*, § 1010 *et seq.*, and § 1030 *et seq.*

⁵ See Cal. Evid. Code § 1035 *et seq.* and § 1037 *et seq.*

If you speak only to a physician, professional counselor, clergy member, sexual assault counselor, domestic violence counselor or advocate, you must understand that the University will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the perpetrator, if you choose to maintain confidentiality.

Even so, these individuals will still assist you in receiving other necessary protection and support, such as victim advocacy, disability, medical/health or mental health services, or legal services. They may not, however, be able to assist you with University academic support or accommodations, or changes to University-based living or working schedules, or assist with adjustments to course schedules. Only the University and the Title IX Coordinator can assist with those matters (see below). A victim who at first requests confidentiality may later decide to file a complaint with the University or report the incident to the police, and thus have the incident fully investigated. These counselors and advocates can provide you with that assistance if you wish. These counselors and advocates will also explain that Title IX includes protections against retaliation, and that the University will not only take steps to prevent retaliation when it knows or reasonably should know of possible retaliation, but will also take strong responsive action if it occurs.

EXCEPTIONS: Under California law, any health practitioner employed in a health facility, clinic, physician's office, or local or state public health department or clinic is required to make a report to local law enforcement if he or she provides medical services for a *physical condition* to a patient/victim who he or she knows or reasonably suspects is suffering from: (1) a wound or physical injury inflicted by a firearm; or (2) any wound or other physical injury inflicted upon a victim where the injury is the result of assaultive or abusive conduct (including sexual misconduct and dating and domestic violence).⁶ This exception does *not* apply to sexual assault and domestic violence counselors and advocates. Health care practitioners will explain this limited exception to you, if applicable.

Additionally, under California law, *all* professionals described above (physicians, psychotherapists, professional counselors, clergy, and sexual assault and domestic violence counselors and advocates) are mandatory child abuse and neglect reporters, and are required to report incidents involving victims under 18 years of age to local law enforcement.⁷ These professionals will explain this limited exception to you, if applicable.

⁶ Assaultive or abusive conduct is defined to include a list of 24 criminal offenses, including sexual battery, incest, rape, spousal rape, abuse of a spouse or cohabitant, and any attempt to commit these crimes. See Cal. Penal Code §§ 11160-11163.2.

⁷ See Cal. Penal Code §§ 11164-11174.3; see also CSU Executive Order 1083 or any superseding executive order.

Finally, some or all of these professionals may also have reporting obligations under California law to: (1) local law enforcement in cases involving threats of immediate or imminent harm to self or others where disclosure of the information is necessary to prevent the threatened danger;⁸ or (2) to the court if compelled by court order or subpoena in a criminal proceeding related to the incident.⁹ If applicable, these professionals will explain this limited exception to you.

Reporting to University or Local Police

If you report certain sex offenses to local or University Police, the police are required to notify you that your name will become a matter of public record *unless confidentiality is requested*.¹⁰ If you request that your identity be kept confidential, your name will not become a matter of public record and the police will not report your identity to anyone else at the University, including the Title IX Coordinator. University Police will, however, report the facts of the incident itself to the Title IX Coordinator being sure not to reveal to the Title IX Coordinator your name/identity, or compromise their own criminal investigation.

The University is required by the federal Clery Act to report certain types of crimes (including certain sex offenses) in statistical reports. However, while the University will report the *type* of incident in the annual crime statistics report known as the Annual Security Report, your name/identity will not be revealed.

Reporting to the Title IX Coordinator and Other University Employees

Most University employees have a duty to report incidents of sexual misconduct, dating and domestic violence, and stalking when they are on notice of it. When you tell the Title IX Coordinator or another University employee about an incident, you have the right to expect the University to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably. *In all cases, we strongly encourage victims to report sexual misconduct, dating and domestic violence, and stalking directly to the Title IX Coordinator.*

As detailed above, all University employees *except* physicians, licensed counselors, sexual assault victim's advocates must report to the Title IX Coordinator all relevant details about incidents of which they become aware. The University will need to determine what happened – and will need to know the names of the victim(s) and the perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the incident.

To the extent possible, information reported to the Title IX Coordinator or other University employee will be shared only with individuals responsible for handling the University's response

⁸ See Cal. Evid. Code § 1024.

⁹ See Cal. Evid. Code § 1035.4.

¹⁰ See Cal. Penal Code § 293; Cal. Gov. Code § 6254(f).

to the incident. The University will protect the privacy of individuals involved except as otherwise required by law or University policy. A report may result in the gathering of extremely sensitive information about you and other individuals in the Campus community. While such information is considered confidential, University policy regarding access to public records and disclosure of personal information may require disclosure of certain information concerning a reported incident. In such cases, efforts will be made to redact the records, as appropriate, in order to protect your identity and privacy and the privacy of other involved individuals.

The Title IX Coordinator can be reached at:

[INSERT CONTACT INFO FOR TITLE IX COORDINATOR]

If you request of the Title IX Coordinator or another University employee that your identity remain completely confidential, the Title IX Coordinator will explain that the University cannot always honor that request and cannot guarantee complete confidentiality. If you wish to maintain confidentiality or request that no investigation be conducted or disciplinary action taken, the University must weigh that request against the University's obligation to provide a safe, non-discriminatory environment for all students, employees and third parties, including you. Under those circumstances, the Title IX Coordinator will determine whether your request for complete confidentiality and/or no investigation can be honored under the facts and circumstances of the particular case, including whether the University has a legal obligation to report the incident, conduct an investigation or take other appropriate steps. Without information about your identity, the University's ability to meaningfully investigate the incident and pursue disciplinary action against the perpetrator may be severely limited.

The Title IX Coordinator will inform you prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the University's response. The Title IX Coordinator will remain mindful of your well-being, and will take ongoing steps to protect you from retaliation or harm, and work with you to create a safety plan. Retaliation against you, whether by students or employees, will not be tolerated. The University and Title IX Coordinator will also:

- Provide interim remedies requested by you, if they are reasonably available, regardless of whether you choose to report sexual misconduct, dating or domestic violence, or stalking to Campus or local police;
- Assist you in accessing other available victim advocacy, academic support, counseling, disability, medical/health or mental health services, and legal assistance both on and off campus;

- Provide other security and support, which could include issuing a no-contact order, helping arrange a change of Campus-based living or working arrangements or course schedules (including for the Respondent pending the outcome of the investigation) or adjustments for assignments, tests, or work duties; and
- Inform you of your right to report a crime to University or local police – and provide you with assistance if you wish to do so.

The University will not require you to participate in any investigation or disciplinary proceeding if you do not wish to participate.

The University will not generally notify parents or legal guardians of your report unless you are under the age of 18 or you provide the University with written permission to do so.¹¹

Under California law, and pursuant to University policy, certain University employees, including the Title IX Coordinator, are mandatory child abuse and neglect reporters and should explain to victims under 18 years of age that they are required to report the incident to the police.¹² However, the identity of the person who reports and the report itself are confidential and disclosed only among appropriate agencies.¹³

Because the University is under a continuing legal obligation to address the issue of sexual misconduct, dating and domestic violence, and stalking campus-wide, any such reports (including non-identifying reports) may also prompt the University to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported incident occurred; increased education, training and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revising its policies and practices.

The Office of the Ombuds, if available on your specific Campus, provides confidential, neutral and informal dispute resolution services, provides information about University policies and procedures, and makes referrals. However, in sexual misconduct, dating and domestic violence, and stalking cases, the Ombuds as well as all other University employees (except for physicians, licensed counselors, sexual assault counselors and advocates as discussed above) must report incidents to the Title IX Coordinator.

¹¹ If there is a health and safety issue (e.g., immediate threat to self or others), the University may notify parents or legal guardians, regardless of the victim's age, as allowed under the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g).

¹² See Cal. Penal Code §§ 11164-11174.3; see also CSU Executive Order 1083 or any superseding executive order.

¹³ See Cal. Penal Code § 11167(d).

NOTE: If the University determines that the perpetrator poses a serious and immediate threat to the Campus community, a designated Campus Security Authority under the Clery Act may be called upon to issue a timely warning to the community. Any such warning will not include any information that identifies the victim.

AS A REPORTER, AM I PROTECTED FROM RETALIATION?

Yes, University policies prohibit retaliation against a person who:

- Reports sexual misconduct, dating or domestic violence, or stalking;
- Assists someone with such a report; or
- Participates in any manner in any related investigation or resolution.

No officer, employee or agent of the University shall retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising his/her rights or responsibilities. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education. Retaliation, if proven, is a violation of University policies and may result in discipline, up to and including termination of employment or expulsion from the University.

WHAT ELSE MIGHT HAPPEN IF I NOTIFY UNIVERSITY POLICE?

Should you choose to notify University Police, you will be escorted to a safe place if necessary, and may be transported to a hospital or sexual response assault center for a medical exam. University police can also provide access to a confidential Sexual Assault Victim's Advocate, if desired. First and foremost, the medical exam you receive from a hospital or sexual assault response center treats any physical injury or effect. The exam may include a vaginal and/or anal examination, testing, and prophylactic treatment for sexually transmitted infections and possible pregnancy.

Second, the medical exam properly collects and preserves evidence. Seeking a medical exam for treatment and evidence collection does not commit you to any particular course of action, and your medical records are confidential.

WHAT CSU PROCEDURES ARE AVAILABLE?

The University has formal written procedures that provide for a Campus investigation of reports of sexual misconduct, dating and domestic violence, and stalking, written findings sent to the Complainant and the Respondent, and a review of the campus investigative findings by the CSU Chancellor's Office. The procedure for CSU employees and third parties is separate from, but

similar to the procedure for CSU students.¹⁴ Your Campus Title IX Coordinator can explain these procedures in detail.

At the conclusion of the University's complaint procedure, any employee or student found to have violated University policy will be subject to discipline. Discipline would be administered consistent with applicable collective bargaining agreements and MPP/confidential personnel plans (for employees), University policies and legal requirements. *As the victim, you are not required to participate in any University disciplinary procedure and may choose not to be a part of it.* Disciplinary procedures for sexual misconduct, dating and domestic violence, and stalking will:

- Provide a prompt, fair, and impartial process and resolution;
- Be conducted by officials who receive annual training on sexual misconduct, dating and domestic violence, and stalking, including how to conduct a process that protects the safety of victims and promotes accountability;
- Provide the Complainant and the Respondent the same opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice;
- Simultaneously inform the Complainant and the Respondent in writing of:
 - The outcome of the disciplinary proceeding;
 - The procedures available to appeal the results of the disciplinary proceeding;
 - Any change to the disciplinary results that occurs prior to the time such results become final; and
 - When disciplinary results become final.

WHAT ARE SEXUAL MISCONDUCT, DATING AND DOMESTIC VIOLENCE, STALKING, AND AFFIRMATIVE CONSENT?

Sexual Misconduct: All sexual activity between members of the CSU community must be based on affirmative consent. Engaging in any sexual activity without first obtaining affirmative consent to the specific activity is sexual misconduct, whether or not the conduct violates any civil or criminal law.

¹⁴ Executive Order 1096 (Systemwide *Policy* Prohibiting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking Against Employees and Third Parties and *Procedure* for Addressing Such Complaints by Employees and Third Parties); Executive Order 1097 (Systemwide *Policy* Prohibiting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking Against Students and Systemwide *Procedure* for Addressing Such Complaints by Students); Executive Order 1095 (Systemwide Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking Policy.)

Sexual activity includes, but is not limited to, kissing, touching intimate body parts, fondling, intercourse, penetration of any body part, and oral sex. It also includes any unwelcome physical sexual acts, such as unwelcome sexual touching, sexual assault, sexual battery, rape, and dating violence. When it is based on gender, domestic violence and stalking also constitute sexual misconduct. Sexual misconduct may include physical force, violence, threat, or intimidation, ignoring the objections of the other person, causing the other person's intoxication or incapacitation through the use of drugs or alcohol, or taking advantage of the other person's incapacitation (including voluntary intoxication). Men as well as women can be victims of these forms of sexual misconduct. Sexual activity with a minor is never consensual when the Complainant is under 18 years old, because the minor is considered incapable of giving legal consent due to age.

- a. Sexual Assault is a form of sexual misconduct and is an attempt, coupled with the ability, to commit a violent injury on the person of another because of that person's gender or sex.
- b. Sexual Battery is a form of sexual misconduct and is any willful and unlawful use of force or violence upon the person of another because of that person's gender or sex as well as touching an intimate part of another person against that person's will and for the purpose of sexual arousal, gratification, or abuse.
- c. Rape is a form of sexual misconduct and is non-consensual sexual intercourse that may also involve the use of threat of force, violence, or immediate and unlawful bodily injury or threats of future retaliation and duress. Any sexual penetration, however slight, is sufficient to constitute rape. Sexual acts including intercourse are considered non-consensual when a person is incapable of giving consent because s/he is incapacitated from alcohol and/or drugs, is under 18 years old, or if a mental disorder or developmental or physical disability renders a person incapable of giving consent. The Respondent's relationship to the person (such as family member, spouse, friend, acquaintance or stranger) is irrelevant. (See complete definition of affirmative consent below.)
- d. Acquaintance Rape is a form of sexual misconduct committed by an individual known to the victim. This includes a person the victim may have just met; i.e., at a party, introduced through a friend, or on a social networking website. (See above for definition of Rape.)

Dating Violence is abuse committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the victim. This may include someone the victim just met; i.e., at a party, introduced through a friend, or on a social networking website. For purposes of this definition, "abuse" means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another. Abuse does not include non-physical, emotional distress or injury.

Domestic Violence is abuse committed against someone who is a current or former spouse; current or former cohabitant; someone with whom the abuser has a child; someone with whom the abuser has or had a dating or engagement relationship; or a person similarly situated under California domestic or family violence law. Cohabitant means two unrelated persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship. For purposes of this definition, “abuse” means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another. Abuse does not include non-physical, emotional distress or injury.

Stalking means engaging in a repeated course of conduct directed at a specific person that would cause a reasonable person to fear for his/her or others’ safety or to suffer substantial emotional distress. For purposes of this definition:

Course of Conduct means two or more acts, including but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property;

Reasonable Person means a reasonable person under similar circumstances and with the same protected statuses as the Complainant;

Substantial Emotional Distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

Affirmative Consent means an informed, affirmative, conscious, voluntary, and mutual agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other participant(s) to engage in the sexual activity. Lack of protest or resistance does not mean affirmative consent, nor does silence mean affirmative consent. Affirmative consent must be voluntary, and given without coercion, force, threats, or intimidation.

The existence of a dating or social relationship between those involved, or the fact of past sexual activities between them, should never by itself be assumed to be an indicator of affirmative consent. A request for someone to use a condom or birth control does not, in and of itself, constitute affirmative consent.

Affirmative consent can be withdrawn or revoked. Consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms of sexual activity (or other sexual acts). Consent given to sexual activity on one occasion does not constitute consent on another occasion. There must always be mutual and affirmative consent to engage in sexual activity. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time, including after penetration. Once affirmative consent is withdrawn or revoked, the sexual activity must stop immediately.

Affirmative consent cannot be given by a person who is incapacitated. A person is unable to consent when s/he is asleep, unconscious, or is incapacitated due to the influence of drugs, alcohol or medication so that s/he could not understand the fact, nature, or extent of the sexual activity. A person is incapacitated if s/he lacks the physical and/or mental ability to make informed, rational decisions.

Whether an intoxicated person (as a result of using alcohol or other drugs) is incapacitated depends on the extent to which the alcohol or other drugs impact the person's decision-making ability, awareness of consequences, and ability to make informed judgments. Intoxication or incapacitation from drugs or alcohol does not diminish a person's responsibility to obtain affirmative consent before engaging in sexual activity.

A person with a medical or mental disability may also lack the capacity to give consent.

Sexual activity with a minor (a person under 18 years old) is never consensual, because a minor is considered incapable of giving consent due to age.

It shall not be a valid excuse that a person affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the person was unable to consent to the sexual activity under any of the following circumstances:

- The person was asleep or unconscious;
- The person was incapacitated due to the influence of drugs, alcohol, or medication, so that the person could not understand the fact, nature, or extent of the sexual activity;
- The person was unable to communicate due to a mental or physical condition.

It shall not be a valid excuse to alleged lack of affirmative consent that the Respondent believed that the person consented to the sexual activity under either of the following circumstances:

- The Respondent's belief in affirmative consent arose from the intoxication or recklessness of the Respondent;
- The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the person affirmatively consented.