

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: Student Conduct Procedures
Executive Order 1098 Revised June 23, 2015

HUMBOLDT

LONG BEACH

Attached is a copy of Executive Order 1098 Revised June 23, 2015, Student Conduct Procedures, which supersedes Executive Order 1098 Effective June 3, 2014.

LOS ANGELES

MARITIME ACADEMY

Complaints filed on or after the effective date of this executive order shall be processed in accordance with the procedure outlined herein. Complaints filed before the effective date of this executive order shall be handled in accordance with Executive Order 1098 June 3, 2014.

MONTEREY BAY

NORTHRIDGE

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.

POMONA

SACRAMENTO

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

SAN BERNARDINO

SAN DIEGO

TPW/lh

SAN FRANCISCO

Attachment

SAN JOSÉ

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 LUIS OBISPO

SAN MARCOS

SONOMA

STANISLAUS

THE CALIFORNIA STATE UNIVERSITY
Office of the Chancellor
401 Golden Shore
Long Beach, California 90802-4210
(562) 951-4400

Executive Order: 1098 Revised June 23, 2015
Effective Date: June 23, 2015
Supersedes: Executive Order 1098 Effective June 3, 2014
Title: Student Conduct Procedures

Article I. Authority and Purpose

These procedures are established pursuant to 5 California Code of Regulations Section 41301, and govern all Student disciplinary matters systemwide.

Procedures specifically for allegations involving Discrimination, Harassment, Retaliation, Sexual Misconduct, Domestic and Dating Violence, and Stalking are set forth in Article IV.¹

Article II. General Provisions

A. Student Conduct Administrator

Each Campus president shall assign an MPP employee to be the Student Conduct Administrator, whose responsibilities are to perform duties as prescribed in these procedures.

1. All Student Conduct Administrators shall receive appropriate training regarding: (a) the student discipline process (including investigation skills and procedures); (b) the law governing Discrimination, Harassment and Retaliation; (c) Student and witness privacy rights; and, (d) the Family Educational Rights and Privacy Act of 1974 (FERPA).
2. All Student Conduct Administrators shall also receive annual training on issues related to: (a) Title IX, VAWA/Campus SaVE Act, and other related state and federal laws prohibiting Discrimination, Harassment and Retaliation based on Gender, including Sex Discrimination, Sexual Harassment, Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking; and, (b) how to conduct an

¹ Key capitalized terms are defined in Article VIII. Terms contained within this Executive Order are intended to be gender neutral.

investigation and hearing process that protects the safety of victims and promotes accountability.

B. Hearing Officers

1. Each Campus president shall appoint one or more persons to serve as Hearing Officers. They may be University employees with MPP appointments (current or retired); managers or directors (current or retired) of a recognized campus auxiliary organization; attorneys licensed to practice in California; or administrative law judges from the Office of Administrative Hearings. Student Conduct Administrators and all persons working under or reporting to them, persons with a conflict of interest in the matter, and percipient witnesses to the events giving rise to the matter are ineligible to serve as Hearing Officers.
2. Except as provided in Article IV, the Hearing Officer conducts the hearing, determines whether a Student has violated the Student Conduct Code, and prepares a report that includes findings and conclusions about whether the Student violated the Student Conduct Code and any recommended sanctions.
3. All Hearing Officers shall receive appropriate training regarding: (a) the student discipline process; (b) the law governing Discrimination, Harassment and Retaliation; (c) student and witness privacy rights; and, (d) FERPA.
4. All Hearing Officers shall also receive annual training on issues related to: (a) Title IX, VAWA/Campus SaVE Act, and other related state and federal laws prohibiting Discrimination, Harassment and Retaliation based on Gender, including Sex Discrimination, Sexual Harassment, Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking; and, (b) the duties of the Hearing Officer (including impartiality, confidentiality and the duty to conduct hearings in a manner that protects the safety of victims and promotes accountability).

C. Advisors

Both the Complainant and the Student charged may elect to be accompanied by an Advisor of their choice, subject to the limitations set forth in this section, to any meetings, conferences, interviews or hearings.

Any witnesses who are alleged to be victims of the Discrimination, Harassment, Retaliation, Sexual Misconduct, Domestic or Dating Violence, or Stalking at issue may likewise elect to be accompanied by an Advisor of their choice.

In cases involving Discrimination, Harassment and Retaliation based on Gender, including Sex Discrimination, Sexual Harassment, Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking, the Complainant may elect to have a Sexual Assault Victim's

Advocate or an attorney as an Advisor. Likewise, in such matters, the Student charged may elect to have an attorney as an Advisor.

Student conduct proceedings are not meant to be formal court-like trials. Although University-related sanctions may be imposed, the process is intended to provide an opportunity for learning. Whoever is selected as an Advisor is limited to observing and consulting with, and providing support to, the Complainant, witness, or Student charged. An Advisor may not speak on a Student's or Complainant's behalf.

In proceedings that do not involve allegations of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking, each Campus president determines by Campus directive whether attorneys are permitted to be present in all or some Student conduct proceedings. Except as otherwise provided in this section, in the absence of a president's directive, attorneys shall be excluded from acting as an Advisor in disciplinary conferences and hearings.

Notwithstanding any Campus directive, attorneys may attend hearings as Advisors: (a) where there are pending criminal (felony) charges arising out of the same facts that are the subject of the disciplinary proceeding; or (b) where the recommended sanction is expulsion.

The Advisor may not be a person with information relevant to the allegations who may be interviewed or called upon to testify during any related investigation or hearing.

Any person who wishes to have an attorney present at the hearing as an Advisor must notify the Student Conduct Administrator in writing of the attorney's name, address and phone number at least **5 Working Days** prior to the hearing.

D. Correspondence

The Student Conduct Administrator (who may act through designees) shall deliver all correspondence to Students (including the Student charged) at the University-assigned, or other primary email address linked to the Student's account in the Office of the Registrar.

E. Interpretation of the Student Conduct Code and this Executive Order

All issues regarding the hearing described in Article III. D or Article IV. H except those specifically noted are within the purview of the Hearing Officer for final determination. Questions of interpretation of the Student Conduct Code or this Executive Order are outside the purview of the Hearing Officer and are determined by the Campus vice president for Student Affairs or designee.

F. Delegation of Duties

The duties of the president in these proceedings may be delegated to an appropriate vice president.

G. Timelines

The Campus may (but is not required to) extend timelines set forth in this Executive Order. Extensions shall be determined by the Campus president, vice president for Student Affairs, or a designee. The Student Conduct Administrator shall notify the Student charged, Complainant, and involved Campus administrators of any revised timeline.

H. Parallel Judicial Proceedings

Student Conduct Code proceedings are independent from court or other administrative proceedings. Discipline may be instituted against a Student also charged in civil or criminal courts based on the same facts that constitute the alleged violation of the Student Conduct Code. The Campus may proceed before, simultaneously with, or after any judicial or other administrative proceedings, except in cases involving Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking. In such cases, the Campus shall proceed without delay pursuant to Article IV below.

I. Cases Involving Academic Dishonesty

Academic dishonesty cases that occur in the classroom shall be handled by faculty members according to applicable Campus procedures. After action has been taken in any such case, the faculty member shall promptly notify the vice president for Student Affairs (or designee) and the Student Conduct Administrator of the matter so that the circumstances of the misconduct can be considered in their totality. A department's procedure for responding to cases of academic dishonesty is, by its nature, limited to the instance presented in a particular class. The Student Conduct Code process provides the Campus with an opportunity to consider the Student's entire circumstances, including whether the reported instance is part of a larger pattern of misconduct.

Article III. Proceedings In Cases Not Involving Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking

This Article sets forth the procedures that govern all student disciplinary matters systemwide not involving allegations of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking.

A. Complaint Intake/Investigation

1. Whenever it appears that the Student Conduct Code has been violated, an oral or written complaint should be directed to the Student Conduct Administrator as soon as possible after the event takes place.
2. The Student Conduct Administrator shall promptly: investigate each complaint submitted; determine whether it is appropriate to charge a Student with violation of the Student Conduct Code; and consider whether the University should implement an

interim suspension (pursuant to Article VI), withdrawal of consent to remain on Campus,² or no contact orders concerning one or more members of the University community.

3. Investigations shall be concluded within **40 Working Days** after a complaint has been made.

B. Notice of Conference and Conference

1. Within **10 Working Days** after the investigation is complete, the Student Conduct Administrator shall notify the Student in writing that a conference has been scheduled or that the Student is directed to promptly schedule a conference with the Student Conduct Administrator.
2. The Notice of Conference shall include the following information:
 - a. The sections of the Student Conduct Code and other Campus policies that are the subject of the charges;
 - b. A factual description of the Student's alleged conduct that forms the basis for the charges;
 - c. The proposed sanction or range of sanctions;
 - d. The location on the Campus where the Student can view his or her discipline file, including the location (or copies) of the Campus policies that were violated;
 - e. Notification of any immediate, interim suspension (see Article VI) and/or withdrawal of consent to remain on Campus;³
 - f. Notification of the Student's right to be accompanied at the conference by an Advisor and the Campus policy regarding use of attorneys; and
 - g. A copy of this Executive Order or notice of where the Student may obtain a copy. If an interim suspension has been imposed or consent to remain on Campus has been withdrawn by the time the Notice of Conference is sent, a copy of this Executive Order shall be enclosed, along with any other Campus policy referenced in the Notice of Conference.
3. The conference with the Student shall be conducted as follows:

² See Cal. Penal Code § 626.4.

³ See Cal. Penal Code § 626.4.

- a. The conference shall not be recorded.
 - b. The Student Conduct Administrator controls the conference and may exclude any Advisor who materially disrupts the conference.
 - c. The conference requirement is waived if the Student fails to attend the conference or otherwise declines to cooperate.
4. The Student shall respond to the charges of misconduct at the conference. The Student Conduct Administrator shall determine which cases are appropriate for resolution (via written resolution agreement), taking into consideration the results of the investigation and any additional information provided by the Student during any conferences. If agreement can be reached with the Student as to an appropriate disposition, the matter shall be closed and the terms of the disposition shall be put in writing and signed by the Student and the University after the Student has been given a reasonable opportunity to review the proposed resolution agreement with an Advisor of the Student's choice. Suspension of one academic year or more, expulsion, withdrawal in lieu of suspension or expulsion, and withdrawals with pending misconduct investigations or disciplinary proceedings shall be entered on the Student's transcript permanently, without exception; this requirement shall not be waived in connection with any resolution agreement.
 5. If the Student admits violating the Student Conduct Code, but no agreement can be reached with respect to the sanction, the Student may request a hearing on the sanction only.
 6. Nothing in this Executive Order shall prevent the Student and the University from entering into a voluntary resolution of an actual or anticipated student disciplinary case at any time, provided that the Student is first given a reasonable opportunity to review any proposed resolution agreement with an Advisor of their choice.

C. Notice of Hearing

1. The Student Conduct Administrator shall issue a Notice of Hearing within **10 Working Days** after the conference has concluded.
2. The Notice of Hearing shall be issued under the following circumstances:
 - a. If the Student fails to attend the conference or otherwise declines to cooperate;
 - b. If the matter is not closed or the disposition is not memorialized in writing promptly after the conference; or

- c. If the Student admits violating the Student Conduct Code, but no agreement can be reached with respect to the sanction.
3. The Notice of Hearing shall include the following information:
- a. The sections of the Student Conduct Code and other Campus policies that are the subject of the charges;
 - b. A factual description of the Student's alleged conduct that forms the basis for the charges;
 - c. The proposed sanctions;
 - d. Notification that neither the Hearing Officer nor the president is bound by the proposed sanction, and that the Hearing Officer may recommend, and/or the president may set, a more severe sanction;
 - e. The date, time and place of the hearing;
 - f. The location on the Campus where the Student may view his or her discipline file, including the location (or copies) of the Campus policies that were violated and any related investigation report;
 - g. Notification that the Student may be accompanied at the hearing by an Advisor, and the Campus policy regarding use of attorneys. If attorneys are allowed, notification shall be given that any person who intends to bring an attorney as their Advisor must inform the Student Conduct Administrator of the attorney's name, address and phone number at least **5 Working Days** before the hearing. Failure to provide this notice in a timely manner will result in exclusion of the attorney from the hearing;
 - h. Notification that the Student can waive the right to a hearing by accepting the proposed sanction;
 - i. Notification of any immediate, interim suspension (see Article VI) and/or withdrawal of consent to remain on Campus;⁴ and,
 - j. A copy of this Executive Order or notice of where the Student may obtain a copy. If an interim suspension has been imposed or consent to remain on Campus has been withdrawn by the time the Notice of Hearing is sent, a copy of this Executive Order shall be enclosed, along with any other Campus policy referenced in the Notice of Hearing.

⁴ See Cal. Penal Code § 626.4.

4. The Student Conduct Administrator shall schedule the hearing promptly, but in any event no sooner than **10 Working Days** after, and no later than **20 Working Days** after, the date of the Notice of Hearing.
5. A notice to appear at hearing shall be sent to any University-related witnesses at least **5 Working Days** before the hearing at the University-assigned or other primary e-mail addresses linked to these persons' University accounts.
6. The Notice of Hearing may be amended at any time, and the Student Conduct Administrator may (but is not required to) postpone the hearing for a reasonable period of time. If the notice is amended after a hearing is underway, the Hearing Officer may (but is not required to) postpone the hearing for a reasonable period of time.

D. Hearing

1. The hearing is closed to all persons except the Student Conduct Administrator; the Student charged; an Advisor; the Hearing Officer; and one person to assist the Hearing Officer in recording the hearing. Any party or witnesses who will be testifying shall attend the hearing in person unless the Student Conduct Administrator permits an exception (e.g., participation via videoconference or telephone). A police or security officer may also be present if deemed appropriate or necessary by the vice president for Student Affairs or Hearing Officer. The University will cooperate in providing University witnesses wherever possible, provided that they are identified at least **5 Working Days** before the hearing.
2. Hearings are intended to be educational rather than adversarial. The Hearing Officer controls the hearing. The Student Conduct Administrator and the Student charged each put on the evidence in their case and may each ask questions of the witnesses in whatever manner the Hearing Officer deems appropriate.
3. The Hearing Officer may ask questions of any witness, the Student charged, the Complainant, or the Student Conduct Administrator.
4. Formal rules of evidence applied in courtroom proceedings (e.g., California Evidence Code) do not apply in the hearing. All information that responsible persons are accustomed to rely upon in the conduct of serious affairs is considered. Hearsay may be considered and will be given the weight appropriate under all of the circumstances. Unduly repetitive information may be excluded.
5. The Hearing Officer shall make an official audio recording of the hearing (with assistance, at the Hearing Officer's discretion). The recording is University Property. No other recording of the hearing is permitted. The audio recording shall be retained by

the Student Conduct Administrator in accordance with the Campus records/information retention and disposition schedule.

6. If the Student charged or Complainant fails to appear at the hearing without good cause, the hearing shall nevertheless proceed. The Student charged may not be found to have violated the Student Conduct Code solely because the Student charged failed to appear at the hearing. Nor may the Student charged be found not to have violated the Student Conduct Code solely because a Complainant or witness failed to appear at the hearing.
7. The Hearing Officer is responsible for maintaining order during the hearing and makes whatever rulings are necessary to ensure a fair hearing. Abusive or otherwise disorderly behavior that causes a material disruption is not tolerated. The Hearing Officer may eject or exclude anyone (including the Student charged and/or the Student's Advisor) whose behavior causes a material disruption.
8. The Hearing Officer's decisions regarding procedural issues are final.
9. Where there is more than one Student charged with misconduct in connection with a single occurrence or related multiple occurrences, the Student Conduct Administrator and the Students charged may agree to a single hearing. A Student may request consolidation of his or her case with others, or the Student Conduct Administrator may initiate the consolidation (subject to FERPA and other applicable privacy laws). The Student Conduct Administrator makes consolidation decisions, which are subject to review by the Hearing Officer and thereafter are final.
10. At any time during the hearing, the Student may waive the right to a hearing and accept the proposed sanction. Such a waiver must be in writing.

E. Standard of Proof; Report and Recommendations of the Hearing Officer

1. After the hearing, the Hearing Officer shall make findings of fact and conclusions about whether the Student violated the Student Conduct Code. The standard of proof the Hearing Officer shall use is whether the University's charge is sustained by a Preponderance of the Evidence. It is the University's burden to show that it is "more likely than not" that the Student violated the Student Conduct Code.
2. The Hearing Officer's report shall be based only on the information received at the hearing. The Hearing Officer shall not, prior to preparing the report, have substantive communications about the facts of the case with the Student Conduct Administrator, the Complainant, the Student charged, or the witnesses, unless both the Student Conduct Administrator and the Student charged are present.
3. The Hearing Officer shall submit a written report of findings and conclusions to the president, along with any recommended sanctions. The report shall be submitted to the Campus president within **10 Working Days** after the hearing.

F. Final Decision/Notification

The president shall review the Hearing Officer's report and issue a final decision.

1. The president may impose the recommended sanctions, adopt a different sanction or sanctions, reject sanctions altogether, or refer the matter back for further findings on specified issues. If the president adopts a different sanction than what is recommended by the Hearing Officer, the president must set forth the reasons in the final decision letter. The president's final decision letter shall be issued within **10 Working Days** after receipt of the Hearing Officer's report.
2. The president shall send his or her decision electronically to the Student at the University-assigned or other primary e-mail address linked to the Student's University account.

Article IV. Proceedings in Cases involving Allegations of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking

This Article sets forth the procedures that govern all student disciplinary matters systemwide involving allegations of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking.

A. DHR Administrator

In accordance with Executive Orders 1096 and 1097, the DHR Administrator investigates complaints of Discrimination, Harassment, and Retaliation based on all Protected Statuses except Gender, determines whether a Student violated the Student Conduct Code, and prepares a report that includes findings and conclusions about whether the Student violated the Student Conduct Code. Unless the determination is appealed as provided in Executive Orders 1096 or 1097, it is final and binding in all subsequent proceedings.

B. Title IX Coordinator

The Title IX Coordinator (or designee) is responsible for investigating Complaints of Gender Discrimination, Harassment and Retaliation, including Sex Discrimination and Sexual Harassment, as well as Complaints of Sexual Misconduct, Domestic and Dating Violence, and Stalking. (See Executive Orders 1095, 1096 and 1097.) In accordance with Executive Orders 1096 and 1097, the Title IX Coordinator investigates those Complaints, determines whether a Student violated the Student Conduct Code, and prepares a report that includes findings of facts and conclusions about whether the Student violated the Student Conduct Code. Unless the determination is appealed as provided in Executive Orders 1096 or 1097, it is final and binding in all subsequent proceedings.

C. Confidentiality

Information provided to University employees in connection with any Complaint shall be considered private and may be shared with other University employees and law enforcement exclusively on a "need to know" basis. The University shall endeavor to honor any Complainant's or alleged victim's request for confidentiality; however, it must also weigh requests for confidentiality against its duty to provide a safe and nondiscriminatory environment for all members of the Campus community. Confidentiality, therefore, cannot be ensured. The Title IX Coordinator or DHR Administrator will determine whether confidentiality is appropriate given the circumstances of each incident. Executive Order 1095 identifies those categories of University employees who are required by law to maintain near or complete confidentiality (for example, in connection with allegations of Sexual Misconduct). Questions about rights and options with respect to confidentiality should be directed to the Campus Title IX Coordinator or DHR Administrator.

D. Complaint/Investigation/Findings

1. Complaints by Students against Students shall be investigated according to the procedures set forth in Executive Order 1097. The DHR Administrator or the Title IX Coordinator shall notify the Student Conduct Administrator of the status of any such Complaint, including any appeal to the Chancellor's Office (CO), as well as the investigation results (including findings, conclusions, and any Interim Remedies afforded to the Complainant). Where the investigative report finds a violation or the finding of a violation is sustained after appeal, the Student Conduct Administrator will initiate student conduct proceedings. The Student Conduct Administrator and the DHR Administrator or Title IX Coordinator will consult with respect to appropriate sanctions and Remedies.
2. Complaints by California State University (CSU) employees or Third Parties, as defined in Executive Order 1096 (e.g., vendors, auxiliary employees or Campus visitors) against Students shall be investigated according to the procedures set forth in Executive Order 1096. The DHR Administrator or the Title IX Coordinator shall notify the Student Conduct Administrator of the status of any such Complaint, including any appeal to the CO, as well as the investigation results (including findings, conclusions, and any Interim Remedies afforded to the Complainant). Where the investigative report finds a violation or the finding of a violation is sustained after appeal, the Student Conduct Administrator will initiate student conduct proceedings. The Student Conduct Administrator and the DHR Administrator or Title IX Coordinator will consult with respect to appropriate sanctions and Remedies.
3. Unless the CO notifies the Campus that an appeal has been filed, investigative findings pursuant to Executive Orders 1096 or 1097 become final **11 working days** after the date of the Notice of Investigation Outcome issued pursuant to those

Executive Orders. If an appeal is filed, the investigative findings do not become final until the appeal has been exhausted.

E. Conference with Complainant

The Student Conduct Administrator shall offer the Complainant(s) the opportunity to confer with the Student Conduct Administrator. Any conference with the Complainant(s) shall occur within **10 Working Days** after the Student Conduct Administrator receives the final investigation report – or, if an appeal was filed, the final appeal outcome. The purpose of the conference is to provide an opportunity for the Complainant to provide input concerning appropriate sanctions and Remedies in light of the investigative findings. Therefore, it should take place before the Notice of Conference, described in section F, is served on the Student charged. The Complainant may be accompanied by an Advisor.

F. Notice of Conference and Conference with the Student Charged

1. Within **10 Working Days** after the Student Conduct Administrator receives the final investigation report – or, if an appeal was filed, the final appeal outcome, and after the Complainant has been given 10 Working Days to have a Conference with the Student Conduct Administrator, the Student Conduct Administrator shall notify the Student charged in writing that a conference has been scheduled or that the Student is directed to promptly schedule a conference with the Student Conduct Administrator.
2. The Notice of Conference shall include:
 - a. The sections of the Student Conduct Code and other Campus policies that are the subject of the proposed discipline;
 - b. The proposed sanction or range of sanctions, including sanctions designed to provide Remedies to the Complainant(s);
 - c. The location on the Campus where the Student can view his or her discipline file, including the location (or copies) of the Campus policies that were violated;
 - d. Notification of any immediate, interim suspension (see Article VI) and/or withdrawal of consent to remain on Campus⁵;
 - e. Notification of the Student’s right to be accompanied at the conference by an Advisor; and

⁵ See Cal. Penal Code § 626.4.

- f. A copy of this Executive Order or notice of where the Student may obtain a copy. If an interim suspension has been imposed or consent to remain on Campus has been withdrawn by the time the Notice of Conference is sent, a copy of this Executive Order shall be enclosed, along with any other Campus policy referenced in the Notice of Conference.

3. Conference with Student charged and/or Complainant

The conference with the Student and any conference with the Complainant(s) shall be conducted as follows:

- a. The conference shall not be recorded.
 - b. The Student Conduct Administrator controls the conference and may exclude any Advisor who materially disrupts the conference.
 - c. The conference requirement is waived if the Student or Complainant(s) fails to attend the conference or otherwise declines to cooperate.
4. The Student Conduct Administrator shall, in consultation with and agreement from the DHR Administrator or Title IX Coordinator, determine which cases are appropriate for resolution (via written resolution agreement), taking into consideration the investigation report and any additional information provided by the Student charged and the Complainant(s) during any conferences. If a proposed resolution agreement can be reached with the Student charged as to an appropriate disposition, the terms of the proposed disposition shall be put in writing and signed by the Student and the University after the Student has been given a reasonable opportunity to review the proposed resolution agreement with an Advisor of the Student's choice. The Student charged must be informed that any proposed resolution may be appealed by the Complainant and is not final until any such appeal is exhausted. Suspension of one academic year or more or expulsion, withdrawal in lieu of suspension or expulsion, and withdrawal with pending misconduct investigation or disciplinary proceedings shall be entered on the Student's transcript permanently without exception; this requirement shall not be waived in connection with any resolution agreement.
5. The Student Conduct Administrator shall promptly notify the DHR Administrator or the Title IX Coordinator of the outcome of the conferences with the Student and the Complainant(s). If the case does not proceed to hearing, the DHR Administrator (or the Title IX Coordinator) shall at that time:
- a. Notify the Complainant(s) of the outcome of the conference, including any proposed resolution agreement as well as the Complainant's right to appeal any proposed resolution agreement to the CO pursuant to Article IV. J.

- b. Take any appropriate further steps to address the effects of any Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking.
 - c. Identify and address any remaining systemic or other patterns of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking at the Campus.
6. Discipline cases may be resolved through the conference process. It is, however, not appropriate for a Complainant to be required to "work out the problem" directly with the Student charged, and in no event should any meeting between Complainant and the Student be required.

G. Notice of Hearing on Sanctions

1. If not resolved, the Student Conduct Administrator shall issue a Notice of Hearing promptly after the conference. Simultaneous notice shall also be provided to the Complainant and the DHR Administrator or the Title IX Coordinator. The Notice of Hearing shall be issued within **5 Working Days** after the conference has concluded.
2. The Notice of Hearing shall be issued under the following circumstances:
 - a. If the Student charged fails to attend the conference or otherwise declines to cooperate;
 - b. If the matter is not closed or the disposition is not memorialized in writing promptly after the conference; or
 - c. No agreement can be reached with respect to the sanction.
3. The Notice of Hearing shall include the following information:
 - a. The sections of the Student Conduct Code and other Campus policies that are the subject of the proposed sanctions;
 - b. The proposed sanctions, including sanctions designed to provide protection/Remedies to the Complainant(s);
 - c. Notification that neither the Hearing Officer nor the president is bound by the proposed sanction, and that the Hearing Officer may recommend, and/or the president may set, a more severe sanction;
 - d. The date, time and place of the hearing;

- e. The location on the Campus where the Student may view his or her discipline file, including the location (or copies) of the Campus policies that were violated, and any related investigation report;
 - f. Notification that the Student charged and the Complainant each may be accompanied at the hearing by an Advisor. Notification shall be given that any person who intends to bring an attorney must inform the Student Conduct Administrator of the attorney's name, address and phone number at least **5 Working Days** before the hearing. Failure to provide this notice in a timely manner will result in exclusion of the attorney from the hearing;
 - g. Notification that the Student can waive the right to a hearing by accepting the proposed sanction, subject to the Complainant's right to appeal (subject to the approval of the DHR Administrator or Title IX Coordinator);
 - h. Notification of any immediate, interim suspension (see Article VI) and/or withdrawal of consent to remain on Campus⁶; and
 - i. A copy of this Executive Order or notice of where the Student and/or Complainant may obtain a copy. If an interim suspension has been imposed or consent to remain on Campus has been withdrawn by the time the Notice of Hearing is sent, a copy of this Executive Order shall be enclosed, along with any other Campus policy referenced in the Notice of Hearing.
4. The Student Conduct Administrator shall schedule the hearing promptly, but in any event no sooner than **10 Working Days** after, and no later than **20 Working Days** after, the date of the Notice of Hearing.
5. A notice to appear at hearing shall be sent to any University-related witnesses and to the Complainant(s) at least **5 Working Days** before the hearing at the University-assigned or other primary e-mail addresses linked to these persons' University accounts.
6. The Notice of Hearing may be amended at any time, and the Student Conduct Administrator may (but is not required to) postpone the hearing for a reasonable period of time. If the notice is amended after a hearing is underway, the Hearing Officer may (but is not required to) postpone the hearing for a reasonable period of time.

⁶ See Cal. Penal Code § 626.4.

7. The DHR Administrator or Title IX Coordinator retain ultimate authority regarding whether a proposed resolution agreement may be entered into after the Notice of Hearing has been issued, or after the Hearing has commenced. Factors to consider will vary based on the facts and circumstances of the specific case.

H. Hearing on Sanctions

The findings and conclusions of the investigations conducted in accordance with Executive Orders 1096 and 1097, once any appeals are exhausted, are final and binding. The hearing is limited to determining appropriate sanctions; the findings of the investigation are not under review.

1. The hearing is closed to all persons except the Student Conduct Administrator; the Student charged; the Complainant(s); their respective Advisors; appropriate witnesses while they are testifying; any other alleged victims while they are testifying, together with their Advisors; the Hearing Officer; and one person to assist the Hearing Officer in recording the hearing. All parties and witnesses who will testify must attend the hearing in person unless the Student Conduct Administrator permits an exception (e.g., participation via videoconference or telephone). A police or security officer may also be present if deemed appropriate or necessary by the vice president for Student Affairs or Hearing Officer. The University will cooperate in providing University witnesses wherever possible, provided that they are identified at least **5 Working Days** before the hearing.
2. The Hearing Officer controls the hearing. Except as provided in Article IV. H, sections 6-8 below, the Student Conduct Administrator and the Student charged each put on the evidence in their case and may each ask questions of the witnesses in whatever manner the Hearing Officer deems appropriate.
3. The Hearing Officer may ask questions of any witness, the Student, the Complainant, Student Conduct Administrator, the Title IX Coordinator or the DHR Administrator.
4. The Complainant(s) may be present while evidence is being presented concerning the charges that relate to him/her, unless the Hearing Officer grants a request that the Complainant(s) be excused during certain testimony to protect privacy rights and/or pursuant to FERPA.
5. The DHR Administrator or the Title IX Coordinator may attend the hearing in its entirety.
6. Questions may not be posed to Complainants about their past sexual behaviors involving any persons other than the Student charged.

7. The Hearing Officer shall ask any questions of the Complainant and other witnesses on behalf of the Student charged (who shall give the Hearing Officer a written list of questions), unless the Complainant(s) or witness expressly waives this requirement and consents to questioning directly by the Student.
8. The Hearing Officer shall ask any questions of the Student and other witnesses on behalf of the Complainant (who shall give the Hearing Officer a written list of any such questions), unless the Complainant in question expressly waives this requirement.
9. The investigation report and any CO Appeal Response prepared pursuant to Executive Orders 1096 or 1097 shall be entered into evidence at the hearing, redacted as appropriate to protect private (e.g. contact) information or as otherwise required by law.
10. Formal rules of evidence applied in courtroom proceedings (e.g., California Evidence Code) do not apply in the hearing. All information that responsible persons are accustomed to rely upon in the conduct of serious affairs is considered. Hearsay may be considered and will be given the weight appropriate under all of the circumstances. Unduly repetitive information may be excluded.
11. The Hearing Officer shall make an official audio recording of the hearing (with assistance, at the Hearing Officer's discretion). The recording is University Property. No other recording of the hearing is permitted. The audio recording shall be retained by the Student Conduct Administrator in accordance with the Campus records/information retention and disposition schedule.
12. If the Student charged fails to appear at the hearing without good cause, the hearing shall nevertheless proceed.
13. The Hearing Officer is responsible for maintaining order during the hearing and makes whatever rulings are necessary to ensure a fair hearing. Abusive or otherwise disorderly behavior that causes a material disruption is not tolerated. The Hearing Officer may eject or exclude anyone (including the Student, the Complainant, and Advisors) whose behavior causes a material disruption.
14. Where there is more than one Student facing sanctions in connection with a single occurrence or related multiple occurrences, the Student Conduct Administrator and the Students charged may agree to a single hearing. A Student may request consolidation of his or her case with others, or the Student Conduct Administrator may initiate the consolidation (subject to FERPA and other applicable privacy laws). The Student Conduct Administrator makes consolidation decisions, which are subject to review by the Hearing Officer and thereafter are final.

15. At any time during the hearing, and subject to the approval of the DHR Administrator or Title IX Coordinator, the Student charged may waive the right to a hearing and accept the proposed sanction, subject to the Complainant's right to appeal. Such a waiver must be in writing. The DHR Administrator or Title IX Coordinator retain ultimate authority regarding whether a proposed resolution agreement may be entered into after the Notice of Hearing has been issued, or after the Hearing has commenced. Factors to consider will vary based on the facts and circumstances of the specific case.
16. The Hearing Officer shall submit a written report to the president recommending sanctions, if any, as well as any recommendations regarding additional Remedies, including but not limited to restricting the Student's contact with, or physical proximity to, the Complainant or other persons. The report shall include any mitigating or aggravating factors relied upon by the Hearing Officer in reaching the recommendations. The report shall be submitted within **10 Working Days** after the hearing.

The Hearing Officer's report shall be based only on the investigative report and the information received at the hearing. The Hearing Officer shall not, prior to preparing the report, have substantive communications about the facts of the case with the Student Conduct Administrator, the Complainant, the Student, the witnesses, or DHR Administrator or the Title IX Coordinator, unless both the Student Conduct Administrator and the Student are present.

I. President's Sanction Decision/Notification

The president shall review the investigative report and the Hearing Officer's report and issue a decision concerning the appropriate sanction.

1. The president may impose the recommended sanctions, adopt a different sanction or sanctions, or reject sanctions altogether. If the president adopts a different sanction than what is recommended by the Hearing Officer, the president must set forth the reasons in the decision letter. The president's decision letter shall be issued within **10 Working Days** after receipt of the Hearing Officer's report.
2. The president shall simultaneously send the decision electronically to the Student charged and Complainant(s) at the University-assigned or other primary e-mail address linked to their University accounts. The decision shall also be sent to the Student Conduct Administrator and the Hearing Officer.
3. The decision letter shall include:
 - a. The outcome of the hearing on sanctions, including any sanction imposed and the name of the Student charged; and

- b. A copy of the Hearing Officer's report, redacted as appropriate or as otherwise required by law.
 - c. Notice of the Complainant's and Student's right to appeal to the CO.
4. The president shall also send the decision to the DHR Administrator or the Title IX Coordinator so that they may determine whether any additional Remedies or steps shall be afforded or undertaken in order to maintain a safe and nondiscriminatory University environment.
5. Unless the CO notifies the campus that an appeal has been filed, the president's sanction decision become final **11 Working Days** after the date of the decision letter.

J. Appeal of Sanction to the Chancellor's Office

The Complainant and Student charged each may file an appeal of the president's decision of appropriate sanctions to the CO no later than **10 Working Days** after the date of the president's decision letter. The Complainant may also appeal any proposed sanctions agreed to as part of a proposed resolution agreement with the Student charged either in the conference procedure described above or at any time thereafter. Such an appeal must be filed within **10 Working Days** after the date of notice to the Complainant of the proposed resolution agreement.

1. The appeal request shall be in writing and shall indicate the basis of the appeal. Sanction appeals are limited to a determination as to whether the sanction is reasonable under the facts and circumstances as determined by the investigation and whether any prejudicial procedural errors occurred during the hearing. The CO may conduct an interview with the appealing party to clarify the written appeal, at the CO's discretion.
2. A sanction decision appeal shall be addressed to:

Equal Opportunity and Whistleblower Compliance Unit
Systemwide Human Resources
Office of the Chancellor
401 Golden Shore, 4th Floor
Long Beach, California 90802
eo-wbappeals@calstate.edu

3. Acknowledgement of Appeal. The CO shall provide prompt written acknowledgement of the receipt of the appeal to the appealing party, and will provide written notification of the appeal to the other party, the campus DHR Administrator or Title IX Coordinator, and the Campus president (or designee).

4. Reasonable Accommodations. The CO will provide reasonable accommodations to any party or witness with a qualified Disability during the appeal process upon request by the person needing the accommodation. A reasonable accommodation may include an extension of time to file or respond to an appeal. The timeframe for CO response to an appeal will automatically be adjusted for the time needed, if any, to provide reasonable accommodations
5. Scope of Review. The CO appeal review shall be limited in scope to determining whether the sanction is reasonable under the facts and circumstances as determined by the investigation and whether any prejudicial procedural errors occurred during the hearing. The CO appeal review will not involve a new investigation and will not consider evidence that was not introduced during the investigation or hearing. The record will be limited to the record at the hearing.
6. CO Appeal Response. The CO shall issue a final appeal response to the parties, the DHR Administrator or Title IX Coordinator, and the campus president (or designee) no later than **10 Working Days** after receipt of the written appeal unless the timeline has been extended under Article V. E of Executive Orders 1096 or 1097.
7. The CO Appeal Response shall include a summary of the issues raised on appeal, a summary of the evidence considered, the determination(s) reached regarding the issues identified within the written appeal, a decision about whether the president's sanction decision is reasonable, and, where applicable, a decision regarding the final sanction.
8. Notification of CO Appeal Response. A copy of the CO final appeal response shall be forwarded to the Complainant and Student charged, the DHR Administrator or Title IX Coordinator, and the president (or designee).

K. Other Student Conduct Code Violations Related to Incidents of Sexual Misconduct, Dating or Domestic Violence, or Stalking

Alleged victims and witnesses should not be deterred from reporting any incidents of Sexual Misconduct, Dating or Domestic Violence, or Stalking out of a concern that they might be disciplined for related violations of drug, alcohol, or other University policies. The University's primary concern is the safety of the Campus community; therefore, a person who participates as a Complainant or witness in investigations or proceedings involving Sexual Misconduct, Dating or Domestic Violence, or Stalking shall not be subject to discipline for related violations of the Student Conduct Code at or near the time of the incident unless the University determines the violation was egregious, including but not limited to plagiarism, cheating, academic dishonesty, or conduct that places the health and safety of another person at risk.

Article V. Sanctions

A. The following sanctions may be imposed for violation of the Student Conduct Code:

1. **Restitution.** Compensation for loss, damages or injury. This may include appropriate service and/or monetary material replacement.
2. **Loss of Financial Aid.** Scholarships, loans, grants, fellowships and any other types of state financial aid given or guaranteed for the purposes of academic assistance can be conditioned, limited, cancelled or denied.⁷
3. **Educational and Remedial Sanctions.** Assignments, such as work, research, essays, service to the University or the community, training, counseling, removal from participation in recognized student clubs and organizations (e.g., fraternities and sororities), and/or University events, or other remedies intended to discourage similar misconduct or as deemed appropriate based upon the nature of the violation.
4. **Denial of Access to Campus or Persons.** A designated period of time during which the Student is not permitted: (i) on University Property or specified areas of Campus;⁸ or (ii) to have contact (physical or otherwise) with the Complainant, witnesses or other specified persons.
5. **Disciplinary Probation.** A designated period of time during which privileges of continuing in Student status are conditioned upon future behavior. Conditions may include the potential loss of specified privileges to which a current Student would otherwise be entitled, or the probability of more severe disciplinary sanctions if the Student is found to violate the Student Conduct Code or any University policy during the probationary period.
6. **Suspension.** Temporary separation of the Student from active Student status or Student status.
 - a. A Student who is suspended for less than one academic year shall be placed on inactive Student (or equivalent) status (subject to individual Campus policies) and remains eligible to re-enroll at the University (subject to individual Campus enrollment policies) once the suspension has been served. Conditions for re-enrollment may be specified.
 - b. A Student who is suspended for one academic year or more shall be separated from Student status but remains eligible to reapply to the University (subject to individual Campus application polices) once the suspension has been served. Conditions for readmission may be specified.

⁷ See Cal. Educ. Code § 69810 *et seq.*

⁸ See Cal. Penal Code § 626.2.

c. Suspension of one academic year or more, withdrawals in lieu of suspension, and withdrawals with pending misconduct investigations or disciplinary proceedings shall be entered on the Student's transcript permanently without exception; this requirement shall not be waived in connection with a resolution agreement.

7. **Expulsion.** Permanent separation of the Student from Student status from the California State University system. Expulsion, withdrawal in lieu of expulsion, and withdrawal with pending misconduct investigation or disciplinary proceeding shall be entered on the Student's transcript permanently, without exception; this requirement shall not be waived in connection with a resolution agreement.

B. Multiple Sanctions

More than one sanction may be imposed for a single violation.

C. Good Standing

A Student is not considered to be in good standing for purposes of admission to the University while under a sanction of suspension or expulsion, or while his or her admission or re-admission has been qualified.⁹

D. Administrative Hold and Withholding a Degree

The University may place an administrative hold on registration transactions and release of records and transcripts of a Student who has been sent written notice of a pending investigation or disciplinary case concerning that Student, and may withhold awarding a degree otherwise earned until the completion of the process set forth herein, including the completion of all sanctions imposed.

E. Record of Discipline

A record of disciplinary probation or suspension is entered on a Student's transcript, with beginning and end date, for the duration of the sanction. A record of expulsion or suspension for one academic year or more shall note the effective date of discipline and remains on the transcript permanently, without exception. A record of withdrawal in lieu of suspension or expulsion and withdrawal with pending misconduct investigation or disciplinary proceeding remains on the transcript permanently, without exception. These requirements shall not be waived in connection with any resolution agreement.

⁹ See 5 Cal. Code Regs. § 40601(g).

Article VI. Interim Suspension

A. Grounds

A president may impose an interim suspension pursuant to Title 5, California Code of Regulations section 41302 where there is reasonable cause to believe that separation of a Student is necessary to protect the personal safety of persons within the University community or University Property, and to ensure the maintenance of order.

An investigative finding of a violation of Executive Orders 1096 or 1097 standing alone may be sufficient to constitute reasonable cause to believe that an interim suspension is necessary to protect the personal safety of persons within the University community or University Property, and to ensure the maintenance of order.

B. Notice and Opportunity for Hearing

A Student placed on interim suspension shall be given prompt notice of the charges pending against him or her as enumerated in Title 5, California Code of Regulations section 41302 and a factual description of the conduct alleged to form the basis for the charges. The Student may request a hearing to determine whether continued interim suspension is appropriate by filing a request with the Student Conduct Administrator. The Student Conduct Administrator will notify the Hearing Officer.

In matters subject to Article IV, the Student Conduct Administrator will also notify the Complainant and the Title IX Coordinator or DHR Administrator. The Complainant may participate in any hearing conducted pursuant to this section.

Within **10 Working Days** of the request, the Hearing Officer shall conduct a hearing to determine whether there is reasonable cause to believe that the continued interim separation of the Student is necessary to protect the personal safety of persons within the University community or University Property, and to ensure the maintenance of order.¹⁰

The hearing is conducted pursuant to the provisions of Article III. D or Article IV. H of these procedures, as appropriate.

The president shall review the Hearing Officer's report and shall promptly issue a final decision regarding interim suspension. Notice to the Student charged and to the Complainant (in matters subject to Article IV) shall be sent to the University-assigned or other primary e-mail address linked to the party's University account. The final decision shall also be provided to the DHR Administrator or the Title IX Coordinator where appropriate.

If the University establishes that there is reasonable cause for the interim suspension to continue, it shall remain in effect until the University closes the disciplinary matter, whether

¹⁰ See 5 Cal. Code Regs. § 41302.

by resolution agreement, final decision or dropped charges, but in no case longer than the president has determined is required to protect the personal safety of persons within the University community or University Property, and to ensure the maintenance of order.

C. Denial of Presence on Campus

During the period of an interim suspension, the Student charged may not, without prior written permission from the Campus president, enter any Campus of the California State University other than to attend the hearing regarding the merits of his or her interim suspension and any disciplinary hearing. The president may also restrict the Student's participation in University-related activities on a case-by-case basis, such as attending off-Campus activities and/or participating in on-line classes. Violation of any condition of interim suspension shall be grounds for expulsion.¹¹

Article VII. Admission or Readmission

Applicants for admission or readmission into any University program are subject to appropriate sanctions for violations of the Student Conduct Code, including qualification, revocation or denial of admission or readmission. Any such sanction shall be determined by a hearing held pursuant to Article III or Article IV, as appropriate. For Students who withdraw while a disciplinary matter is proceeding, the Campus has discretion whether to continue proceedings or hold proceedings in abeyance.

Article VIII. Definitions

For purposes of this Executive Order, the following definitions apply:

- A. Adverse Action** means an action that has a substantial and material adverse effect on the Complainant's ability to participate in a University program or activity free from Discrimination, Harassment or Retaliation, as those terms are defined below. Minor or trivial actions or conduct not reasonably likely to do more than anger or upset a Complainant does not constitute an Adverse Action.

- B. Advisor:** The Complainant and the Student charged may each elect to be accompanied by an Advisor of their choice to any meeting, interview or hearing regarding the allegations, subject to the limitations set forth above in Article II. C. The Advisor may be anyone, including, for Complainants, a Sexual Assault Victim's Advocate (defined below), provided the Advisor is not a person with information relevant to the allegations who may be interviewed or testify during any related investigation or hearing. The Advisor may not answer questions regarding the subject matter of the investigation for the Complainant or the Student charged. Where attorneys are permitted, the Complainant and the Student charged may each elect an attorney as an Advisor. Any person who has a

¹¹ See 5 Cal. Code Regs. § 41302.

license (active or inactive) to practice law is considered an attorney for purposes of this Executive Order.

- C. 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 consent, nor does silence mean consent.

Affirmative Consent can be withdrawn or revoked. Affirmative Consent cannot be given by a person who is incapacitated.

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

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

See Executive Orders 1096 and 1097 for a more detailed description of Affirmative Consent.

- D. Age** means how old a person is, or the number of years for the date of a person's birth and is a Protected Status.¹²
- E. California State University (CSU)** means the 23 campus system of the California State University, including the Chancellor's Office (CO).
- F. Campus or University** means any of the 23 campuses of the CSU or the CO.
- G. CO Appeal Response** refers to the decision provided to the Complainant and the Student charged upon completion of the Appeal Process.
- H. Complainant** means an individual who is eligible to file a Complaint to report a violation of Executive Orders 1096 or 1097. It also includes any person who is reported to have experienced a violation of Executive Orders 1096 or 1097 in cases where some other person has made a report on that person's behalf. A Complainant may also be referred to as a party to the Complaint.
- I. Complaint** means a report of a violation of Executive Orders 1096 or 1097 alleging Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking or a report under 5 California Code of Regulations Section 41301.

¹² See 34 C.F.R. § 110.3.

- J. 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.¹³ 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.
- K. DHR (Discrimination, Harassment, and Retaliation) Administrator** means the MPP employee at each Campus who is designated to administer portions of this Executive Order and coordinate compliance with the laws prohibiting Discrimination, Harassment and Retaliation for all Protected Statuses except Gender. The DHR Administrator may delegate tasks to one or more designees. The Campus president may assign the roles of the DHR Administrator and Title IX Coordinator (defined below) to the same person.
- L. Disability** means mental or physical disability as defined in California Education Code § 66260.5 and California Government Code § 12926, and is a Protected Status.
- M. Discrimination** means Adverse Action taken against a Student by the CSU, a CSU employee, another Student, or a Third Party because of a Protected Status.
- N. 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.¹⁴ Abuse does not include non-physical, emotional distress or injury.
- O. Gender** means sex, and includes a person’s gender identity and gender expression.¹⁵ Gender expression means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth. Sex includes but is

¹³ See Cal. Penal Code § 13700 (b).

¹⁴ See Cal. Penal Code § 13700(b) and Cal. Family Code § 6211.

¹⁵ See Cal. Educ. Code § 66260.7.

not limited to pregnancy, childbirth or associated medical condition(s).¹⁶ They are Protected Statuses.

P. Genetic Information is a Protected Status and means¹⁷:

- The Student's genetic tests.
- The genetic tests of the Student's family members.
- The manifestation of a disease or disorder in the Student's family members.
- Any request for, or receipt of genetic services, or participation in clinical research that includes genetic services, by a Student or any Student's family member.
- Genetic Information does not include information about any Student's sex or age.

Q. Harassment means unwelcome conduct that is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the Complainant, and is in fact considered by the Complainant, because of the Complainant's Protected Status, as limiting the Complainant's ability to participate in or benefit from the services, activities or opportunities offered by the University.

R. Investigator means the person tasked by a Campus with investigating a Complaint. All investigators shall receive annual training regarding such issues as the laws governing Discrimination, Harassment and Retaliation; Title IX and VAWA/Campus SaVE Act (as defined below); as well as other related state and federal laws prohibiting Discrimination, Harassment and Retaliation based on Gender or Sex, including Sex Discrimination, Sexual Harassment, Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking; Complainant, Student, Employee, and witness privacy rights; and the Family Educational Rights and Privacy Act of 1974 (FERPA). For matters involving Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking, the Investigator shall also receive annual training on how to conduct an investigation process that protects the safety of the Complainant(s)/victim(s) and the University community. (See also Executive Order 1095 Revised regarding required training for Sexual Harassment and Sexual Misconduct investigations.)

If delegated, the DHR Administrator or the Title IX Coordinator (for Complaints alleging Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking) shall monitor, supervise, and oversee the investigation to ensure that it is conducted in accordance with the standards, procedures and timelines set forth in Executive Orders 1096 and 1097 Revised.

The Investigator may be the DHR Administrator, the Title IX Coordinator, or their designee, provided that the person shall be an MPP Employee or an external consultant.

¹⁶ See 34 C.F.R. § 106.40.

¹⁷ See Cal. Civ. Code § 51(2)(e).

- S. MPP Employee** means a Management Personnel Plan employee who has been designated as a “management” or “supervisory” employee under the provisions of the Higher Education Employer-Employee Relations Act.¹⁸
- T. Nationality** includes citizenship, country of origin, and national origin and is a Protected Status.¹⁹
- U. Parties** to a Complaint are the Complainant(s) and the Student(s) charged.
- V. Preponderance of the Evidence** means the greater weight of the evidence; i.e., that the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side. The Preponderance of the Evidence is the applicable standard for demonstrating facts and reaching conclusions in an investigation conducted pursuant to this Executive Order or Executive Orders 1096 and 1097.
- W. Protected Status** includes Age, Disability, Gender, Genetic Information, Nationality, Race or Ethnicity, Religion, Sexual Orientation, and Veteran or Military Status.
- X. Race or Ethnicity** includes ancestry, color, ethnic group identification, and ethnic background and is a Protected Status.²⁰
- Y. Religion** is a Protected Status and includes all aspects of religious belief, observance, and practice, and includes agnosticism and atheism. Religious dress and grooming practices, such as wearing religious clothing, head or face covering, jewelry, and artifacts, are part of a Complainant’s religious observance or belief.²¹
- Z. Remedies** mean actions taken to correct allegations and/or reported violations of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking. Remedies can include discipline of the perpetrator.

Interim Remedies shall be offered prior to the conclusion of an investigation in order to immediately stop any wrongdoing and/or reduce or eliminate any negative impact, when appropriate. Persons reporting that they have been the victim of Discrimination, Harassment, Retaliation, Sexual Misconduct, Domestic Violence, Dating Violence, or Stalking must be provided reasonable and available Interim Remedies, if requested, regardless of whether the person chooses to report the conduct to Campus police or local law enforcement, and regardless of whether an investigation is conducted under Executive Order 1096 or 1097. Examples may include offering the option of psychological counseling services, changes to academic or living situations, completing a course and/or courses on-line (if otherwise appropriate), academic tutoring, arranging for

¹⁸ See 5 Cal. Code Regs. § 42720 et seq.

¹⁹ See Cal. Educ. Code § 66261.5.

²⁰ See Cal. Educ. Code § 66261.7.

²¹ See Cal. Educ. Code § 66262.

the re-taking of a class or withdrawal from a class without penalty, and/or any measure as appropriate to stop further alleged harm until an investigation is concluded or a resolution is reached. The DHR Administrator or Title IX Coordinator shall assist and provide the person with reasonable Remedies as requested throughout the reporting, investigative, and disciplinary processes, and thereafter.

AA. Retaliation means Adverse Action taken against a Student because the Student has or is believed to have:

1. Exercised rights under Executive Orders 1096 or 1097, or Title V of the California Code of Regulations;
2. Reported or opposed conduct which the Student reasonably and in good faith believes is in violation of Executive Orders 1096 or 1097, or Title V of the California Code of Regulations;
3. Assisted or participated in a related investigation/proceeding regardless of whether the Complaint was substantiated; or
4. Assisted someone in reporting or opposing a violation of Executive Orders 1096 or 1097, or Title V of the California Code of Regulations, or assisted someone in reporting or opposing Retaliation under Executive Orders 1096 or 1097, or Title V of the California Code of Regulations.

Retaliation may occur whether or not there is a power or authority differential between the individuals involved.

BB. Sexual Assault Victim's Advocate refers to employees or third party professionals appointed to support victims/survivors/Complainants of Sexual Misconduct. They must be certified and have received specialized training to provide advice and assistance, including but not limited to the provision of information about available options in the Complaint, law enforcement, legal, and medical processes and with emotional and decision making support. Sexual Assault Victim's Advocates may accompany victims/survivors/Complainants as a support person and assist in seeking services. They are committed to maintain the highest possible level of confidentiality permissible under state and federal law in their communications with the persons they assist.²² Sexual Assault Victim's Advocates are appointed based on experience and demonstrated ability to effectively provide services to victims/survivors/Complaints. See Executive Order 1095 for more detailed information.

CC. Sexual Harassment, a form of Sex Discrimination, is unwelcome verbal, nonverbal or physical conduct of a sexual nature that includes, but is not limited to, sexual advances, requests for sexual favors, and any other conduct of a sexual nature where:

²² See Cal. Evid. Code §§ 1035.2 and 1035.4.

1. Submission to, or rejection of, the conduct is explicitly or implicitly used as the basis for any decision affecting a Complainant's academic status or progress, or access to benefits and services, honors, programs, or activities available at or through the University; **or**
2. The conduct is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the Complainant, and is in fact considered by the Complainant, as limiting his or her ability to participate in or benefit from the services, activities or opportunities offered by the University; **or**
3. The conduct is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the Complainant, and is in fact considered by the Complainant, as creating an intimidating, hostile or offensive environment.

For example, it would include being forced to engage in unwanted sexual contact as a condition of membership in a student organization or frequently being exposed to unwanted images of a sexual nature in a classroom that are unrelated to the coursework.

Sexual Harassment also includes acts of verbal, non-verbal or physical aggression, intimidation or hostility based on Gender or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

Sexual Harassment is unwelcome conduct of a sexual nature. While romantic and/or social relationships between members of the University community may begin as consensual, they may evolve into situations that lead to charges of Sexual Harassment or Sexual Misconduct, including Domestic Violence, Dating Violence, or Stalking.

Conduct that does not amount to Sexual Harassment may still be unprofessional or violate other University policies.

DD. 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.

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.

1. **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.²³
2. **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.²⁴
3. **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 that person 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 Complainant's relationship to the person (such as family member, spouse, friend, acquaintance or stranger) is irrelevant. (See complete definition of Affirmative Consent above.)²⁵
4. **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.)

EE. Sexual Orientation means one's preference in sexual partners and includes heterosexuality, homosexuality, or bisexuality and is a Protected Status.²⁶

FF. 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.²⁷ For purposes of this definition:

²³ See Cal. Penal Code § 240.

²⁴ See Cal. Penal Code § 242.

²⁵ See Cal. Penal Code §§ 261-263.

²⁶ See Cal. Educ. Code § 66262.7.

²⁷ See Cal. Penal Code § 646.9.

1. **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;
2. **Reasonable Person** means a reasonable person under similar circumstances and with the same Protected Statuses as the Complainant;
3. **Substantial Emotional Distress** means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

GG. Student means an applicant for admission to the CSU, an admitted CSU student, an enrolled CSU student, a CSU extended education student, a CSU student between academic terms, a CSU graduate awaiting a degree, a CSU student currently serving a suspension or interim suspension, and a CSU student who withdraws from the University while a disciplinary matter (including investigation) is pending.

HH. Student Conduct Code means 5 California Code of Regulations Section 41301 et seq.

II. Third Party means a person other than an employee or a Student. Examples include employees of auxiliary organizations²⁸, volunteers, independent contractors, vendors and their employees, and visitors.

JJ. Title IX means Title IX of the Education Amendments of 1972.

KK. Title IX Coordinator means the Campus MPP Employee appointed by the Campus president to coordinate compliance with Title IX; VAWA/Campus SaVE Act; and other related state and federal laws prohibiting Discrimination, Harassment and Retaliation based on Gender or sex, including Sex Discrimination, Sexual Harassment, Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking. (See Executive Order 1095 Revised).

LL. University Property means:

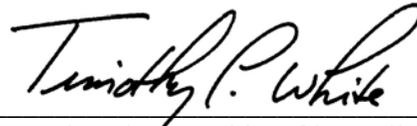
1. Real or personal property in the possession or under the ownership or control of the University; and
2. All University facilities whether utilized by a Campus or a Campus auxiliary organization.

MM. VAWA means the Violence Against Women Reauthorization Act of 2013 (which amends the Jeanne Clery Disclosure of Campus Crimes Statistics Act, commonly

²⁸ See 5 Cal. Code Regs. § 42406.

known as the Clery Act) (20 U.S.C. 1092(f)), under its Campus Sexual Violence Elimination Act provision (Campus SaVE Act).

- NN. Veteran or Military Status** may be Protected Statuses and means service in the uniformed services.
- OO. Working Days** are defined as Monday through Friday, excluding all official holidays or Campus closures at the Campus where the Complaint originated or at the CO where an Appeal is reviewed.



Timothy P. White, Chancellor

Dated: June 23, 2015

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 1098 (*Student Conduct Procedures*), dated June 3, 2014
- Executive Order 1073 (*Student Conduct Procedures*), dated April 6, 2012
- Executive Order 1043 (*Student Conduct Procedures*), dated August 3, 2009
- Executive Order 970 (*Student Conduct Procedures*), dated February 2, 2006