



**SAN DIEGO STATE
UNIVERSITY**

Business and Financial Affairs

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Jessica Rentto

Associate Vice President, Administration

December 7, 2021

Paul Connolly, Assistant Chief of Police
San Diego Police Department
1401 Broadway
San Diego, CA 92101
REF# 1914000001

Dear Assistant Chief Connolly,

I am writing in follow-up to my letter, dated November 12, 2021, regarding the SDPD sexual assault investigation. As previously communicated, San Diego State University takes these allegations seriously, and so remains mindful of the need to not take action which would undermine or affect the integrity of the SDPD investigation. At the same time, we continue to assess our obligations to administratively investigate the allegations to the extent they may involve SDSU students.

At this stage, the university has not yet received any direct reports from the reporting party, nor have we received any first-hand information from witnesses pertaining to the incident. The lack of direct information impacts our ability to administratively investigate the claims, and given the length of time since the incident, we have concerns that any further delays may adversely impact the university's ability to fully investigate pursuant to our university policies relating to sexual violence.

To this end, we are requesting that SDPD provide the reporting party with the attached CSU Executive Order 1096 and Complaint Form, along with the contact information for the university's Title IX Coordinator, Gail Mendez. We would like to ensure that the reporting party is apprised of their rights to file a complaint with the university, and as we do not currently know their identity, we are unable to provide this information to them directly.

We continue to be mindful of SDPD's investigation, and intend to collaborate with SDPD and proceed in a way that will not interfere with the integrity of the police investigation. We appreciate your partnership as we balance SDPD's investigation needs with the university's obligation to address issues and reports of sexual violence.

Kindest regards,


Jessica Rentto

cc: Gail Mendez, Director, Center for the Prevention of Harassment and Discrimination



**SAN DIEGO STATE
UNIVERSITY**

Gail Mendez, J.D.

Director

Center for Prevention of Harassment and Discrimination

Prevention of Harassment and Discrimination

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Owner: Sue McCarthy: SW Title IX CO &
Sr SW DR
Area: Human Resources
Codes: EO 1096

Policy and Procedures; Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking against Employees and Third Parties

Executive Order 1096 (Revised August 24, 2021) supersedes Executive Order 1096 (Revised August 14, 2020). This policy and procedure applies systemwide, in conjunction with Executive Order 1095 (Revised June 2, 2015) and 1098 (Revised August 24, 2021) and any superseding executive orders.

This executive order (EO 1096) has been revised in response to Federal Regulations and a recent California court of appeal decision and includes addenda that apply to cases involving students and employees that fall within the scope of the Federal Regulations or where a student has been accused of sexual misconduct or dating and domestic violence as defined by CSU policy.¹ [Addendum B: Federal Mandated Hearing Addendum](#) supersedes this Executive Order's investigation and resolution process for cases that are defined by the Title IX federal regulations as sexual harassment in an education program or activity against a person (including, but not limited to students and employees) in the United States.

Where the Federal Mandated Hearing Addendum is not applicable, [Addendum A: State Mandated Hearing Addendum](#) supersedes Article III.C.7-9 and Article IV of this Executive Order with respect to cases (i) alleging sexual misconduct or dating and domestic violence by a student that, (ii) if substantiated, could result in a severe sanction (suspension or expulsion), and (iii) where credibility of any party or witness is central to the finding.

Complaints that are in process as of the effective date of this executive order will be processed in accordance with the *procedures* outlined herein, however utilizing the *policy and definitions* set forth in the executive order in place at the time of the alleged misconduct. A Complaint is "in process" if the time to appeal to the Chancellor's Office under Executive Orders 1096 or 1098 has not expired.

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

[NOTE: THIS EXECUTIVE ORDER'S INVESTIGATION AND RESOLUTION PROCESS IS SUPERSEDED BY [ADDENDUM B: FEDERAL MANDATED HEARING ADDENDUM](#) FOR CASES THAT ARE DEFINED BY THE TITLE IX FEDERAL REGULATIONS AS SEXUAL HARASSMENT IN AN EDUCATION PROGRAM OR ACTIVITY AGAINST A PERSON (INCLUDING, BUT NOT LIMITED TO STUDENTS AND EMPLOYEES) IN THE UNITED STATES. THE TITLE IX COORDINATOR, WITH THE DHR ADMINISTRATOR, WILL ASSESS ALLEGATIONS OF OTHER NON-ADDENDUM B RELATED MISCONDUCT SET FORTH IN THE

SAME COMPLAINT THAT ARISE OUT OF THE SAME FACTS AND/OR INCIDENTS THAT MAY ALSO BE INVESTIGATED AND RESOLVED (INCLUDING SANCTIONS AND DISCIPLINE) IN ACCORDANCE WITH THIS ADDENDUM OR OTHER CSU POLICIES. SEE [ADDENDUM B: FEDERAL MANDATED HEARING ADDENDUM](#)

[NOTE: ARTICLE III.C.7-9 AND ARTICLE IV OF THIS EXECUTIVE ORDER DO NOT APPLY IN CASES (I) ALLEGING SEXUAL MISCONDUCT OR DATING AND DOMESTIC VIOLENCE BY A STUDENT THAT, (II) IF SUBSTANTIATED, COULD RESULT IN A SEVERE SANCTION (SUSPENSION OR EXPULSION), AND (III) WHERE CREDIBILITY OF ANY PARTY OR WITNESS IS CENTRAL TO THE FINDING. SEE [ADDENDUM A: STATE MANDATED HEARING ADDENDUM](#)]

Article I. Policy Statement

The California State University (CSU) is committed to maintaining an inclusive community that values diversity and fosters tolerance and mutual respect. We embrace and encourage our community differences in Age, Disability (physical and mental), Gender (or sex), Gender Identity (including transgender), Gender Expression, Genetic Information, Marital Status, Medical Condition, Nationality, Race or Ethnicity (including color or ancestry), Religion (or Religious Creed), Sexual Orientation, and Veteran or Military Status, and other characteristics that make our community unique.² All individuals have the right to participate fully in CSU programs and activities free from Discrimination, Harassment, and Retaliation. The CSU prohibits Harassment of any kind, including Sexual Harassment, as well as Sexual Misconduct, Dating and Domestic Violence, and Stalking. Such misconduct violates University policy and may also violate state or federal law.

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 sexual activity is Sexual Misconduct and constitutes a violation of this policy, whether or not the sexual activity violates any civil or criminal law.

This policy is established in compliance with the California Equity in Higher Education Act, Title IX of the Education Amendments of 1972, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (34 C.F.R. 106), 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) (VAWA) under its Campus Sexual Violence Elimination Act provision (Campus SaVE Act), Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975, among other applicable state and federal laws.

A. **Prohibited Conduct.** The CSU prohibits:

1. Discrimination, including Harassment, because of any Protected Status: i.e., Age, Disability (physical or mental), Gender (or sex), Gender Identity (including transgender), Gender Expression, Genetic Information, Marital Status, Medical Condition, Nationality, Race or Ethnicity (including color or ancestry), Religion (or Religious Creed), Sexual Orientation, sex stereotype, and Veteran or Military Status;
2. Retaliation for exercising rights under this policy, opposing Discrimination or Harassment because of a Protected Status, or for participating in any manner in any related investigation or proceeding;
3. Dating and Domestic Violence, and Stalking;
4. Sexual Misconduct of any kind, which includes sexual activity engaged in without Affirmative Consent; and,

5. Employees from entering into a consensual relationship with any Student or Employee over whom they exercise direct or otherwise significant academic, administrative, supervisory, evaluative, counseling, or extracurricular authority. See Article I. F.

The University shall respond promptly and effectively to all complaints of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking, and shall take appropriate action to prevent, correct, and discipline conduct that violates this policy. This Executive Order is intended to protect the rights and privacy of both the Complainant and the Respondent, as well as other involved individuals.

Employees and Students who are found to have violated this policy shall be subject to discipline commensurate with the violation. If Employee discipline is warranted, it shall be administered in a manner consistent with applicable collective bargaining agreements, CSU policies, and legal requirements. Student discipline shall be administered in accordance with 5 Cal. Code Regs. § 41301 and Executive Order 1098, or any superseding executive order, if applicable.

- B. **Discrimination.** The CSU strives to be free of all forms of Discrimination, including Harassment, because of a Protected Status. It is CSU policy that no person shall be excluded from participation in, or be denied the benefits of, any CSU program or activity because of any Protected Status.
- C. **Retaliation.** Retaliation against a person for exercising any rights under this policy or for opposing Discrimination or Harassment because of a Protected Status, Sexual Misconduct, Dating or Domestic Violence, or Stalking, or for participating in any manner in any policy-related investigation or proceeding is prohibited.

No victim or witness in related investigations or proceedings will be subject to disciplinary sanctions by the University for related violations of conduct policies occurring 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 any other person at risk.

- D. **Dating and Domestic Violence, and Stalking.** The CSU prohibits Dating and Domestic Violence, and Stalking. Dating and Domestic Violence, and Stalking are often based on Gender. CSU prohibits all such misconduct whether or not it is based on Gender.
- E. **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 constitutes Sexual Misconduct and is a violation of this policy, whether or not the conduct violates any civil or criminal law.

Sexual Misconduct is a form of Sexual Harassment and may create a sexually hostile environment that affects access to or participation in CSU programs and activities. CSU prohibits all such conduct whether or not it also amounts to Sexual Harassment.

Sexual activity includes but is not limited to kissing, touching intimate body parts, fondling, intercourse, penetration of any body part, and oral sex.

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 Affirmative Consent has been obtained from 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 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 asleep, unconscious or 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. A person is incapacitated if the person 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 not 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 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.

F. Consensual Relationships. Consensual relationship means a sexual or romantic relationship between

two persons who voluntarily enter into such a relationship. While sexual and/or romantic relationships between members of the University community may begin as consensual, they may evolve into situations that lead to Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking subject to this policy.

A CSU Employee shall not enter into a consensual relationship with a Student or Employee over whom that employee exercises or influences direct or otherwise significant academic, administrative, supervisory, evaluative, counseling, or extracurricular authority. In the event such a relationship already exists, each Campus shall develop a procedure to reassign such authority to avoid violations of this policy.

This prohibition does not limit the right of an Employee to make a recommendation on personnel matters concerning a family or household member where the right to make recommendations on such personnel matters is explicitly provided for in the applicable collective bargaining agreement or MPP/confidential personnel plan.

- G. **Reasonable Accommodations.** The CSU will provide reasonable accommodations to qualified individuals with a Disability. Reasonable accommodations will be determined by the Campus following an interactive process with those involved to identify the nature and extent of the restrictions and the appropriate accommodation.
- H. **Duty to Report.** Except as provided below, **any** Employee who knows or has reason to know of allegations or acts that violate this policy shall promptly inform the DHR Administrator or Title IX Coordinator. These Employees are required to disclose all information, including the names of the Parties, **even where the person has requested anonymity.** The DHR Administrator or Title IX Coordinator will determine whether such confidentiality is appropriate given the circumstances of each such incident.

Employees Who Do Not Have A Duty to Report:

1. The following Employees are **not** required to report **any** information about an incident of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking to the DHR Administrator or Title IX Coordinator:
 - a. Physicians; psychotherapists; professional licensed counselors; licensed clinical social workers, and clergy who work on or off Campus, acting solely in those roles or capacities as part of their employment, in the provision of medical or mental health treatment or counseling (*and those who act under their supervision, including all individuals who work or volunteer in these centers and offices*); and
 - b. 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 solely in that role (*including those who act in that role under their supervision, along with non-professional counselors or advocates who work or volunteer in sexual assault centers, victim advocacy offices, women's centers or health centers*).
 - c. A CSU employee/union representative is not required to report a possible violation of this Executive Order 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.

2. University police are **not** required to report any **personally-identifiable information** about a victim of certain sex offenses,³ **if the victim requests confidentiality of identity**, but must report all known facts of the incident, including the identity of the perpetrator (if known), to the Title IX Coordinator.

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 medical services are provided for a **physical condition** to a patient/victim who the practitioner 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.⁴ This exception does **not** apply to sexual assault and domestic violence counselors and advocates. Health care practitioners should explain this limited exception to victims, if applicable.

Additionally, under California law, **all** 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.⁵ These professionals will explain this limited exception to victims, 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;⁶ or, (2) to the court if compelled by court order or subpoena in a criminal proceeding related to the Sexual Misconduct, Dating or Domestic Violence, or Stalking incident.⁷ If applicable, these professionals will explain this limited exception to victims.

Article II. Policy Implementation, Training and Communication

Each Campus president shall designate a DHR Administrator and Title IX Coordinator who shall be responsible for the implementation of and compliance with this policy. The DHR Administrator is responsible for the implementation of and compliance with this policy with respect to all Discrimination, Harassment and Retaliation matters except those involving Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking. The DHR Administrator is responsible for publicizing this Executive Order, developing Campus training policies consistent with this Executive Order, conducting training, and establishing an administrative structure consistent with this Executive Order that facilitates the prevention and elimination of Discrimination, Harassment, and Retaliation. The Title IX Coordinator is responsible for the implementation of, and compliance with this policy with respect to Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking. The Title IX Coordinator is responsible for publicizing this Executive Order, developing Campus training policies consistent with this Executive Order, conducting training, and establishing an administrative structure consistent with this Executive Order that facilitates the prevention and elimination of Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking. Each Campus shall make the contact information for the DHR Administrator and Title IX Coordinator available to all members of the Campus community as well as Third Parties. The contact information shall be updated as necessary.

To prevent Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking, and to encourage reporting of such conduct, training shall be provided by each Campus to all Employees, including Faculty unit employees and student assistants. Such training shall be mandatory for all employees within twelve months of the effective date of this Executive Order, and on an annual basis thereafter. New employees shall receive training within six months of their initial hiring. Such training shall explain, but not be limited to: what constitutes Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking under applicable law; the rights and responsibilities of each Employee relating to Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking including the duty to report and exceptions; the protection against Retaliation for Employees who report Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking; the procedure provided in this Executive Order for filing, investigating and resolving a Complaint; and the option and method for filing Complaints with external government agencies such as the Department of Fair Employment and Housing (DFEH) and the Equal Employment Opportunity Commission (EEOC).

Under Cal. Govt. Code § 12950.1, each Campus shall provide supervisory Employees at least two hours of interactive Sexual Harassment training within six months of the Employee's assignment to a supervisory position and every two years thereafter. Each Campus shall maintain documentation of the delivery and completion of these trainings. For detailed guidance regarding the definition of "supervisor" and the implementation of this training, Campuses shall consult Coded Memoranda HR 2005-35 and other applicable policies.

The requirements for training to promote awareness of CSU policies against Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking are set forth in Executive Order 1095.

This Executive Order shall be made readily available and distributed on an annual basis to all Students and Employees, utilizing multiple media for communication, including email, Student orientations and catalogs, new Employee orientations, Campus websites and publications, and the webpages for the offices of Equity and Diversity, Student Affairs, Student Judicial Affairs, Disabled Student Services, Auxiliary Service Organizations, Academic Affairs, Extended Education, Athletics, Residential Life, and Human Resources.

Each Campus shall also distribute a copy of the Department of Fair Employment and Housing information sheet on sexual harassment (Form DFEH-185, or any superseding document) to all Employees utilizing multiple media for communication, including email and webpages.

In addition, each Campus shall post the DFEH poster on employment discrimination (Form DFEH-162, or any superseding document) in prominent and accessible locations on Campus where other employment notices regarding rules, regulations and procedures are posted.

Article III. Campus Procedure for Responding to Complaints

[NOTE: THIS EXECUTIVE ORDER'S INVESTIGATION AND RESOLUTION PROCESS IS SUPERSEDED BY [ADDENDUM B: FEDERAL MANDATED HEARING ADDENDUM](#) FOR CASES THAT ARE DEFINED BY THE TITLE IX FEDERAL REGULATIONS AS SEXUAL HARASSMENT IN AN EDUCATION PROGRAM OR ACTIVITY AGAINST A PERSON (INCLUDING, BUT NOT LIMITED TO STUDENTS AND EMPLOYEES) IN THE UNITED STATES. THE TITLE IX COORDINATOR, WITH THE DHR ADMINISTRATOR, WILL ASSESS ALLEGATIONS OF OTHER NON-ADDENDUM B RELATED MISCONDUCT SET FORTH IN THE

SAME COMPLAINT THAT ARISE OUT OF THE SAME FACTS AND/OR INCIDENTS THAT MAY ALSO BE INVESTIGATED AND RESOLVED (INCLUDING SANCTIONS AND DISCIPLINE) IN ACCORDANCE WITH THIS ADDENDUM OR OTHER CSU POLICIES. SEE [ADDENDUM B: FEDERAL MANDATED HEARING ADDENDUM](#)

[NOTE: ARTICLE III.C.7-9 OF THIS EXECUTIVE ORDER DOES NOT APPLY IN CASES (I) ALLEGING SEXUAL MISCONDUCT OR DATING AND DOMESTIC VIOLENCE BY A STUDENT THAT, (II) IF SUBSTANTIATED, COULD RESULT IN A SEVERE SANCTION (SUSPENSION OR EXPULSION), AND (III) WHERE CREDIBILITY OF ANY PARTY OR WITNESS IS CENTRAL TO THE FINDING. SEE [ADDENDUM A: STATE MANDATED HEARING ADDENDUM](#)

This procedure provides individuals a process to address alleged violations of this policy by the CSU, a CSU Employee, a Student, or a Third Party. Whenever a Campus determines that the allegation(s) are outside the scope of this policy, the Campus shall promptly notify the individual in writing. All Complaints and related investigations against Respondents who are sworn University public safety officers shall be governed by this policy, the applicable collective bargaining agreement, and by the Public Safety Officers Procedural Bill of Rights Act (POBR).⁸ The campus DHR Administrator or Title IX Coordinator shall work with the campus Chief of Police, or designee, to investigate Complaints against sworn public safety officers. Consultation with the Office of General Counsel is recommended.

- A. **Who May Use This Procedure:** The individuals listed below may use the procedure in this Executive Order to address Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking.
1. **Employees.** Non-represented Employees and Employees in bargaining units whose collective bargaining agreements have incorporated this Executive Order may use the procedure described in this Executive Order to address Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking by the CSU, another Employee, a Student, or a Third Party.
 2. **Employees who are covered by a grievance procedure in a collective bargaining agreement.** Employees who are covered by a collective bargaining agreement that provides a grievance procedure for raising allegations of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking shall use the grievance procedure specified in their collective bargaining agreement.
 3. **Applicants for employment.** Applicants for employment may use the procedure outlined in this Executive Order to address Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking that occurred during their application process.
 4. **Student employees.** At times, a person may be employed by the CSU and also be a Student. If an allegation of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking arose out of the person's status as a Student and not their status as an Employee, the allegations shall be handled under 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) or a superseding executive order. An allegation arising out of the person's University work environment (while they are acting as an Employee) shall be handled under this Executive Order.
 5. **Third Parties.** Allegations of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking by Third Parties against the CSU, an Employee, or a Student shall be investigated and resolved in accordance with the procedure outlined in this Executive Order.

The University will respond to all Complaints and will take appropriate action to prevent, correct, and discipline conduct that violates this policy. To report alleged violations, an individual may submit a formal written Complaint to the DHR Administrator (Discrimination, Harassment, and Retaliation) or Title IX Coordinator (Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking). The date of receipt shall be deemed to be the Complaint filing date. The DHR Administrator/Title IX Coordinator shall offer reasonable accommodations to individuals who are unable to submit a Complaint because of a qualified Disability.

Complaints should be brought forward as soon as possible after the conduct occurs. While there is no stated timeframe for making a Complaint, prompt reporting will better enable the Campus to respond to the Complaint, determine the relevant issues, and provide an appropriate Remedy and/or action. All incidents should be reported even if a significant amount of time has passed. However, delaying a report or Complaint may impede the University's ability to conduct an investigation or take appropriate remedial actions.

The Campus will respond to all reports of alleged violations of this policy, whether or not the report is submitted as a written Complaint. However, the response may be limited if information contained in the report is insufficient to verify violation(s) of this Executive Order.

- B. **Campus Informal Resolution Process.** Complainants who believe they have experienced Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking under this policy may initiate the Informal Resolution process prior to, or instead of, filing a Complaint. The purpose of the Informal Resolution process is to explore whether the Complainant's concern(s) can be resolved by the Campus without an investigation.

This Executive Order neither prevents nor requires the use of the Informal Resolution process. Under no circumstance shall a Complainant be required to use the Informal Resolution process to address prohibited behaviors. It is not appropriate for a Complainant to be required to "work out the problem" directly or mediate with the Respondent. Mediation cannot be used, even on a voluntary basis, to resolve Sexual Misconduct, Dating or Domestic Violence, or Stalking Complaints. In other matters, where voluntary mediation is requested, no meeting between the Complainant and the Respondent should occur without involvement by appropriate Campus administrators, including the DHR Administrator or Title IX Coordinator.

Where the allegations involve Sexual Misconduct, Dating or Domestic Violence, or Stalking, the Complainant shall be advised to immediately file a Complaint under Article III, C.

1. **To initiate the Informal Resolution Process.** The Complainant should contact the Campus DHR Administrator (Discrimination, Harassment, or Retaliation) or Title IX Coordinator (Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking) who shall promptly meet with the Complainant to discuss his or her concern(s) and possible resolutions as appropriate.

Complainants shall be informed about the range of possible outcomes, including Supportive Measures or disciplinary actions that might be taken against the Respondent, and information about the procedures leading to such outcomes.

2. **Participation in the Informal Resolution Process.** Participation is voluntary. It may include an

inquiry into the facts, but does not include an investigation. Means for resolution shall be flexible. Resolution options include but are not limited to discussions with the Parties, a resolution facilitated by the DHR Administrator or Title IX Coordinator, separating the Parties, referring one or both of the Parties to counseling programs, an agreement between Campus and the Respondent regarding disciplinary action, conducting targeted preventive educational and training programs or providing Remedies to persons harmed by violations of this policy.

The Campus shall attempt to resolve the Complainant's concern(s) quickly and effectively. The DHR Administrator or Title IX Coordinator shall meet with the Complainant, the Respondent, and any other persons or witnesses they may determine to be necessary.

3. **Final Informal Resolution.** If resolution is reached, a written record of the resolution shall be documented and maintained in accordance with applicable Campus recordkeeping policies. The matter shall be considered closed.

Where the Respondent is a Student, the DHR Administrator/Title IX Coordinator shall inform the Student Conduct Administrator of the outcome of the Informal Resolution process, including any Supportive Measures afforded to the Complainant. Where the Respondent is an Employee, Human Resources or Academic Affairs shall be informed as appropriate.

If resolution is not reached, the Campus shall promptly notify the Complainant and, where applicable, the Respondent in writing that the Informal Resolution process is terminated, and the termination effective date. The DHR Administrator/Title IX Coordinator shall also determine whether the matter is appropriate for investigation, and so notify the parties in writing. The Complainant shall be provided written notification of the right to file a Complaint pursuant to Article III, C.

4. **Confidentiality.** Other than consulting with their respective Support Advisors, both the Complainant and the Respondent shall keep the details of the Informal Resolution process confidential until the process is concluded. If the matter is not resolved and an investigation is conducted, the Complainant and the Respondent shall maintain confidentiality until the conclusion of the Campus investigation and CO Appeal Review process, if any.
5. **Termination of Informal Resolution Process.** The Complainant shall be notified that the Complainant or the Campus may at any time elect to terminate the Informal Resolution process. In that event, the DHR Administrator/Title IX Coordinator shall promptly notify the Complainant and the Respondent in writing that the Informal Resolution process has terminated, the effective date thereof, and inform the Complainant of the right to file a Complaint pursuant to Article III, C. The DHR Administrator/Title IX Coordinator shall also determine whether the matter is appropriate for investigation, and so notify the parties in writing.

- C. **Campus Investigation Process.** Campuses will investigate Complaints of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking unless an Informal Resolution is reached, whether or not a written Complaint is submitted. The DHR Administrator/Title IX Coordinator will determine whether to open an investigation after making a preliminary inquiry into the allegations. An investigation may not be warranted where the reported information is insufficient. These determinations will be documented in writing by the DHR Administrator/Title IX Coordinator, and maintained in accordance with systemwide records retention policies.

In cases where the Complainant does not want to pursue an investigation, the DHR Administrator/Title IX Coordinator should inform the Complainant that the ability to take corrective action may be limited. The

Campus may determine that circumstances warrant initiating an investigation even if a Complaint has not been filed and independent of the intent or wishes of the Complainant. In cases involving Sexual Misconduct, Dating or Domestic Violence, or Stalking, when determining whether to go forward with an investigation, the Title IX Coordinator should consider the seriousness of the allegation(s), the age of the Complainant, whether there have been other Complaints against the Respondent, and the risk to the Campus community if the Respondent's alleged conduct remains unaddressed. These determinations will be documented in writing by the DHR Administrator/Title IX Coordinator, and maintained in accordance with systemwide records retention policies.

1. **Filing a Complaint.** Any Employee or Third Party may file a Complaint reporting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking under this policy subject to the following exceptions:
 - a. Complaints of Student employees that arise out of their status as a Student. Such Complaints shall be governed by Executive Order 1097 or any superseding executive order.
 - b. Complaints against a president shall be filed with the Chancellor's Office (CO). However, Complaints against a president shall be processed by the Campus if the president's role in the alleged incident was limited to a decision on a recommendation made by another administrator, and the president had no other substantial involvement in the matter.
 - c. For Complaints against CO employees, the responsibilities identified in this Executive Order as those of the president are the responsibilities of the chancellor. Complaints that involve allegations against the chancellor or a member of the Board of Trustees shall be referred to the chair or vice chair of the Board and the CO Title IX Coordinator for processing and investigation.
2. **Complaint Requirements.** The Complainant may submit a written Complaint to the DHR Administrator or Title IX Coordinator. The date the Complaint is received in the appropriate office shall be deemed to be the Complaint filing date. The DHR Administrator/Title IX Coordinator shall offer reasonable accommodations to Complainants who are unable to submit a written Complaint because of a qualified Disability.

The Complainant may complete the attached "CSU Complaint Form" or, in the alternative, submit a written signed statement containing the following information:

- a. The Complainant's full name, address (including email address) and telephone number(s);
- b. The name of the Respondent and job title, position or Student status, if known;
- c. The Protected Status that is the basis for any alleged Discrimination, Harassment, or Retaliation, the Respondent's activity that is the basis for the alleged Retaliation, or whether Dating or Domestic Violence, or Stalking is alleged;
- d. A clear, concise statement of the facts that constitute the allegations including pertinent date(s) and sufficient information to identify any individuals who may provide relevant information during the course of any investigation;
- e. A statement verifying that the information provided is true and accurate to the best of the Complainant's knowledge;
- f. The day, month and year of the Complainant's most recent employment or the day, month and year in which the Complainant applied for employment with the University;
- g. The full name, address and telephone number of the Complainant's Support Advisor, if any;
- h. The specific harm resulting from the allegations;

- i. The specific remedy sought;
- j. The Complainant's signature; and,
- k. The date on which the Complaint is submitted.

3. **Intake interview.** The DHR Administrator or Title IX Coordinator shall meet with the Complainant as soon as possible, but no later than **10 Working Days** after the Complaint was received. The Complainant shall be available for and attend this meeting.

- a. The meeting shall serve as the initial intake interview with the Complainant and will:
 - i. Explain the investigation procedure and timelines and answer any questions about them;
 - ii. Inform the Complainant of rights and options under this Executive Order, including the right to have an Advisor throughout the process;
 - iii. Provide the opportunity for the Complainant to complete and sign a Complaint form, if not already done; and,
 - iv. Discuss reasonable Supportive Measures, as appropriate.

b. In cases alleging Sexual Misconduct, Dating or Domestic Violence, or Stalking, the Title IX Coordinator shall also:

- i. Inform the Complainant of the right to file a criminal complaint;

- ii. Offer to assist the Complainant with filing a criminal complaint;

- iii. Assure the Complainant that such filing will not significantly delay the Campus investigation;

Advise the Complainant of available resources such as the Campus police, Campus Sexual Assault Victim's Advocate, student health service center or psychological counselling center; and

- iv. Provide *written* information, as directed under Executive Order 1095, to any Complainant who makes a report to the Campus of Sexual Misconduct, Dating or Domestic Violence, or Stalking.

c. Prior to or during the initial interview with the Respondent, the DHR Administrator or Title IX Coordinator shall:

- i. Explain the investigation procedure and timelines and answer any questions about them;

- ii. Inform the Respondent of rights and options under this Executive Order; including the right to have a Support Advisor throughout the process;

- iii. Provide the Respondent with a copy of this Executive Order;

- iv. Provide the Respondent with a description of the Complainant's allegations against the Respondent;

- v. Provide the Respondent a full opportunity to respond to the allegations, including scheduling other meeting(s), accepting documentary evidence, and accepting Respondent's list of potential witnesses; and,

- vi. Discuss any Supportive Measures, as appropriate.

4. **Support Advisor.** The Complainant and the Respondent may elect to be accompanied by a Support Advisor to any meeting or interview regarding the Complaint. (See definition in Article VI.)

5. **Confidentiality.** Information regarding the Complaint may be shared on a "need to know" basis with other Campus Employees, and with law enforcement (with the Complainant's written consent), except for some limited exceptions. (See Executive Order 1095.) The DHR Administrator and/or Title IX Coordinator shall endeavor to honor any request for confidentiality; however, the DHR Administrator and/or Title IX Coordinator shall also weigh requests for confidentiality against the University's duty to provide a safe and nondiscriminatory environment for all members of the Campus community. **Confidentiality, therefore, cannot be ensured.**

The Title IX Coordinator receives all Complainant requests for confidentiality involving cases of Sexual Misconduct, Dating or Domestic Violence, or Stalking, and determines if the request can be honored under the facts and circumstances of the particular case. (See Executive Order 1095.)

6. **Complaint Accepted for Investigation.** The DHR Administrator or Title IX Coordinator will review all written Complaints and the information received during the intake interview with the Complainant. If the DHR Administrator or Title IX Coordinator determines that the Complaint falls within the scope of this Executive Order, the Complainant will be notified within **10 Working Days** that the Complaint has been accepted for investigation and the timeline for completion of the investigation.

If the DHR Administrator or Title IX Coordinator determines the Complainant has failed to state a Complaint within the scope of this Executive Order, the Complainant will be provided with written notice of this determination with **10 Working Days**. The DHR Administrator or Title IX Coordinator will also inform the Complainant that if additional information is provided, the Complaint will be reviewed again. The DHR Administrator or Title IX Coordinator will maintain a record of the Complaint and the reasons the Complaint was deemed not within the scope of this Executive Order.

The DHR Administrator or Title IX Coordinator shall determine whether the Complaint should be processed through another Campus office or University procedure available to the Complainant. If appropriate, the DHR Administrator or Title IX Coordinator shall direct the Complainant to that procedure as soon as possible.

7. **Investigation Procedure.** The DHR Administrator or Title IX Coordinator shall promptly investigate the Complaint or assign this task to another Investigator on a case-by-case basis. If assigned to another Investigator, the DHR Administrator or Title IX Coordinator shall monitor, supervise, and oversee all such delegated tasks, including reviewing all investigation draft reports before they are final to ensure that the investigation was sufficient, appropriate, impartial, and in compliance with this Executive Order.

The Complainant and the Respondent shall have equal opportunities to present relevant witnesses and evidence in connection with the investigation. Upon inquiry, the Complainant and Respondent shall be advised of the status of the investigation.

Before reaching a final conclusion or issuing a final investigation report, the Investigator shall have:
a) advised the Parties or have offered to do so, verbally or in writing, of any evidence upon which the findings will be based; and, b) given the Parties an opportunity to respond to the evidence, including presenting further relevant evidence, information or arguments that could affect the outcome. The Investigator will not reach a final conclusion or issue an investigation report until giving careful consideration to any such relevant evidence, information or arguments provided by the Parties. The Investigator retains discretion and authority to determine relevance.

The investigation shall be completed no later than **60 Working Days** after the intake interview, unless the timeline has been extended pursuant to Article V. E. The timeline should not be extended for a period longer than an additional **30 Working Days** from the original due date.

On occasion, a criminal investigation may be initiated by a law enforcement agency over the same allegations that are reported in a Complaint filed under this policy. A pending (Campus or local) police investigation is a separate investigation and it does not relieve a Campus of its responsibility to timely investigate Complaints under this policy. Thus, a Campus may not wait until the conclusion of a police investigation to commence its own investigation. Although it may be necessary to temporarily delay the investigation while the police are gathering evidence, once notified that the police have completed the fact gathering portion of their investigation, the Campus must promptly resume and complete its own investigation. In cases involving Sexual Misconduct, Dating or Domestic Violence, or Stalking, see the "Coordination with Criminal Investigations and Proceedings" section of Executive Order 1095.

8. **Investigation Report.** Within the investigation period stated above, the Investigator shall prepare an investigation report. The report shall include a summary of the allegations, the investigation process, the Preponderance of the Evidence standard, a detailed description of the evidence considered, and appropriate findings. Relevant exhibits and documents, if any, shall be attached to the written report. The report shall be promptly provided to the DHR Administrator or Title IX Coordinator, if applicable. The DHR Administrator or Title IX Coordinator shall review the investigation report to assure compliance with this Executive Order before proceeding further.
9. **Notice of Investigation Outcome.** Within **10 Working Days** of issuance of the final investigation report, the DHR Administrator or Title IX Coordinator shall notify the Complainant and Respondent in writing of the outcome of the investigation. The Notice shall include a summary of the allegations, the investigative process, the Preponderance of the Evidence standard, the evidence considered, the findings of fact, a determination as to whether this Executive Order was violated, and if so, any Remedies to be afforded to the Complainant. The notice shall advise the Complainant and Respondent of their right to file an appeal under this Executive Order and to request a copy of the final investigation report with exhibits/attachments, if any, redacted as appropriate. The Notice shall be delivered to the Parties in a manner which guarantees delivery within **2 Working Days** (email delivery is acceptable).

Where a Complaint is made against a Student and this Executive Order is found to have been violated, the DHR Administrator or Title IX Coordinator shall also notify the Campus Student Conduct Administrator of the investigation outcome, and provide a copy of the investigation report. Where the Respondent is an Employee, Human Resources or Academic/Faculty Affairs shall be notified and provided a copy of the investigation report.

Article IV. Appeal Review - Office of the Chancellor (CO)

[NOTE: THIS EXECUTIVE ORDER'S INVESTIGATION AND RESOLUTION PROCESS IS SUPERSEDED BY [ADDENDUM B: FEDERAL MANDATED HEARING ADDENDUM](#) FOR CASES THAT ARE DEFINED BY THE TITLE IX FEDERAL REGULATIONS AS SEXUAL HARASSMENT IN AN EDUCATION PROGRAM OR ACTIVITY AGAINST A PERSON (INCLUDING, BUT NOT LIMITED TO STUDENTS AND EMPLOYEES) IN

THE UNITED STATES. THE TITLE IX COORDINATOR, WITH THE DHR ADMINISTRATOR, WILL ASSESS ALLEGATIONS OF OTHER NON-ADDENDUM B RELATED MISCONDUCT SET FORTH IN THE SAME COMPLAINT THAT ARISE OUT OF THE SAME FACTS AND/OR INCIDENTS THAT MAY ALSO BE INVESTIGATED AND RESOLVED (INCLUDING SANCTIONS AND DISCIPLINE) IN ACCORDANCE WITH THIS ADDENDUM OR OTHER CSU POLICIES. SEE [ADDENDUM B: FEDERAL MANDATED HEARING ADDENDUM](#)

[NOTE: ARTICLE IV OF THIS EXECUTIVE ORDER DOES NOT APPLY IN CASES (I) ALLEGING SEXUAL MISCONDUCT OR DATING AND DOMESTIC VIOLENCE BY A STUDENT THAT, (II) IF SUBSTANTIATED, COULD RESULT IN A SEVERE SANCTION (SUSPENSION OR EXPULSION), AND (III) WHERE CREDIBILITY OF ANY PARTY OR WITNESS IS CENTRAL TO THE FINDING. SEE [ADDENDUM A: STATE MANDATED HEARING ADDENDUM](#)]

- A. **Filing an Appeal to the CO.** Any Complainant or Respondent who is not satisfied with a Campus investigation outcome may file an appeal with the CO no later than **10 Working Days** after the date of the Notice of Investigation Outcome.
- B. **Written Appeal.** The appeal shall be in writing and shall be based only on one or more of the appeal issues listed below:
1. The investigation outcome is unsupported by the evidence, based on the Preponderance of the Evidence standard;
 2. Prejudicial procedural errors impacted the investigation outcome to such a degree that the investigation did not comply with this Executive Order; or
 3. New evidence not available at the time of the investigation.
- C. **Issues and Evidence on Appeal.** The issues and evidence raised on appeal shall be limited to those raised and identified during the investigation, unless new evidence becomes available after the Campus investigation process and is made part of the appeal by the appealing party. The CO may conduct an interview, at the CO's discretion, with the appealing party to clarify the written appeal. Appeals 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

- D. **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 and the Campus DHR Administrator or Title IX Coordinator.
- E. **Reasonable Accommodation.** The CO will provide reasonable accommodation(s) to any party or witness in the appeal process with a qualified Disability upon request by the person needing the accommodation. A reasonable accommodation may include an extension under these procedures. The timeframe for the CO Appeal Response will automatically be adjusted for the time needed, if any, to provide reasonable accommodation(s).
- F. **Scope of CO Review.** The CO review will not involve a new investigation by the CO and will not consider

evidence that was not introduced during the Campus investigation, unless the new evidence was not available at the time of the Campus investigation process. The CO may make reasonable inquiries to determine if the new evidence could have affected the investigation determination. If the CO review determines the investigation should be reopened to cure any defects in the investigation and/or consider new evidence introduced for the first time on appeal (that could have affected the investigation determination), the investigation will be remanded back to the Campus and the investigation reopened at the Campus level.

- G. **Reopening a Campus Investigation.** The CO will return the matter to the Campus and will specify in writing the timeline by which a reopened investigation must be completed. The CO will notify the Parties of the reopening of the investigation and the timeline for completion of the reopened investigation. The Campus will complete the reopened investigation and provide the CO with an amended investigation report. The Campus will also provide the Parties with amended Notices of Investigation Outcome, and such Notices will provide the Parties the opportunity to appeal any new or amended findings, in accordance with this Executive Order. Upon receipt of the amended investigation report, the CO will contact the appealing party to determine whether that party wishes to continue with the appeal.
- H. **Timeline.** The CO shall respond to the appealing party no later than **30 Working Days** after receipt of the written appeal unless the timeline has been extended as specified in Article V. E below.
- I. **CO Appeal Response.** The CO Appeal Response shall include a summary of the issues raised on appeal, a summary of the evidence considered, the Preponderance of the Evidence standard, and the determination(s) reached regarding the issue(s) identified within the written appeal. A copy of the final CO Appeal Response shall be forwarded to the Complainant and Respondent, as well as the Campus DHR Administrator or Title IX Coordinator.

The CO Appeal Response is final and concludes the Complaint and CO review process under this Executive Order.

Article V. General Provisions for Campus Investigation/CO Appeal Review

- A. **Impartial Investigations.** All investigations and reviews shall be conducted impartially and in good faith.
- B. **Cooperation in an Investigation.** Students and Employees are required to cooperate with the investigation and other processes set forth in this Executive Order, including but not limited to, attending meetings, being forthright and honest during the process, and keeping confidential the existence and details of the investigation/review. If a Complainant and/or Respondent refuse to cooperate, the CSU may draw all reasonable inferences and conclusions on the basis of all available evidence and conclude the investigation/review.
- C. **False Allegations Prohibited.** A Complainant shall proceed with a Complaint in good faith. A Complainant who knowingly and intentionally files a false Complaint or any individual who is determined to have provided false statements or information during the investigation/appeal review shall be subject to discipline in accordance with applicable collective bargaining agreements, CSU policies, and legal requirements (e.g., Education Code Section 89530 et seq.). Such disciplinary action shall not be deemed to be Retaliation.
- D. **Input into the Investigation.** Both the Complainant and Respondent shall have the right to identify witnesses and other evidence for consideration; however, the CSU shall decide what evidence is relevant and significant to the issues raised.

- E. **Timelines and Extensions.** The timeline for the procedures contained within this Executive Order may be extended for any reason deemed to be legitimate by the Campus Investigator/CO Appeal reviewer or by mutual agreement of the Parties. The timelines stated within this Executive Order will be automatically adjusted for a reasonable time period that should not exceed an additional **30 Working Days** for a Campus investigation or an additional **30 Working Days** for a reopened Campus investigation under Article IV. The Complainant and Respondent shall receive written notification of any period of extension.
- F. **Delivery.** When submitting a Complaint or issuing any notices required by this Executive Order, personal delivery, overnight delivery services, electronic mail, or certified mail may be used. If personal delivery is used, a proof of service shall be prepared attesting to the calendar date of delivery, which will establish the date of filing or response. If certified mail delivery is used, the postmark shall establish the date of filing or response. Electronic communications must be sent to the designated CSU or Campus e-mail address unless the intended recipient has specified a different address. Electronic communications will be deemed received on the date sent.
- G. **Investigation Not Warranted.** In the event that a Campus determines an investigation is not warranted, the reasons for that decision shall be reduced to writing and retained by the Campus according to appropriate record retention policies.
- H. **Information Requests.** Where it is necessary for the Complainant or Respondent to have access to specific information for the purpose of filing a Complaint or CO Appeal, the Complainant or Respondent shall make a written request for such information to the Campus. The Complainant or Respondent shall have access to information within the policies, procedures and laws governing confidentiality and privacy that are relevant to any issue raised in the Complaint. This provision does not authorize a Complainant or Respondent access to the personnel files of another without the written consent of that person.
- I. **Employee Rights.** Nothing contained herein is intended or should be construed to interfere with an Employee's right to consult with a representative.
- J. **Release Time.** Taking into account campus operational needs, CSU shall provide the Complainant and Support Advisor, if any, reasonable release time for preparing and presenting the Complaint upon their request.

Taking into account campus operational needs, CSU shall provide Unit 3 and 4 Complainants and any Support Advisor (who is in the same bargaining unit) with reasonable release time for preparing and presenting the Complaint upon request. Taking into account campus operational needs, CSU shall provide to any Support Advisor to Unit 3 or 4 Respondents reasonable release time for the purposes of providing advice to the Respondent under this Executive Order, where both the Respondent and Support Advisor are in the same bargaining unit.

- K. **External Remedies.** A Complainant may choose to pursue remedies with outside government agencies at any time without waiting for the conclusion of the CSU Complaint process under this Executive Order.

Article VI. 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 employment or ability to participate in a University program or activity free from Discrimination, Harassment or Retaliation. 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. **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 Affirmative Consent has been obtained from 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 Article I. E. for more information.

- C. **Age**, with respect to employment discrimination, refers to the chronological age of any individual who has reached his or her 40th birthday.⁹ With respect to discrimination in non-employment programs and activities, Age means how old a person is, or the number of years from the date of a person's birth.¹⁰ Age based stereotype refers to generalized opinions about matters including the qualifications, job performance, health, work habits, and productivity of individuals over forty.

Age is a Protected Status.

- D. **Calendar Days** are defined as Monday through Sunday and include official holidays.
- E. **California State University (CSU)** means the 23 Campus system of the California State University, including the 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 Respondent upon completion of the appeal process provided under Article IV.
- H. **Complainant** means an individual who is eligible to file a Complaint or report a violation of this policy. See Article III. A for a description of those eligible to file a Complaint. It also includes any person who is reported to have **experienced** a violation of this policy 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 this policy or a written communication that complies with Article III: C-2 alleging Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking, against the CSU, an Employee, a Student, or a Third Party.
- 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.¹¹ 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 self, or another. Abuse does not include non-physical, emotional distress or injury.
- K. **DHR (Discrimination, Harassment, and Retaliation) Administrator** means the Management Personnel Plan (MPP) Employee at each Campus who is designated to administer this Executive Order and coordinate compliance with the laws prohibiting Discrimination,

Harassment and Retaliation. The DHR Administrator may delegate tasks to one or more designees, provided that any designee shall be a MPP Employee or an external consultant, and the DHR Administrator retains overall responsibility and authority. **MPP Employee** means an employee who has been designated as a "management" or "supervisory" employee under the provisions of the Higher Education Employer-Employee Relations Act.¹² The Campus president may assign the roles of the DHR Administrator and Title IX Coordinator to the same person. The names of, and contact information for the DHR Administrator and Title IX Coordinator shall be made readily available to the Campus community and Third Parties as described in Article II.

- L. **Disability**, as defined in California Government Code § 12926 and the federal Americans with Disabilities Act (ADA), 2008 Amendments, means:

Having a physical or mental condition that limits a major life activity. "Limits" means making the achievement of a major life activity difficult. "Limits" is determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity. A "major life activity" is broadly construed and includes physical, mental, and social activities (such as walking, talking, seeing, hearing) and working; or

Having a known history of a qualifying impairment; or

Being regarded or treated as having or having had such an impairment that has no presently disabling effects but may become a qualifying impairment in the future.

Disability includes HIV and AIDS. Disability is a Protected Status.

- M. **Discipline** means any disciplinary action taken to correct a violation of the prohibitions against Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking set forth in this Executive Order. Discipline for Employees includes, but is not limited to, suspension, demotion and termination of employment. Discipline for Students includes, but is not limited to, probation, suspension and expulsion. Suspension of one academic year or more, expulsion, withdrawal in lieu of suspension or expulsion, and withdrawal with pending misconduct investigation or disciplinary proceeding shall be entered on the Student's transcript permanently without exception; this requirement cannot be waived in connection with any settlement agreement. See the definition of Remedies below

- N. **Discrimination** means Adverse Action taken against an Employee or Third Party by the CSU, a CSU employee or a **Student**, because of a Protected Status.

- O. **Domestic Violence** is abuse committed against someone who is a current or former spouse; current or former cohabitant; someone with whom the Respondent has a child; someone with whom the Respondent 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 spouses; (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 self, or another.¹³ Abuse does not include non-physical, emotional distress or injury.

P. **Employee** means a person legally holding a position in the CSU. This term includes full-time, part-time, permanent, tenured, probationary, temporary, intermittent, casual, and per-diem positions. This term does not include auxiliary or foundation Employees or other Third Parties.¹⁴

Q. **Gender** means sex, and includes Gender Identity, Gender Expression, and transgender. It also includes sex stereotyping.¹⁵

Sex includes, but is not limited to, pregnancy, childbirth, breastfeeding or any related medical condition(s).¹⁶

Gender Identity means a person's identification as male, female, a gender different from the person's sex at birth, or transgender.

Gender Expression means a person's gender-related appearance or behavior whether or not stereotypically associated with the person's assigned sex at birth.

Sex stereotype means an assumption about a person's appearance or behavior or about an individual's ability or inability to perform certain kinds of work based on a myth, social expectation, or generalization about the individual's sex.

Transgender is a general term that refers to a person whose gender identity differs from the person's sex at birth. A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth. A transgender person may or may not identify as transsexual.

Gender is a Protected Status.

R. **Genetic Information** means¹⁷:

The person's genetic tests.

The genetic tests of the person's family members.

The manifestation of a disease or disorder in the person's family members.

Any request for, or receipt of genetic services, or participation in clinical research that includes genetic services, by a person or any person's family member.

Genetic Information does not include information about the sex or age of any person.

Genetic Information is a Protected Status.

S. **Harassment** means unwelcome conduct engaged in because of a Complainant's Protected Status and:

Submission to, or rejection of, the conduct is made a term or condition of the Complainant's employment; **or**

Submission to or rejection of such conduct by the Complainant is used as the basis or threatened to be used as the basis for employment actions or decision affecting the Complainant; **or**

The conduct is sufficiently severe 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 intimidating, hostile or offensive.

Harassment includes, but is not limited to, verbal harassment (e.g., epithets, derogatory comments, or slurs), physical harassment (e.g., assault, impeding or blocking movement, or any physical interference with normal work or movement), and visual forms of harassment (e.g., derogatory posters, cartoons, drawings, symbols, or gestures.)

- T. **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 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, Dating and Domestic Violence, and Stalking; Complainant, Respondent, 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) and the University community. (See also Executive Order 1095 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 this policy.

The Investigator shall not be within the administrative control or authority of any Respondent CSU Employee. The Investigator may be the DHR Administrator, the Title IX Coordinator, or their designee, provided that any designee shall be a MPP Employee or an external consultant.

- U. **Marital Status means** an individual's state of marriage, non-marriage, divorce or dissolution, separation, widowhood, annulment, or other marital state.¹⁸

Marital Status is a Protected Status.

- V. **Medical Condition** means either of the following:

Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer; or

Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:

Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder; or

Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.¹⁹

Medical Condition is a Protected Status.

- W. **Nationality** includes citizenship, country of origin, and national origin.²⁰ It also includes language use restrictions and holding or presenting a driver's license issued under section

12801.9 of the Vehicle Code.

Nationality is a Protected Status.

- X. **Parties** to a Complaint are the Complainant(s) and the Respondent(s).
- Y. **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.
- Z. **Protected Status** includes Age, Disability (physical or mental), Gender (or sex), Genetic Information, Gender Identity (including transgender), Gender Expression, Marital Status, Medical Condition, Nationality, Race or Ethnicity (including color or ancestry), Religion or Religious Creed, Sexual Orientation, and Veteran or Military Status.
- AA. **Race or Ethnicity** includes ancestry, color, ethnic group identification, and ethnic background.²¹

Race or Ethnicity is a Protected Status.

- BB. **Religion or Religious Creed** includes all aspects of religious belief, observance, and practice, including religious dress and grooming practices, 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.²² Religion or Religious Creed is a Protected Status.

- CC. **Remedies** means actions taken to correct allegations and/or reported violations of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence, or Stalking as set forth in this Executive Order. Remedies can include Discipline or other corrective action.

Supportive Measures shall be offered prior to the conclusion of an investigation in order to immediately stop any wrong-doing and/or reduce or eliminate any negative impact, when appropriate. Persons reporting that they have been the victim of Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking must be provided reasonable and available Supportive Measures, 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 this Executive Order. Examples may include offering the option of psychological counseling services, changes to work area, work assignments, or supervisory reporting relationship, or any measure as appropriate to stop further alleged harm until an investigation is concluded or a resolution is reached. The Title IX Coordinator shall assist and provide the Complainant with reasonable Remedies as requested throughout the reporting, investigation, appeal, and disciplinary processes, and thereafter.

- DD. **Respondent** means the CSU, a CSU Employee, a Student, or a Third Party who is alleged to have violated this Executive Order.
- EE. **Retaliation** means Adverse Action taken against a person because the person has or is believed to have:
 - Exercised rights under this Executive Order;
 - Reported or opposed conduct which was reasonably and in good faith believed to be in violation of this Executive Order;
 - Assisted or participated in a policy-related investigation/proceeding regardless of whether the Complaint was substantiated; or,

Assisted someone in reporting or opposing a violation of this Executive Order, or assisted someone in reporting or opposing Retaliation under this Executive Order.

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

FF. **Sexual Assault Victim's Advocate** refers to Employees or third party professionals appointed to support Complainants reporting 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 Advocates may serve as the Complainant's Support Advisor 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.²³ Sexual Assault Victim's Advocates are appointed based on experience and demonstrated ability to effectively provide services to victims/survivors/Complainants. (See Executive Order 1095 for more detailed information.)

GG. **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, any other conduct of a sexual nature, offering employment benefits or giving preferential treatment in exchange for sexual favors, or indecent exposure, where:

1. Submission to, or rejection of, the conduct by the Complainant is explicitly or implicitly used as the basis for any decision affecting a term or condition of the Complainant's employment, or an employment decision; **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 creating an intimidating, hostile or offensive environment.

Sexual Harassment could include being forced to engage in unwanted sexual contact in exchange for a raise or promotion; being subjected to video exploitation or a campaign of sexually explicit graffiti; or frequently being exposed to unwanted images of a sexual nature in the work environment.

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.

This policy covers unwelcome conduct of a sexual nature. While romantic, sexual, intimate, personal or social relationships between members of the University community may begin as consensual, they may evolve into situations that lead to Sexual Harassment or Sexual Misconduct, including Dating or Domestic Violence, or Stalking, subject to this policy.

Claiming that the conduct was not motivated by sexual desire is not a defense to a complaint of harassment based on Gender.

HH. **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. 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 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.²⁴

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.²⁵

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 the 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 Respondent's relationship to the person (such as family member, spouse, friend, acquaintance or stranger) is irrelevant. (See complete definition of Affirmative Consent above.)²⁶

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.)

II. **Sexual Orientation** means one's preference in sexual partners and includes heterosexuality, homosexuality, or bisexuality.²⁷

Sexual Orientation is a Protected Status.

JJ. **Stalking** means engaging in a repeated Course of Conduct directed at a specific person that would cause a Reasonable Person to fear for the safety of self or others' safety or to suffer Substantial Emotional Distress.²⁸ For purposes of this definition:

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 Status(es) 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.

KK. **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.

- LL. **Support Advisor:** The Complainant and the Respondent may each elect to be accompanied by a Support Advisor to any meeting or interview regarding the allegations. The Support Advisor may be anyone, including a union representative from the Complainant's or Respondent's collective bargaining unit, an attorney, or, in the case of the Complainant, a Sexual Assault Victim's Advocate, provided the Support Advisor is not a person with information relevant to the allegations who may be interviewed by the Investigator during the investigation. The Support Advisor may not answer questions regarding the subject matter of the investigation for the Complainant or the Respondent. However, the Support Advisor may observe and consult with the Complainant or Respondent and take appropriate action to ensure that the investigation does not violate applicable laws, policies, or collective bargaining agreements.
- MM. **Third Party** means a person other than an Employee or a Student. Examples include employees of auxiliary organizations²⁹, unpaid interns, volunteers, independent contractors, vendors, and their employees, and visitors.
- NN. **Title IX** means Title IX of the Education Amendments of 1972.
- OO. **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, Dating and Domestic Violence and Stalking. (See Executive Order 1095.)
- PP. **VAWA** means the Violence Against Women Reauthorization Act of 2013 (which amends the Jeanne Clery Disclosure of Campus Crimes Statistics Act, commonly known as the Clery Act) (20 U.S.C. 1092(f)), under its Campus Sexual Violence Elimination Act provision (Campus SaVE Act).
- QQ. **Veteran or Military Status** means service in the uniformed services. Veteran or Military Status may be a Protected Status.
- RR. **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.

ADDENDUM A: STATE MANDATED HEARING ADDENDUM

INVESTIGATION AND HEARING PROCESS – FOR STUDENTS ACCUSED OF SEXUAL MISCONDUCT OR DATING AND DOMESTIC VIOLENCE (WHEN ADDENDUM B DOES NOT APPLY)

This Addendum, entitled "Addendum A - State Hearing Addendum," supersedes Article III.C.7-9 and Article IV of California State University Executive Order 1096 (Revised March 29, 2019); Article III.B.7-9 and Article IV of California State University Executive Order 1097 (Revised March 29, 2019); and Article IV of California State University Executive Order 1098 (Revised March 29, 2019), and applies to Complaints alleging Sexual Misconduct or Dating and Domestic Violence committed by a Student Respondent.³⁰

Article I. Scope of this Addendum

This Addendum **supersedes** the existing investigation and resolution process under Article III.C.7-9 and Article IV of EO 1096 (Revised August 14, 2020); Article III.B.7-9 and Article IV of EO 1097 (Revised August 14, 2020); and Article IV of EO 1098 (Revised August 14, 2020) (sanctions) for cases (i) alleging Sexual Misconduct or Dating and Domestic Violence by a Student that, (ii) if substantiated, could result in a severe sanction (suspension or expulsion), **and** (iii) where credibility of any Party or witness is central to the finding.³¹ Allegations of other misconduct set forth in the same Complaint that arise out of the same facts and/or incidents may also be investigated and resolved (including sanctions) in accordance with this Addendum.

Article II. Investigation Procedure

The Title IX Coordinator will either promptly investigate the Complaint or assign this task to another Investigator. If assigned to another Investigator, the Title IX Coordinator will monitor, supervise, and oversee all such delegated tasks, including reviewing all investigation draft reports before they are final to ensure that the investigation is sufficient, appropriate, impartial, and in compliance with the relevant Executive Order, including this Addendum.

At the onset of the investigation, the Title IX Coordinator will simultaneously provide both Parties a Notice of Investigation. The Notice of Investigation will include:

1. a summary of the Complaint (e.g., "who," "what," "when," and "where");
2. a copy of, or internet link to, the relevant Executive Order, including this Addendum;
3. a description of the investigation and resolution procedure (including the right to hearing and appeal);
4. the estimated timeline for completion of the investigation;
5. a description of the University's policy against Retaliation; and
6. information about the Parties' right to a Support Advisor. The Complainant and Respondent will have equal opportunities to present relevant witnesses and evidence in connection with the investigation and at any hearing. Upon request, the Complainant and Respondent will be advised of the status of the investigation. If new allegations are raised during the investigation that are materially different from those described in the Notice of Investigation, a revised Notice of Investigation will be issued to the Parties.

Article III. Evidence

A. Gathering of Evidence. The Investigator will take reasonable steps to gather all relevant evidence from the Parties, other witnesses or other sources. The Investigator will document the steps taken to gather evidence, even when those efforts are not successful.

The Investigator will notify the Parties in writing that they may:

1. submit documentary information to the Investigator;
2. submit a list of potential witnesses to the Investigator; and/or
3. request that the Investigator attempt to collect documents and other information that are not reasonably accessible to the requesting Party.

B. Basis for Declining Request. The Investigator may decline a Party's request to gather information if:

1. the request seeks information about the Complainant's sexual history with anyone other than the Respondent (unless such evidence about the Complainant's sexual behavior is offered to prove that someone other than the Respondent committed the alleged misconduct, or if the evidence concerns specific incidents of the Complainant's sexual behavior with respect to the Respondent and is offered to prove consent);
2. the request seeks information about the Respondent's sexual history with anyone other than the Complainant unless such information is used to prove motive or pattern of conduct;
3. the request seeks information that is unreasonably duplicative of evidence in the Investigator's possession;
4. the Investigator determines that the information is not relevant to disputed issues;
5. the request seeks information that can be reasonably and adequately obtained by the requesting Party from other independent or publicly available sources;
6. the burden of obtaining the information is likely to substantially outweigh the benefit that the evidence bears on a disputed issue; or
7. the requested information can be reasonably obtained through other means less likely to intrude on a person's privacy.

In determining the relevance of evidence, consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms of sexual activity, and consent given to sexual activity on one occasion does not constitute consent on another occasion.

Article IV. Review of Evidence

Before issuing a final investigation report (Final Investigation Report), the Investigator will share with the Complainant and Respondent a preliminary report of the evidence, along with all relevant evidence gathered as described above (Preliminary Investigation Report), redacted if and to the extent required by law. The Preliminary Investigation Report will: (a) describe the allegations; (b) identify the material facts – undisputed and disputed – with explanations as to why any material fact is disputed; and (c) describe the evidence presented and considered.

The Investigator may use discretion in determining how to provide access to the Preliminary Investigation Report with the Parties in light of the particular circumstances and any Party or witness privacy concerns. The

Preliminary Investigation Report will also identify any evidence offered by the Parties or any other witnesses that the Investigator concluded is not relevant to a material disputed fact, and will briefly explain why it is not relevant. Such evidence need not be attached to the report, but will be available for reasonable review upon request during the review of evidence process.

This process is collectively referred to as the "Review of Evidence."

Each Party will be given a reasonable opportunity to respond to the list of disputed facts and evidence and ask questions. In particular, each Party may:

1. meet again with the Investigator;
2. identify additional disputed facts;
3. respond to the evidence in writing;
4. request that the Investigator ask specific questions to the other Party and other witnesses;
5. identify additional witnesses; and
6. request that the Investigator gather additional evidence.

The Investigator will share with the Parties the answers to questions posed during the Review of Evidence. If additional disputed material facts are identified or relevant evidence is gathered, it will be included in the Preliminary Investigation Report (or in a separate addendum) and shared with all Parties, who will be given a reasonable opportunity to respond to the new evidence and ask questions. The Investigator determines when it is appropriate to conclude the Review of Evidence.

Article V. Investigation Report, Pre-Hearing Disposition, and Scheduling of Hearing

1. The Final Investigation Report will include all of the information included in the Preliminary Investigation Report as well as additional relevant evidence received during the Review of Evidence. Any relevant documentary or other tangible evidence provided by the Parties or witnesses, or otherwise gathered by the Investigator will be attached to the Final Investigation Report as exhibits or otherwise made available for reasonable review by the Parties and at the hearing. Evidence offered by the Parties or any other witnesses that the Investigator concluded is not relevant to a material disputed fact will also be accessible to the Hearing Officer during the hearing.
2. Absent good cause (of which the Parties will receive written notice): (i) the investigation should be concluded within **100 Working Days** from the date that Notice of Investigation is provided to the Parties; and (ii) the Final Investigation Report should be completed and provided to the Parties within **10 Working Days** after the Review of Evidence has concluded. Any extensions will be granted, and notice to the Parties given, as set forth in Article V. E. of EO 1096 and EO 1097.
3. If assigned to another Investigator, the Title IX Coordinator will monitor, supervise, and oversee all delegated tasks, including reviewing all draft reports before they are finalized to ensure that the investigation was sufficient, appropriate, impartial, and in compliance with the relevant Executive Order, including this Addendum.
4. Within **10 Working Days** after the Parties have been provided the Final Investigation Report, the Parties will be informed of the timelines that will apply to the pre-hearing and hearing processes described in Article VII below.

Article VI. Informal Resolution³²

If the Title IX Coordinator or either Party believes that it may be possible to resolve the Complaint in a prompt, fair, and reasonable manner without a hearing, the Title IX Coordinator may suggest that the Parties consider an Informal Resolution subject to the following:

1. both Parties must agree to engage in the Informal Resolution process;
2. any agreed-upon remedies and disciplinary sanctions will have the force and effect of sanctions imposed following a Hearing;
3. the terms of any resolution must be memorialized in writing and signed by the Parties and the Title IX Coordinator; and
4. the resolution will be final and not appealable by either Party.

Article VII. Pre-Hearing and Hearing Processes

1. The Student Conduct Administrator, Title IX Coordinator, or other appropriate Administrator (Hearing Coordinator) will be responsible for coordinating the hearing process. The Hearing Coordinator's duties will include: scheduling the hearing; notifying witnesses of the hearing; ensuring that the Hearing Officer is provided with appropriate materials including a copy of the report and any exhibits; coordinating videoconferencing (if necessary); and securing a location for the hearing. The Hearing Coordinator will also act as liaison between the Parties and the Hearing Officer on procedural matters.

2. The Parties will be given written notice of the date, time, and location of the hearing as well as the identity of the Hearing Officer. Notification of the hearing will be sent to the designated CSU campus e-mail address, unless the recipient has specifically requested in writing to the Hearing Coordinator that notice be given to a different e-mail address. Communications will be deemed received on the date sent. The hearing will not be set sooner than **20 Working Days** after the date of notice of hearing.

3. Timelines:

Hearing Officer

Any objections to an appointed Hearing Officer will be made in writing to the Hearing Coordinator within **5 Working Days** after notice of the identity of the Hearing Officer has been provided.

The objection must be based on an actual conflict of interest. A conflict of interest exists if the Hearing Officer has a personal relationship with one of the

Parties or witnesses or has demonstrated actual bias towards a Party or witness. The fact that a Hearing Officer has previously served as a Hearing Officer in university proceedings will not constitute a conflict of interest. The Hearing Coordinator will determine if a conflict of interest exists. In that event, the Parties will be notified in writing of the name of the new Hearing Officer. The date for the hearing may need to be rescheduled. Any objection to the new Hearing Officer will be made in accordance with this section.

Hearing Process

No later than **15 Working Days** before the hearing, each Party will:

- a. Provide to the Hearing Coordinator the name of, and contact information for, the Party's Support Advisor and support person (if any);

- b. Make any requests to the Hearing Coordinator to consolidate pending cases for hearing;
- c. Provide to the Hearing Coordinator a proposed witness list that includes the names of, and current contact information for, that Party's proposed witnesses as well as an explanation of the relevance of each proposed witness's testimony and the disputed issue to which the witness's testimony relates. Absent extenuating circumstances, such witnesses should have been identified to the investigator during the investigation process, and referenced in the investigation report.

The Hearing Officer will make all determinations regarding pre-hearing matters, including witness participation and questions, and will promptly notify the Hearing Coordinator who, in turn, will promptly notify the Parties.

No later than **10 Working Days** before the hearing, the Hearing Coordinator will:

- a. Share a final witness list with the Parties.
- b. Notify each witness of the date, time and location of the hearing. Witnesses will be instructed to attend the hearing and to promptly direct any questions or concerns about their attendance at the hearing to the Hearing Coordinator.

No later than **5 Working Days** prior to the hearing, the Parties will submit a list of proposed questions to the Hearing Coordinator.

No later than **3 Working Days** before the hearing, the Parties will submit to the Hearing Coordinator any: (i) objections to, or questions about, the witness list or (ii) requests for permission to participate in the hearing remotely or out of the physical presence of the other Party. All communications will be in writing.

No later than **1 Working Day** before the hearing, the Hearing Officer will resolve all pending requests regarding participation at the hearing. The Hearing Coordinator will give prompt notice to the Parties (and witnesses) as appropriate.

The hearing is closed to all persons except the Parties; the Parties' respective Support Advisors; one support person per Party; appropriate witnesses while they are testifying; the Student Conduct Administrator; Title IX Coordinator; Hearing Officer; and Hearing Coordinator. A CSU administrator may also be present, but will not participate in the hearing. Campus police or a security officer may also be present if deemed appropriate or necessary by the Vice President for Student Affairs, Hearing Coordinator or Hearing Officer. The University will take reasonable steps to instruct witnesses employed by the University to attend the hearing, and to arrange for such witnesses to be available to attend, provided that such employee witnesses are timely identified to the Hearing Coordinator in accordance with this Executive Order.

4. The University will instruct Student witnesses to attend the hearing, provided that such Student witnesses are timely identified to the Hearing Coordinator in accordance with this Executive Order. Students who fail to comply may be subject to discipline, depending on the circumstances. The University will take reasonable steps to accommodate Student witnesses including arranging for them to be excused from class attendance, if necessary.

5. The hearing will commence with an overview of the hearing process given by the Hearing Officer, after which the Parties will be given an opportunity to ask questions about the hearing process. Generally, the Investigator or the Title IX Coordinator (if not the Investigator) will be the first witness and will describe the complaint, investigation process, and summarize the evidence. Each Party will be given an opportunity to

make an opening statement that will last no longer than 10 minutes. The Support Advisor and any support person are not permitted to make the opening statement or speak during the hearing. The Parties will not make closing statements.⁶

6. The Hearing Officer may ask questions of the Complainant, Respondent, Investigator, any University official (e.g., Title IX Coordinator or Student Conduct Administrator), and any witness.

- a. The Complainant and Respondent may be present at all times during the hearing unless the Hearing Officer determines that a Party should be excused for extraordinary circumstances.
- b. As set forth above, the Parties will give the Hearing Coordinator a written list of any questions that they would like the Hearing Officer to ask the witnesses. The Parties may also propose follow-up questions to the Hearing Officer during the hearing, at appropriate times designated by the Hearing Officer.
- c. The Hearing Officer will ask the questions proposed by the Parties except for questions that:
 - i. seek information about the Complainant's sexual history with anyone other than the Respondent (unless such evidence about the Complainant's sexual behavior is offered to prove that someone other than the Respondent committed the alleged misconduct);
 - ii. seek information about the Respondent's sexual history with anyone other than the Complainant, unless such information is used to prove motive or pattern of conduct;
 - iii. seek information that is unreasonably duplicative of evidence in the Hearing Officer's possession; or
 - iv. the Hearing Officer determines are not relevant to material disputed issues, are argumentative or harassing or unduly intrude on a witness's privacy.
- d. The Hearing Officer has discretion to modify or change the wording of a question proposed by a Party (for example, when a question is unclear or inappropriate in tone) as long as the substance of the question is preserved.
- e. The Parties will address any questions, concerns or objections about a question (or line of questioning) to the Hearing Officer who will use their discretion to resolve any issues consistent with the Executive Order. Support Advisors may not speak on behalf of a Party.
- f. 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.

7. Hearsay may be considered, but will only be given the weight appropriate under all of the circumstances, with due consideration given to the importance of credibility assessment. Absent extenuating circumstances, the Hearing Officer will not rely on prior statements made by the Parties or witnesses during the investigation whose credibility is central to the determination unless those Parties or witnesses make themselves available for examination by the Hearing Officer.

8. The Hearing Officer will not, prior to preparing the Hearing Officer's Report (described below), have substantive communications about the facts of the case with either Party or the Investigator unless in the presence of both Parties and a University official (e.g., Hearing Coordinator, Title IX Coordinator or Student Conduct Administrator).

9. New evidence not reasonably available at the time of the investigation to the Party seeking to introduce the evidence may be considered in the Hearing Officer's discretion.

10. The Hearing Officer will make an official audio recording of the hearing. The recording is University property. No other recording of the hearing is permitted. The audio recording will be retained by the Hearing

Coordinator or designee in accordance with the Campus records/information retention and disposition schedule.

11. If either Party fails to appear at the hearing without good cause the hearing will nevertheless proceed. Whether good cause exists is determined by the Hearing Officer.

12. The Respondent will not be found to have violated University policy solely because the Respondent failed to appear at the hearing. Nor will the Respondent be found not to have violated the University policy solely because a Complainant or other witness failed to appear at the hearing.

13. Abusive or otherwise disorderly behavior that causes a material disruption is not tolerated. The Hearing Officer may eject or exclude anyone (including either Party, their Support Advisors, and support persons) whose behavior causes a material disruption.

14. The Hearing Officer controls the hearing, is responsible for maintaining order during the hearing, and makes whatever rulings are necessary to ensure a fair hearing. The Hearing Officer's decisions in this regard are final.

15. Where there is more than one Respondent or Complainant in connection with a single occurrence or related multiple occurrences, the Hearing Officer and the Parties may agree to a single hearing. A Party may request consolidation with other cases, or the Student Conduct Administrator may initiate the consolidation (subject to FERPA and other applicable privacy laws). All such requests will be made in accordance with timelines set forth in this section. The Hearing Officer makes consolidation decisions, which are subject to review by the Vice President of Student Affairs or designee.

Article VIII. Standard of Proof, Report, and Hearing Officer's Report

1. After the hearing, the Hearing Officer will make findings of fact and conclusions about whether the Respondent violated University Policy (Hearing Officer's Report). The standard of proof the Hearing Officer will use is whether each allegation is substantiated by a Preponderance of the Evidence. The Title IX Coordinator will review the Hearing Officer's Report to ensure compliance with this Executive Order. The Hearing Coordinator will transmit the Hearing Officer's Report promptly to the Parties, the Title IX Coordinator, and the Student Conduct Administrator, usually within **10 Working Days** of the close of the hearing. If no violation is found, the president (or designee) will also be notified.
2. If a violation is found, within **5 Working Days** of receiving such finding the Parties may submit to the Hearing Coordinator an impact statement or other statement regarding discipline that is no more than 2000 words in length. The document is an opportunity for the Parties to suggest disciplinary outcomes and to provide information that they believe is important for the Hearing Officer to consider. The Student Conduct Administrator and/or Title IX Coordinator may also submit a written statement regarding aggravating and mitigating factors, including whether the Respondent was previously found to have violated the Student Code of Conduct.
3. Within **5 Working Days** after receiving and considering any impact or other statements submitted by the Parties and other statements described above, the Hearing Officer will submit the Hearing Officer's Report to the president (or designee), including recommended sanctions (as defined in EO 1098) if a Respondent has been determined to have violated University policy. The Hearing Officer's Report will attach the Investigation Report and will include:
 - a. the factual allegations and alleged policy violations;

- b. the Preponderance of the Evidence standard;
- c. the evidence considered including an analysis of the credibility of the Parties and witnesses, when credibility assessments are required to resolve factual disputes;
- d. any material evidence identified by the Parties or witnesses that the Hearing Officer determined was not relevant (or duplicative) and the reason why the evidence was not considered to be relevant;
- e. a list of all questions proposed by the Parties at the hearing, and if any questions were not asked, why;
- f. a summary of the procedural issues raised by the Parties before or during the hearing;
- g. the factual findings and the evidence on which the factual findings are based;
- h. to the extent that the factual findings required a determination concerning of the relative credibility or lack of credibility of the Parties or witnesses, an explanation as to how that determination was reached; and
- i. a determination of whether the Executive Order was violated and an analysis of the basis for that determination.

Article IX. Final Decision/Notification

In cases where the Hearing Officer has found a violation of policy, the president (or designee) will review the Investigation Report and the Hearing Officer's Report and issue a decision concerning the appropriate sanction within **10 Working Days** of receipt of the Hearing Officer's Report.

1. The president may impose the recommended sanctions, adopt a different sanction or sanctions, or reject sanctions altogether. If the president adopts a sanction other than what is recommended by the Hearing Officer, the president must set forth the reasons in the Decision Letter.
2. The president will simultaneously send the Decision Letter electronically to the Respondent and Complainant at the University-assigned or other primary e-mail address linked to their University accounts.³³ The decision will also be sent to the Student Conduct Administrator and the Hearing Officer.
3. The Decision Letter will include:
 - a. the outcome of the hearing, including any sanction imposed, and the name of the Respondent(s);
 - b. a copy of the Hearing Officer's Report, redacted as appropriate or as otherwise required by law; and
 - c. notice of the Complainant's and Respondent's right to appeal to the CO.
4. The president will also send the Decision Letter to the Title IX Coordinator so that they may determine whether any additional Remedies (or other supportive measure) will be afforded or undertaken in order to maintain a safe and nondiscriminatory University environment.
5. Unless the CO notifies the campus and Parties that an appeal has been filed, the president's sanction decision becomes final **11 Working Days** after the date of the Decision Letter.

Article X. Appeal of Decision

- A. **Filing an Appeal to the CO.** Any Complainant or Respondent who is not satisfied with a Campus hearing outcome may file an appeal with the CO no later than **10 Working Days** after the date of the Decision Letter.

B. **Written Appeal.** The appeal will be in writing and will be based only on one or more of the appeal issues listed below:

1. The hearing outcome is not supported by substantial evidence (in other words, there was no reasonable basis for such findings or conclusions);
2. Prejudicial procedural errors impacted the hearing outcome to such a degree that the hearing did not comply with this Executive Order;
3. New evidence that was not reasonably available at the time of the hearing and would have affected the Hearing Officer's decision about whether the Respondent violated CSU policy; or
4. The sanction(s) imposed constituted an abuse of discretion based on the substantiated conduct.

C. **Issues and Evidence on Appeal.** The issues and evidence raised on appeal will be limited to those raised and identified during the hearing, unless new evidence becomes available after the Campus hearing process and is made part of the appeal by the appealing party. The CO may conduct an interview, at the CO's discretion, with the appealing party and/or the Campus to clarify the written appeal. Appeals will 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

- D. **Acknowledgement of Appeal.** The CO will provide prompt written acknowledgement of the receipt of the appeal to the appealing Party, and will provide prompt written notification of the appeal, including a copy of the appeal, to the non-appealing Party and the Campus Title IX Coordinator. The notice will include the right of the non-appealing Party and the Campus to provide a response to the appeal within **10 Working Days** of the date of the notice.
- E. **Reasonable Accommodation.** The CO will provide reasonable accommodations to any Party or witness in the appeal process with a qualified Disability upon request by the person needing the accommodation. A reasonable accommodation may include an extension under these procedures. The timeframe for the CO Appeal Response will automatically be adjusted for the time needed, if any, to provide reasonable accommodations.
- F. **Scope of CO Review.** The CO review will not involve a new hearing by the CO and will not consider evidence that was not introduced during the Campus hearing, unless the new evidence was not reasonably available at the time of the Campus hearing process. The CO may make reasonable inquiries to determine if the new evidence could have affected the hearing determination. If the CO review determines the hearing should be reopened to cure any defects in the hearing and/or consider new evidence introduced for the first time on appeal (that could have affected the hearing determination), the matter will be remanded back to the Campus and the hearing reopened at the Campus level. Under very limited circumstances, the CO can reverse the Hearing Officer's decision, provided that the factual findings remain intact.
- G. **Reopening a Campus Hearing.** The CO will return the matter to the Campus and will specify in writing the timeline by which a reopened hearing must be completed. The CO will simultaneously notify the Parties of the reopening of the hearing and the timeline for completion of the reopened hearing. The

Campus will complete the reopened hearing and provide the CO with an amended Hearing Officer's Report. The Campus will also provide the Parties with amended Notices of Hearing Outcome, and such Notices will provide the Parties the opportunity to appeal any new or amended findings, in accordance with this Executive Order. Upon receipt of the amended hearing report, the CO will contact the appealing party to determine whether that Party wishes to continue with the appeal.

- H. **Reversal by CO.** If the hearing outcome (determination regarding policy violation) is not supported by the facts as determined by the Hearing Officer, the CO may vacate and reverse the Hearing Officer's decision, but only with respect to whether University policy was violated.
- I. **Timeline.** The CO will respond to the appealing Party no later than **30 Working Days** after receipt of the written appeal unless the timeline has been extended as specified in Article V, E. of EO 1096 and 1097.
- J. **CO Appeal Response.** The CO Appeal Response will include a summary of the issues raised on appeal, a summary of the evidence considered, the scope of review, and the determination(s) reached regarding the issue(s) identified within the written appeal. A copy of the final CO Appeal Response will be forwarded to the Complainant and Respondent, as well as the Campus Title IX Coordinator. The CO Appeal Response is final and concludes the Complaint and CO review process under this Executive Order.
- K. **Notifications to the Parties.** The Complainant and the Respondent will be simultaneously informed, in writing, whenever there is a change to the outcome of the proceedings (findings and/or sanctions).

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ADDENDUM B: FEDERAL MANDATED HEARING ADDENDUM

In 2020, through Secretary of Education Betsy DeVos, the United States Department of Education, Office for Civil Rights (OCR) issued and amended federal regulations (Federal Regulations) implementing the sex discrimination law known as "Title IX," which is part of the Education Amendments of 1972. The Federal Regulations are titled *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance* (34 C.F.R. 106). The Federal Regulations were published in the Federal Register on May 19, 2020. As of their effective date, currently August 14, 2020, and unless and until delayed or rescinded, the Federal Regulations have the full force of law and all U.S. higher education institutions that receive federal funds, including the CSU, must comply with the Federal Regulations.

This Addendum, entitled "**Addendum B: Federal Mandated Hearing Addendum**" supplements and replaces parts of [California State University Executive Order 1096](#) (Revised August 14, 2020), [California State University Executive Order 1097](#) (Revised August 14, 2020), [Article IV of California State University Executive Order 1098](#) (Revised August 14, 2020), and [Addendum A: State Mandated Hearing Addendum](#), with respect to cases involving Sexual Harassment as defined by the Federal Regulations.

This Addendum is in effect during the time period that the Federal Regulations are in effect and is automatically delayed or rescinded if the Federal Regulations are delayed or rescinded.

Article I. Scope of this Addendum

This Addendum, **Addendum B: Federal Mandated Hearing Addendum**, replaces the investigation and resolution process for [Executive Order 1096](#) (Revised August 14, 2020), [Executive Order 1097](#) (Revised August 14, 2020), [Article IV of Executive Order 1098](#) (Revised August 14, 2020), and [Addendum A: State Mandated Hearing Addendum](#), for cases that are defined by the Federal Regulations as Sexual Harassment in an Education Program or Activity against a person (including Students and Employees of the CSU) in the United States. The Title IX Coordinator, with the DHR Administrator, will assess allegations of non-Addendum B misconduct set forth in the same Complaint that arise out of the same facts and/or incidents that may also be investigated and resolved (including sanctions and discipline) in accordance with this addendum or other CSU policies.

Article II. Definitions

Capitalized terms are defined in this Addendum and in Executive Orders 1096, 1097 and 1098. In implementing this process, the definitions in Addendum B apply where they differ from those listed in Executive Orders 1096, 1097, and 1098. For purposes of this Addendum, the following definitions apply:

- A. **Bias and Conflict of Interest** means that whether bias exists against Complainants or Respondents generally or against individual Complainants or Respondents, it requires examination of the particular facts of a situation. In determining whether bias exists, the following should be considered:
1. an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased;
 2. an evaluation that does not apply generalizations that might unreasonably conclude that bias exists (for example, assuming that a declaration that one is a feminist, or survivor, means that they are biased against men, or that a male is incapable of being sensitive to women, or that prior work as a victim advocate, or as a defense attorney, renders the person biased for or against Complainants or

Respondents); and

3. whether the bias will impede the impartiality of the person being evaluated.

- B. **Complainant**³⁴ means an individual who is alleged to have been subjected to conduct that could constitute Sexual Harassment.
- C. **Directly Related** means anything that is not incidental to a matter at issue.
- D. **Education Program or Activity** includes all the operations of the CSU as well as locations, events, or circumstances over which the CSU exercised substantial control over the Respondent (Student, Employee, or Third Party) **and** the context in which the Sexual Harassment occurs. Education Program or Activity also includes any building owned or controlled by the CSU or a student organization that is officially recognized by the CSU.
- E. **Formal Complaint** means a document or electronic submission filed by a Complainant that contains the Complainant's physical or digital signature³⁵ or a document signed by the Title IX Coordinator³⁶ alleging Sexual Harassment against a Respondent and requesting an investigation of the allegation of Sexual Harassment. At the time that the Formal Complaint is filed, a Complainant must be participating in or attempting to participate in an Education Program or Activity of the CSU.
- F. **Relevant** means having significant and demonstrable bearing on the matter at hand.
- G. **Remedies** are individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant at the conclusion of the Formal Complaint process where the Respondent has been found responsible.
Remedies may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escorts, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
The Title IX Coordinator is responsible for coordinating the effective implementation of Remedies.
- H. **Respondent** means an individual who has been reported to be a perpetrator of conduct that could constitute Sexual Harassment.
- I. **Sexual Harassment** means conduct on the basis of Sex that satisfies one or more of the following:
1. An Employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to an Education Program or Activity.
 3. **Sexual Assault**³⁷:
 - a. **Rape** is the penetration, or attempted penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Affirmative Consent of the Complainant. Rape also includes the attempted penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Affirmative Consent of the Complainant, with the present ability and the intent to commit Rape.
 - b. **Fondling** is the touching of the private body parts of another person for the purpose of sexual gratification, without the Affirmative Consent of the victim, including instances where the Complainant is incapable of giving Affirmative Consent because of their age or because of their temporary or permanent mental incapacity.

- c. **Incest** is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - d. **Statutory Rape** is sexual intercourse with a person who is under the age of 18 years, the California statutory age of consent.
4. **Dating Violence**³⁸ means physical violence or threat of physical violence committed by a person—
- a. who is or has been in a social relationship of a romantic or intimate nature with the Complainant; **and**
 - b. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship.
 - ii. The type of relationship.
 - iii. The frequency of interaction between the persons involved in the relationship.
5. **Domestic Violence**³⁹ means physical violence or threat of physical violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant.
6. **Stalking**⁴⁰ means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- a. fear for his or her safety or the safety of others; or
 - b. suffer substantial emotional distress.
- J. **Simultaneously** means at approximately the same time.
- K. **Supportive Measures** are individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent regardless of whether a Formal Complaint is filed. Supportive Measures are designed to restore or preserve equal access to CSU Education Programs or Activities without unreasonably burdening the other Party, including to protect the safety of all Parties or the educational environment.

Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escorts, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures. Supportive Measures will remain Confidential except when it is not possible to maintain Confidentiality in order to provide the Supportive Measures.

Article III. Response to Report of Sexual Harassment

A. Response to a Report of Sexual Harassment

After receiving a report of Sexual Harassment, the Title IX Coordinator will contact the Complainant promptly to discuss the availability of Supportive Measures. During the discussion, the Title IX Coordinator will consider the Complainant's wishes with respect to Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint,

and explain the process for filing a Formal Complaint.

B. Response to a Formal Complaint

In response to a Formal Complaint, the process described in this Addendum will be followed. In the absence of a Formal Complaint, the Title IX Coordinator will provide appropriate Supportive Measures as described above. A Formal Complaint must be investigated even if the Complainant does not know the Respondent's identity.

C. Emergency Removal

A Student Respondent may be removed from an Education Program or Activity on an emergency basis before an investigation concludes or where no investigation or hearing is pending. Prior to the removal, an individualized safety and risk analysis will be conducted.

The removal is referred to as an "Emergency Removal," and has the effects of an Interim Suspension, as set forth in CSU Executive Order 1098, Article VI, including that during the period of the Emergency Removal, the Student may not, without prior written permission from the Campus president or designee, enter any Campus of the California State University other than to attend a hearing.

As with Interim Suspensions, as set forth in CSU Executive Order 1098, Article VI, the president or vice president designee, in consultation with the Title IX Coordinator, will determine whether there is an immediate threat to the physical health or safety of any Student or other individual arising from the allegations of Sexual Harassment to warrant Emergency Removal. An assessment that the Respondent poses a threat of obstructing the Sexual Harassment investigation or destroying Relevant evidence does not justify Emergency Removal.

Where a determination is made that justifies Emergency Removal, the Respondent will be provided with notice and given an opportunity to challenge the decision immediately following the removal, in accordance with the procedures set forth in CSU Executive Order 1098, Article VI, including the right to a hearing within **10 Working Days** of a request by the Respondent for such a hearing, to determine if there is an immediate threat to the physical health or safety of a Student or other individual arising from the allegations of Sexual Harassment. The hearing will be conducted under CSU Executive Order 1098, Article III.D, and not this Addendum as it relates to hearings.

If it is determined that the alleged conduct does not arise from the Sexual Harassment allegation/s, the Campus may address a Student Respondent's alleged conduct under the Student Conduct Code.

D. Administrative Leave (Temporary Suspension)

A Campus may place a non-student Employee on Administrative Leave (sometimes referred to as Temporary Suspension) in accordance with applicable Collective Bargaining Agreements or CSU policies while the Formal Complaint process is pending.

Article IV. Dismissal/Referral of a Formal Complaint

When the Title IX Coordinator receives a Formal Complaint, or where new information or events arise, the Title IX Coordinator will assess whether the Formal Complaint meets the requirements of the Federal Regulations to move forward under the process in this Addendum. A determination that allegations in a Formal Complaint do not meet the requirements of the Federal Regulations will result in a dismissal of the allegations in the Formal Complaint that do not meet the requirements and, in some cases, a referral of the allegations to another process as the University may have an obligation to address the matter under other laws and policies. The Federal Regulations require that there be two types of dismissals: mandatory and discretionary.

A. Mandatory Dismissal/Referral

The Title IX Coordinator will determine whether allegations in a Formal Complaint must be dismissed for

purposes of the Federal Regulations.

If a Formal Complaint is dismissed it may still be referred, if appropriate, to be addressed under the processes in the non-Addendum B portions of Executive Orders 1096, 1097 and 1098, including Addendum A – State Mandated Hearing Addendum, or other applicable policies.

Under the Federal Regulations, a Formal Complaint will be dismissed as to any conduct alleged that:

1. would not meet the definition of Sexual Harassment even if proved;
2. did not occur in an Education Program or Activity; or
3. did not occur in the United States.

B. Discretionary Dismissal

At any time during the process, it is within the discretion of the Title IX Coordinator to dismiss a Formal Complaint, or any conduct alleged within a Formal Complaint, where:

1. a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any part of it;
2. the Respondent is no longer a Student or Employee; or
3. if the specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

C. Notice Requirement

Written notice of a mandatory or discretionary dismissal and reason(s) for the dismissal will be sent Simultaneously to the Parties when a Title IX Coordinator dismisses a Formal Complaint. The notice will inform the Parties of their right to appeal the dismissal, whether the matter will be referred to another process and the process for submitting an appeal. This notice may be accompanied by a Notice of Allegations, as described in Article VI. below, where a Notice of Allegations has not already been provided.

D. Appeal after Mandatory or Discretionary Dismissal

Either Party may appeal from a dismissal of a Formal Complaint or any part of the Complaint. The appeal must be filed within **10 Working Days** from the date of the Notice of Dismissal. The appeal will be in writing and will be based only on one or more of the following grounds:

1. a procedural irregularity occurred that affected the dismissal of the Formal Complaint;
2. new evidence that was not reasonably available at the time the dismissal decision was made that could affect the decision to dismiss the Formal Complaint; or
3. the Title IX Coordinator (or designee) who dismissed the Formal Complaint, had a Conflict of Interest or Bias for or against the Complainant or Respondent in this case or Complainants or Respondents in general that affected the outcome of the matter.

Appeals will be filed with the Chancellor's Office (CO) and will be addressed to:

Systemwide Title IX Unit
Systemwide Human Resources
Office of the Chancellor
TIX-Dismissal-Appeals@calstate.edu

If you are unable to file an appeal or a response to an appeal electronically, please contact the Campus Title

IX Office for assistance.

When an appeal is submitted, the other Party as well as the Campus Title IX Coordinator will be notified in writing. In response to the appeal, the other Party will be given **5 Working Days** from their receipt of notice of the appeal to submit a written statement in support of or challenging the dismissal. Within **10 Working Days** of the CO's receipt of the appeal, the Parties will Simultaneously receive (via email) a written decision with explanation.

The CO review will not involve a new assessment of the Dismissal/Referral or consideration of evidence that was not introduced during the Campus review, unless the new evidence was not reasonably available at the time of the review.

If the CO review determines that the Dismissal/Referral should be reviewed to cure any defects, the matter will be remanded back to the Campus to reassess within a timeframe specified by the CO. The Parties will be informed Simultaneously of the review and the timeframe. Once the review is complete the Campus will provide the Parties and the CO with either a Notice of Dismissal/Referral or Notice of Allegations, depending on the outcome, that reflects any changes to the determination. The notice will inform the Parties of their right to appeal and the CO will contact the appealing Party to determine whether that Party wishes to continue with the appeal.

The CO appeal response is final and concludes the Dismissal/Referral process under this Addendum. If there is a mandatory dismissal of a Formal Complaint, it does not preclude the Campus from later identifying a relevant policy or policies that address the alleged conduct, notifying the Parties of the policy or policies, and moving forward under the procedures of those policies.

Article V. Consolidation of Formal Complaints

Where Formal Complaints alleging Sexual Harassment are asserted by, or alleged against, more than one person, or by one Party against the other Party, and they arise out of the same events or circumstances, the Title IX Coordinator may, in their discretion, consolidate two or more Formal Complaints into one Formal Complaint.

Where a Formal Complaint process involves more than one Complainant or more than one Respondent, references in this Addendum to the singular "Party," "Complainant," or "Respondent" include the plural, as applicable.

Article VI. Notice of Allegations

When the Title IX Coordinator receives a Formal Complaint, the Title IX Coordinator will Simultaneously provide both Parties a written Notice of Allegations.

The Notice of Allegations will be provided to both Parties regardless of whether the Formal Complaint must be dismissed under Article IV. If a Formal Complaint is dismissed at this stage of the process, the Notice of Allegations will also include the Notice of Dismissal and appeal rights.

The Notice of Allegations will include:

- A. a copy of, or web link to, the relevant Executive Order, including this Addendum;
- B. the identities of the Parties involved in the incident, if known;
- C. a summary of the Formal Complaint (e.g., "who," "what," "when," and "where");
- D. reference to the specific definition of Sexual Harassment under Article II that is implicated in the Formal

Complaint;

- E. a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Formal Complaint process;
- F. a description of the Formal Complaint process (including the right to hearing and appeal);
- G. information about the Parties' right to a Support Advisor (as defined below), and that a Support Advisor may be, but is not required to be, an attorney;
- H. a statement that if a Party has a Support Advisor (as defined below), a copy of evidence and a subsequent Final Investigation Report will be Simultaneously sent to both the Party and their Support Advisor unless the Party notifies the Investigator or Title IX Coordinator in writing that they do not wish this information to be sent to their Support Advisor;
- I. a statement that reads as follows: "A Complainant shall proceed with a Formal Complaint in good faith and a Complainant who knowingly and intentionally files a false Formal Complaint or any individual who is determined to have provided false statements or information during the investigation/appeal review shall be subject to discipline in accordance with the Student Conduct Code, applicable collective bargaining agreements, CSU policies, or legal requirements (e.g., Education Code Section 89530 et seq.). Likewise, the Respondent and witnesses are required to cooperate with the investigation including being forthright and honest during the process. The mere fact that two individuals have different recollections and one is later found to be more credible does not make the other person's statement false. Disciplinary action against an individual for knowingly filing a false Formal Complaint or for providing a knowingly false statement will not be deemed to be Retaliation";
- J. an explanation that the Complainant and Respondent will have equal opportunities to present Relevant witnesses and inculpatory and exculpatory evidence in connection with the investigation and at any hearing;
- K. a statement that the Parties may identify specific documents and information that they believe are Relevant and request that the Investigator attempt to collect such documents and other information that are not reasonably accessible to the requesting Party;
- L. the estimated timeline for completion of the investigation;
- M. a statement that upon request, the Complainant and Respondent will be advised of the status of the investigation; and
- N. a description of the University's policy against Retaliation.

If new allegations are raised during the investigation that were not included in the Notice of Allegations, a revised Notice of Allegations will be issued Simultaneously to the Parties.

If the Notice of Allegations also serves as notice of a Respondent's expected attendance at an interview, it will include details of the **date, time, location, participants, and purpose of that interview**. The Notice of Allegations must be provided to a Respondent at least **5 Working Days** prior to the interview.

If a Respondent requests to meet sooner than **5 Working Days** after receipt of the Notice of Allegations, they should verbally confirm at the start of the meeting that they are aware that they were provided notice of at least **5 Working Days** and this confirmation should be documented by the Title IX Coordinator or Investigator.

Article VII. Informal Resolution

At any time prior to the issuance of the Hearing Officer's Report, if the Title IX Coordinator or either Party

believes that it may be possible to resolve the Formal Complaint in a prompt, fair, and reasonable manner without a hearing, the Parties may consider an Informal Resolution that does not involve a full investigation and adjudication, subject to the following:

- A. informal Resolution under this Addendum may **only** be offered where a Formal Complaint has been filed;
- B. the University cannot offer or facilitate Informal Resolution under this Addendum to resolve allegations that an Employee sexually harassed a Student; and
- C. the University must obtain the Parties' voluntary, written consent before starting the Informal Resolution process.

Once the Title IX Coordinator determines that Informal Resolution is appropriate, the Parties should Simultaneously be provided written notice regarding Informal Resolution that includes the following:

- A. the allegations of Sexual Harassment, as defined by this Addendum;
- B. the requirements of the Informal Resolution process including that once the Informal Resolution process is finalized neither Party is permitted to file another Formal Complaint arising from the same allegations;
- C. an explanation that at any time prior to agreeing to a resolution, any Party has the right to withdraw from the Informal Resolution process and resume the Formal Complaint process;
- D. an explanation of any consequences resulting from participating in the Informal Resolution process, including the records that will be maintained or could be shared; and
- E. the Parties' right to consult with a Support Advisor, if any.

The Title IX Coordinator will oversee the Informal Resolution process and make the final determination on all Informal Resolutions facilitated by the Title IX Coordinator or designee regarding whether the terms agreed to by the Parties are appropriate in light of all of the circumstances of the Formal Complaint.

The Informal Resolution process will be completed prior to any determination of responsibility being made, but no later than **60 Working Days** after both Parties provide voluntary, written consent to participate in the Informal Resolution process.

The University may not require the Parties to participate in an Informal Resolution process under this Addendum, nor may a Party be required to waive their right to the investigation and adjudication of a Formal Complaint as a condition of enrollment or employment, or continuing enrollment or employment.

The terms of any Informal Resolution must be put in writing and signed by the Parties, and the Title IX Coordinator. Prior to signing the Informal Resolution, the Title IX Coordinator will consult with the Student Conduct Administrator and/or other appropriate University Administrator responsible for the implementation of the terms. Use of electronic signatures is permitted.

Any agreed-upon Remedies and disciplinary sanctions will have the force and effect of sanctions imposed following a hearing.

The resolution will be final and not appealable by either Party.

Article VIII. Investigation of a Formal Complaint

The Title IX Coordinator will either promptly investigate the Formal Complaint or assign this task to another Investigator. If assigned to another Investigator, the Title IX Coordinator will monitor, supervise, and oversee all such delegated tasks, including reviewing all investigation draft reports before they are final to ensure that the investigation is sufficient, appropriate, impartial, and in compliance with the relevant Executive Order,

including this Addendum.

A. Gathering of Evidence

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the Parties. The Investigator will take reasonable steps to gather all relevant evidence from the Parties, other witnesses or other sources. The Investigator will document the steps taken to gather evidence, even when those efforts are not successful.

Parties should be aware that **all** evidence Directly Related to the investigation will be provided to the other Party, subject to the exceptions described below.

The University cannot access, consider, disclose, or otherwise use a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the University obtains that Party's voluntary, written consent to do so for a Formal Complaint process under this Addendum.⁴¹

The University will not restrict the ability of either Party to discuss the allegations under investigation or to gather and present Relevant evidence (for example, contacting a potential witness).

B. Advisors

Support Advisors

The Complainant and the Respondent may each elect to be accompanied by a Support Advisor to any meeting, interview, or proceeding regarding the allegations that are the subject of a Formal Complaint. The Support Advisor may be anyone, including a union representative from the Complainant's or Respondent's collective bargaining unit, an attorney, or, in the case of the Complainant, a Sexual Assault Victim's Advocate.

The Support Advisor may not answer questions regarding the subject matter of the investigation for the Complainant or the Respondent or speak on behalf of a Complainant or Respondent. However, the Support Advisor may observe and consult with the Complainant or Respondent.

Hearing Advisors

The Complainant and Respondent must have a Hearing Advisor at the hearing. A Hearing Advisor will be responsible for asking the other Party and any witnesses all Relevant questions and follow-up questions, including those that challenge credibility, during the hearing. During a hearing, Parties may not ask questions of the other Party or any witnesses. Questioning at the live hearing will be conducted directly, orally, and in real time by the Party's Hearing Advisor of choice or a Hearing Advisor provided by the University if the Party does not have a Hearing Advisor.

The Hearing Advisor may be the same person as the Support Advisor. A Party may have both a Support Advisor and a Hearing Advisor present at a hearing. If a Party does not have a Hearing Advisor to perform questioning during the hearing, the University shall provide the Party with a Hearing Advisor for this purpose.

Advisors Generally

The Title IX Coordinator or Investigator will explain to the Complainant and Respondent that they may request that their Support Advisor, if any, be copied on communications during the Formal Complaint process. Any such request will be in writing to the Title IX Coordinator or Investigator and should include the Support Advisor's name and contact information.

The Title IX Coordinator or Investigator will also explain that Support Advisors **will** receive a copy of the evidence and Final Investigation Report, unless the Party specifically directs in writing that this information should not be sent to their Support Advisor.

Although reasonable efforts will be made to accommodate Hearing Advisors and Support Advisors, undue delays affecting the complaint resolution timeline will not be permitted. Disruptive, abusive, or disrespectful behavior also will not be tolerated. At the discretion of the Investigator or Title IX Coordinator during meetings or interviews and of the Hearing Officer during hearings, a Hearing Advisor or Support Advisor who engages in disruptive, abusive or disrespectful behavior will not be permitted to participate. If a Hearing Advisor is excused during a hearing, the University will either provide a Party with another Hearing Advisor or allow the Party to obtain another Hearing Advisor. It is within the Hearing Officer's discretion to proceed with or postpone the hearing in order to address the situation.

C. Notice of Meetings, Interviews and Hearings

Parties will be provided written notice of the **date, time, location, names of participants, and purpose** of all meetings and investigative interviews at which their participation is expected. This written notice should be provided with at least **3 Working Days** for the Party to prepare to participate in the meeting or interview. This requirement will not apply where a Party themselves requests to meet with the Title IX Coordinator or Investigator or as addressed in Article VI of this Addendum.

If a Party requests to meet sooner than **3 Working Days** after receipt of written notice of an investigative interview or meeting, they should verbally confirm at the start of the interview or meeting that they are aware that they were provided notice of at least **3 Working Days** and this confirmation should be documented by the Title IX Coordinator or Investigator.

D. Review of Evidence

Before issuing a final investigation report (Final Investigation Report), the Investigator will send to the Complainant and Respondent, and their respective Support Advisors,⁴² if any, **all** evidence (including evidence upon which the University does not intend to rely) obtained as part of the investigation that is Directly Related to the allegations raised in the Formal Complaint (Preliminary Investigation Report). This includes inculpatory or exculpatory evidence whether obtained from a Party or other source, redacted if required by law.

The requirement to provide all Directly Related evidence does not include illegally obtained evidence (e.g. conversations recorded without the consent of the participants). Neither the Preliminary nor Final Investigation Report will include information protected by a legally recognized privilege, the Complainant's sexual history, or a Party's treatment records if the Party has not given voluntary, written consent to the disclosure of those treatment records.

The Preliminary Investigation Report will: (a) describe the allegations; (b) identify the material facts – undisputed and disputed – with explanations as to why any material fact is disputed; and (c) describe the evidence presented and considered. Where not contained within the Preliminary Investigation Report itself, evidence should be attached to the Preliminary Investigation Report as exhibits.

The Preliminary Investigation Report and any exhibits must be sent in electronic format (which may include use of a file sharing platform that restricts the Parties and any Support Advisors from downloading or copying the evidence) **or** hard copy. The Investigator may use discretion in determining how to send the Preliminary Investigation Report to the Parties and their Support Advisors, if any, in light of the

particular circumstances and any Party or witness privacy concerns.

This process is collectively referred to as the "Review of Evidence."

Each Party will be given a minimum of **10 Working Days** for the initial Review of Evidence to respond to the list of disputed facts and evidence and submit additional questions for the other Party and witnesses. This timeframe may be extended at the discretion of the Title IX Coordinator (either on their own or in response to a Party's request). The extension must be made available to both Parties, who must be notified as such. During the Review of Evidence, each Party may:

1. meet again with the Investigator to further discuss the allegations;
2. identify additional disputed facts;
3. respond to the evidence in writing;
4. request that the Investigator ask additional specific questions to the other Party and other witnesses;
5. identify additional relevant witnesses; or
6. request that the Investigator gather additional evidence.

The Investigator will share with the Parties the answers to questions posed during the Review of Evidence. If additional disputed material facts are identified or evidence is gathered, it will be included in the Preliminary Investigation Report (or in a separate addendum) and shared with all Parties, who will be given a reasonable opportunity to respond to the new evidence and submit additional questions to the other Party and other witnesses about the new evidence only. The Investigator determines when it is appropriate to conclude the Review of Evidence.

E. Final Investigation Report

After the Review of Evidence phase is concluded, the Parties will receive a Final Investigation Report that will summarize all **Relevant** evidence (inculpatory and exculpatory), including additional Relevant evidence received during the Review of Evidence. Any Relevant documentary or other tangible evidence provided by the Parties or witnesses, or otherwise gathered by the Investigator will be attached to the Final Investigation Report as exhibits.

As part of an Informal Resolution, at the request of both Parties, Campuses will provide a written preliminary assessment of the evidence by the Title IX Coordinator. Neither the fact nor the substance of the assessment will be shared with the Hearing Officer or considered Relevant at the Hearing.

The Final Investigation Report shall be sent to the Parties and their respective Support Advisors, if any, in electronic format (which may include use of a file sharing platform that restricts the Parties and any Support Advisors from downloading or copying the evidence) or hard copy. The Parties and their Support Advisors will be provided **10 Working Days** to review and provide a written response to the Final Investigation Report. Campuses will inform Parties not to include any reference to the preliminary assessment and that any such references will be redacted.

The written response will be attached to the Final Investigation Report and provided to the Hearing Officer, if appropriate, and the Parties. Any references to a preliminary assessment, assuming one was requested, will be redacted from this written response. No documentation should be provided to the

Hearing Officer if an Informal Resolution is reached.

F. Timeframe for Completion of Investigation

Absent a determination of good cause made by the Investigator or Title IX Coordinator (of which the Parties will receive written notice): (i) the investigation should be concluded within **100 Working Days** from the date that the Notice of Allegations is provided to the Parties; and (ii) the Final Investigation Report should be completed and provided to the Parties within **10 Working Days** after the Review of Evidence has concluded. Extensions may be granted, and notice to the Parties given, as set forth in Article V. E. of EO 1096 and EO 1097.

Within **10 Working Days** after the Parties have been provided the Final Investigation Report, the Parties will be informed of the timelines that will apply to the pre-hearing and hearing processes described in Article IX below. The Parties will be required to provide the name and contact information for their Hearing Advisor within **5 Working Days** after notice of the hearing timeline.

Article IX. Hearing

1. A Hearing Coordinator, (either the Student Conduct Administrator, Title IX Coordinator, or other appropriate Administrator) will be responsible for coordinating the hearing process. The Hearing Coordinator's duties will include: scheduling the hearing; notifying witnesses of the hearing; ensuring that the Hearing Officer is provided with appropriate materials including a copy of the report and any exhibits; coordinating videoconferencing (if necessary); and securing a location for the hearing. The Hearing Coordinator will also act as liaison between the Parties and the Hearing Officer on procedural matters.
2. The Parties will be given written notice of the **date, time, location, participants, and purpose of the hearing**, as well as the **identity of the Hearing Officer**. Notification of the hearing will be sent to the designated CSU campus e-mail address, unless the recipient has specifically requested in writing to the Hearing Coordinator that notice be given to a different e-mail address. Communications from the Hearing Coordinator will be deemed received on the date sent. The hearing will not be set sooner than **20 Working Days** after the date of notice of hearing.
3. Timelines:

Objection to Hearing Officer

Any objections to an appointed Hearing Officer must be made in writing to the Hearing Coordinator within **5 Working Days** after notice of the identity of the Hearing Officer has been communicated to the Parties. The objection may only be based on an actual conflict of interest. A conflict of interest exists if the Hearing Officer has a personal relationship with one of the Parties or witnesses or has demonstrated actual bias towards a Party or witness.

The fact that a Hearing Officer has previously served as a Hearing Officer in a University proceedings will not constitute a conflict of interest. The Hearing Coordinator will determine if a conflict of interest exists. In that event, the Parties will be notified in writing of the name of the new Hearing Officer. The date for the hearing may need to be rescheduled. Any objection to the new Hearing Officer will be made in accordance with this section.

Pre-Hearing Process

No later than **15 Working Days** before the hearing, each Party may:

a. Provide to the Hearing Coordinator a proposed witness list that includes the names of, and current contact information for, that Party's proposed witnesses as well as an explanation of the relevance of each proposed witness's testimony and the disputed issue to which the witness's testimony relates.

No later than **10 Working Days** before the hearing, the Hearing Coordinator will:

a. Share a final witness list with the Parties;

b. Notify each witness of the date, time and location of the hearing. Witnesses will be directed to attend the hearing and to promptly direct any questions or concerns about their attendance at the hearing to the Hearing Coordinator.

No later than **5 Working Days** prior to the hearing, the Parties may submit a list of proposed questions to the Hearing Coordinator. The questions will be provided to the Hearing Officer. Parties are strongly encouraged to provide questions in advance of the hearing in order to streamline the hearing process and provide the Hearing Officer an opportunity to resolve relevancy concerns prior to the hearing. The proposed questions will not be shared with the other Party.

The Hearing Officer will make all determinations regarding pre-hearing matters, including which witnesses have Relevant testimony and will participate and which questions, if submitted, are Relevant and will promptly notify the Hearing Coordinator who, in turn, will promptly notify the Parties.

The hearing is closed to all persons except the Parties; the Parties' respective Hearing Advisors; one Support Advisor for each Party; appropriate witnesses while they are testifying; the Student Conduct Administrator or Human Resources Officer; Title IX Coordinator; Title IX Investigator; Hearing Officer; Hearing Coordinator; and any person necessary to create a formal record of the proceeding (including a technological support, videographer, or similar role.) A CSU administrator may also be present but will not participate in the hearing. Campus police or a security officer may also be present if deemed appropriate or necessary by the appropriate Campus administrator, Hearing Coordinator or Hearing Officer.

4. The University will direct witnesses who are CSU Employees to attend the hearing. Any Employees, including those in bargaining units, who fail to comply with any such directive may be subject to discipline under the applicable provisions of their collective bargaining agreement or other University policy. The University will take reasonable steps to arrange for Employee witnesses to be available to attend, provided that such Employee witnesses are timely identified to the Hearing Coordinator in accordance with this Executive Order.
5. The University will direct Student witnesses to attend the hearing, provided that such Student witnesses are timely identified to the Hearing Coordinator in accordance with this Executive Order. Students who fail to comply may be subject to discipline, depending on the circumstances. The University will take reasonable steps to accommodate Student witnesses including arranging for them to be excused from class attendance, if necessary.
6. The University will make all evidence provided during the investigation, including during Review of Evidence available at any hearing to give each Party and the Hearing Officer the opportunity to refer to such evidence during the hearing. This includes evidence upon which the University does not intend to rely in reaching a determination regarding the Respondent's responsibility.

Hearing Process

7. Live hearings will be conducted using videoconferencing technology, unless circumstances are such that videoconferencing would not be appropriate. Neither Party will be required to be physically present in the same room as the Hearing Officer, each other, or witnesses. CSU will utilize technology that ensures that Parties will be able to Simultaneously see and hear all of the proceedings and testimony.
8. The hearing will begin with an overview of the hearing process given by the Hearing Officer, after which the Parties will be given an opportunity to ask questions about the hearing process. Each Party will be given an opportunity to make an opening statement that may not last longer than 10 minutes. Only the Parties themselves will be permitted to make opening statements. The Hearing Advisor and any Support Advisor are not permitted to make the opening statement. The Support Advisor may not speak during the hearing. Closing arguments will not be made.
9. Each Party is required to have a Hearing Advisor for purposes of questioning the other Party and witnesses during the hearing. If a Party does not have a Hearing Advisor prior to the hearing or at the start of the hearing, one will be provided to that Party for the purposes of asking the other Party and any witnesses all Relevant questions and follow-up questions, including those questions challenging credibility. If a Party's Hearing Advisor does not appear or is excused for conduct that causes a material disruption, a Hearing Advisor will be provided. In either case, the Hearing Officer has discretion to proceed with or postpone the hearing.

Questioning

10. Generally, the Hearing Officer will start the questioning of witnesses and Parties. The Investigator or the Title IX Coordinator (if not the Investigator) will be the first witness and will describe the Formal Complaint, investigation process, and summarize the evidence. Hearing Advisors will be permitted to ask Relevant questions once the Hearing Officer has concluded their questioning of the other Party and each witness.
11. The Hearing Officer may ask questions of any Party or witness who participates in the hearing.
 - a. The Complainant and Respondent may be present (physically or virtually) at all times during the hearing.
 - b. Parties themselves may not directly ask questions of each other and witnesses.
 - c. Each Party's Hearing Advisor is permitted to ask all Relevant questions of the other Party, the Investigator, and any witnesses, and is also permitted to ask follow-up questions, including those questions challenging credibility. A Party may not be directly questioned by their own Hearing Advisor. The Hearing Officer controls the hearing and determines whether a question is Relevant.
 - d. A question is not considered Relevant if it relates to the Complainant's sexual predisposition or prior sexual behavior, unless such question about the Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the question concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is asked to prove consent.
 - e. Even if a question relates to a Relevant subject or issue, the Hearing Officer may determine that the Party or witness being asked the question is not required to answer if the question is repetitive or duplicative of prior questions.
 - f. The Hearing Officer has the discretion to request information from the Parties or Hearing Advisors

regarding questions prior to making a determination about the Relevancy of the question. Neither the Parties nor Hearing Advisors may assert objections to questions.

- g. Immediately after each question is asked by the Hearing Advisor, and before the question is answered, the Hearing Officer will indicate whether the question is Relevant, and if it is not, provide an explanation as to why the question is excluded as not Relevant. A Complainant, Respondent, or witness will only answer questions posed by a Hearing Advisor that the Hearing Officer determines are Relevant.
 - h. In addition to the relevance requirement, all questions must be asked in a respectful, non-abusive manner. The Hearing Officer determines whether a question satisfies this requirement and may require that Hearing Advisor rephrase a relevant question or repeat the question in a respectful manner when the Hearing Officer determines that the question was asked in a disrespectful or abusive manner.
 - i. Abusive or otherwise disorderly behavior that causes a material disruption will not be tolerated. The Hearing Officer may excuse from the hearing anyone (including either Party or their Hearing Advisor) whose behavior causes a material disruption. Should a Hearing Advisor be removed from a proceeding, the University will provide a Hearing Advisor. The Hearing Officer, in their discretion, may postpone the hearing. In making a determination whether to postpone the hearing, the Hearing Officer will consider the equity of postponement as to both Parties.
12. Formal rules of evidence applied in courtroom proceedings (e.g., California Evidence Code) do not apply in the hearing. All Relevant information is considered.
13. Hearsay may be considered, but will only be given the weight appropriate under all of the circumstances, with due consideration given to the importance of credibility assessment. Absent extenuating circumstances, the Hearing Officer will not rely on prior statements made by the Parties or witnesses during the investigation whose credibility is central to the determination unless those Parties or witnesses make themselves available for examination by the Hearing Officer.

Other Procedural Matters

14. The Hearing Officer will not, prior to preparing the Hearing Officer's Report (described below), have substantive communications about the facts of the case with either Party or the Investigator unless in the presence of both Parties and a University official (e.g., Hearing Coordinator, Title IX Coordinator or Student Conduct Administrator).
15. The Campus will make or arrange for an official audio recording of the hearing. The recording is University property. No other recording of the hearing is permitted. The audio recording will be retained by the Hearing Coordinator or designee in accordance with the Campus records/information retention and disposition schedule. Parties may request to inspect and review the recording.
16. New evidence not reasonably available at the time of the investigation to the Party seeking to introduce the evidence may be considered in the Hearing Officer's discretion.
17. If either Party fails to appear at the hearing without good cause the hearing will nevertheless proceed. Whether good cause exists is determined by the Hearing Officer. If a Party fails to appear at the hearing, the Hearing Advisor for the non-appearing Party will question the other Party.
18. The Hearing Officer controls the hearing, is responsible for maintaining order during the hearing, and makes whatever rulings are necessary to ensure a fair hearing. The Hearing Officer's decisions in this regard are final.

Article X. Determination Regarding Responsibility

After the hearing, the Hearing Officer will make written findings of fact and conclusions about whether the Respondent violated this Addendum with respect to the definition of Sexual Harassment under Article II. I (Hearing Officer's Report).

The standard of proof the Hearing Officer will use is whether each allegation is substantiated by a Preponderance of the Evidence. The Title IX Coordinator will review the Hearing Officer's Report to ensure procedural compliance with this Addendum.

The Hearing Coordinator will Simultaneously send the Hearing Officer's Report promptly to the Parties, the Title IX Coordinator, and the appropriate University Administrator, usually within **15 Working Days** of the close of the hearing.

The Hearing Officer's Report must include:

1. identification of the allegations potentially constituting Sexual Harassment as defined in Article II. I. of this Addendum – this should include the factual allegations and the corresponding alleged policy violations;
2. the Preponderance of the Evidence standard;
3. a description of the procedural steps taken from the receipt of the Formal Complaint through the determination incorporated by reference to the Final Investigation Report, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
4. the factual findings and the evidence on which the factual findings are based;
5. a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
6. an explanation as to how the determination concerning the relative credibility or lack of credibility of the Parties or witnesses was reached;
7. conclusions regarding the application of the policy violations defined in this Addendum to the facts, including a determination of whether the Executive Order was violated and an analysis of the basis for that determination;
8. a summary of the procedural issues raised by the Parties during the pre-hearing or hearing processes;
9. a list of all questions proposed by the Parties at the hearing, and if any questions were not asked, why; and
10. a statement as to whether Remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant.

If no violation of the addendum is found, the president (or designee) will be notified along with the Parties. The notification will include the outcome of the hearing, a copy of the Hearing Officer's Report (redacted as appropriate or as otherwise required by law) and notice of the Complainant's and Respondent's right to appeal to the Chancellor's Office.

If a violation of the addendum is found, within **5 Working Days** of receiving such finding the Parties may submit to the Hearing Coordinator an impact statement or other statement regarding discipline that is no more than 2000 words in length. The document is an opportunity for the Parties to suggest disciplinary outcomes and to provide information that they believe is important for the Hearing Officer to consider. The Student Conduct Administrator and/or appropriate University Administrator responsible for discipline and Title IX

Coordinator may also submit a written statement regarding aggravating and mitigating factors that provides a recommendation regarding the disciplinary outcome, including information regarding prior disciplinary outcomes for similar conduct and whether the Respondent was previously found to have violated university policy.

Discipline means any disciplinary action taken to correct a violation of the prohibitions in this Addendum, as follows:

1. Discipline for Employees includes, but is not limited to, suspension, demotion and termination of employment.
2. Discipline for Students includes, but is not limited to, probation, suspension and expulsion and other Sanctions as defined in Article V, California State University Executive Order 1098.

Within **5 Working Days** after receiving and considering any impact or other statements submitted by the Parties and other statements described above, the Hearing Officer will submit the Hearing Officer's Report to the president (or designee). The Hearing Officer's Report will be amended to include a statement of, and rationale for, any recommended disciplinary sanctions to be imposed on the Respondent ("Final Hearing Officer's Report"). The Final Hearing Officer's Report will attach the Final Investigation Report.

In cases where the Hearing Officer has found a violation of policy, the president (or designee) will review the Final Investigation Report and the Final Hearing Officer's Report and issue a decision ("Decision Letter") concerning the appropriate sanction or discipline within **10 Working Days** of receipt of the Final Hearing Officer's Report.

The president (or designee) may impose the recommended sanctions or discipline, adopt a different sanction or discipline or sanctions or discipline, or reject sanctions or disciplines altogether. If the president (or designee) adopts a sanction or discipline other than what is recommended by the Hearing Officer, the president (or designee) must set forth the reasons in the Decision Letter.

The president (or designee) will Simultaneously send the Decision Letter electronically to the Respondent and Complainant at the University-assigned or other primary e-mail address linked to their University accounts.⁴³ The Decision Letter will also be sent to the Student Conduct Administrator or other appropriate University Administrator responsible for Employee discipline and the Hearing Officer.

The Decision Letter will include:

1. the outcome of the hearing, including any sanction imposed, and the name of the Respondent(s);
2. information regarding the procedures and permissible bases for the Complainant and Respondent to appeal to the Chancellor's Office;
3. if a finding of responsibility is made against the Respondent, a statement as to whether Remedies will be provided to the Complainant that are designed to restore or preserve equal access to the University's education program or activity. The specifics of any such Remedies may be discussed separately between the Complainant and the Title IX Coordinator and need not be included in the Decision Letter; and
4. a copy of the Final Hearing Officer's Report will be attached to the Decision Letter, redacted as appropriate or as otherwise required by law.

The president will also send the Decision Letter to the Title IX Coordinator so that they may determine whether any additional Remedies (or other supportive measure) will be provided or undertaken in order to maintain a safe and nondiscriminatory University environment.

The determination regarding responsibility and any sanctions become final either on the date that the

Chancellor's Office provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely (**11 Working Days** after the date of the Decision Letter).

The Title IX Coordinator is responsible for effective implementation of any Remedies.

Article XI. Appeals

- A. **Filing an Appeal to the Chancellor's Officer.** Any Complainant or Respondent who is not satisfied with a Formal Complaint Process outcome (determination regarding responsibility or recommended sanction) may file an appeal with the Chancellor's Office (CO) no later than **10 Working Days** after the date of the Decision Letter. All arguments and/or evidence supporting the appeal must be submitted by the deadline to file the appeal. Evidence/arguments submitted after the appeal submission deadline will not be considered by the CO.
- B. **Written Appeal.** The appeal must be in writing and may be based only on one or more of the grounds for appeal listed below:
1. the hearing outcome is not supported by substantial evidence (in other words, there was no reasonable basis for such findings or conclusions);
 2. a procedural irregularity occurred that affected the outcome of the matter;
 3. new evidence that was not reasonably available at the time of the hearing and would have affected the Hearing Officer's decision about whether the Respondent violated the Executive Order, including this addendum;
 4. the Title IX Coordinator, Investigator, or Hearing Officer had a Conflict of Interest or Bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; and
 5. the sanction(s) imposed as part of the outcome of the Formal Complaint process constituted an abuse of discretion based on the substantiated conduct.
- C. **Issues and Evidence on Appeal.** The issues and evidence raised on appeal will be limited to those raised and identified during the Campus hearing, unless new evidence becomes available that was not reasonably available at the time of a Campus hearing that could affect the outcome of the matter and is submitted by the appealing party. The CO may communicate, at the CO's discretion, with the appealing party, the responding party, and/or the Campus to clarify the written appeal. Appeals will 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

Electronic submission to the email address listed above is the preferred method of submitting appeals.

- D. **Acknowledgement of Appeal.** The CO will provide prompt written acknowledgement of the receipt of the appeal to the appealing Party, and will provide prompt written notification of the appeal, including a copy of the appeal, to the non-appealing Party and the Campus Title IX Coordinator. The notice will include the right of the non-appealing Party and the Campus to provide a response to the appeal within **10 Working**

Days of the date of the notice. The appeal and appeal response shall be limited to 3,500 words, excluding exhibits.

- E. **Reasonable Accommodations.** The CO will provide reasonable accommodations to any Party or witness in the appeal process with a qualified Disability upon request by the person needing the accommodation. A reasonable accommodation may include an extension of time under these procedures. The timeframe for the CO Appeal Response will be adjusted for the time needed, if any, to provide reasonable accommodations.
- F. **Scope of CO Review.** The CO review will not involve: a new hearing by the CO, or a weighing of evidence or assessment of credibility, or consideration of evidence that was not introduced during the Campus hearing, unless the new evidence was not reasonably available at the time of the Campus hearing process. The CO may make reasonable inquiries to determine if the new evidence could have affected the outcome. If the CO review determines the hearing should be reopened to cure any defects in the hearing itself and/or consider new evidence introduced for the first time on appeal (that could have affected the hearing determination), the matter will be remanded back to the Campus and the proceeding reopened at the Campus level.
- G. **Reopening a Campus Hearing.** If a matter is to be reopened, the CO will return the matter to the Campus and will specify in writing the timeline by which a reopened hearing must be completed. The CO will Simultaneously notify the Parties of the reopening of the hearing and the timeline for completion of the reopened hearing. The Campus will complete the reopened hearing and provide the CO with an amended Hearing Officer's Report. The Campus will also provide the Parties with amended Notices of Hearing Outcome, and such Notices will provide the Parties the opportunity to appeal any new or amended findings, in accordance with this Executive Order. Upon receipt of the amended hearing report, the CO will contact the appealing party to determine whether that Party wishes to continue with the appeal.
- H. **Reversal by CO.** If the hearing outcome (determination regarding policy violation) is not supported by the facts as determined by the Hearing Officer, the CO may vacate and reverse the Hearing Officer's decision, but only with respect to whether University policy was violated.
The CO may reverse the Hearing Officer's decision under extremely limited circumstances, and the factual findings will remain intact. In general, the scope of review in cases where a hearing has occurred (as opposed to cases where findings are made by an investigator) is very limited, because of the additional process afforded the parties.
- I. **Timeline.** The CO will respond to the appealing Party no later than **30 Working Days** after receipt of the written appeal unless the timeline has been extended as specified in Article V, E. of EO 1096 and 1097.
- J. **CO Appeal Response.** The CO Appeal Response will include a summary of the issues raised on appeal, a summary of the evidence considered, the scope of review, the determination(s) reached regarding the issue(s) identified within the written appeal, and the rationale for the determination(s). A copy of the final CO Appeal Response will be sent Simultaneously to the Complainant and Respondent, as well as the Campus Title IX Coordinator. The CO Appeal Response is final and concludes the Complaint and CO review process under this Executive Order.
- K. **Notifications to the Parties.** The Complainant and the Respondent will be Simultaneously informed, in writing, whenever there is a change to the outcome of the proceedings including the findings and/or sanctions.

The CO Appeal Response is final and concludes the Complaint and CO review process under this Executive Order.

Article XII. Retaliation

Retaliation, including intimidation, coercion, or discrimination against any individual for the purpose of interfering with an individual exercising any rights under this Addendum, for reporting or filing a Formal Complaint of Sexual Harassment (as defined under this Addendum), or for participating or refusing to participate in any manner in any policy-related investigation or proceeding, including a hearing, is prohibited.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this Article.

Complaints of retaliation that arise from this Addendum may be filed with the Title IX Coordinator in accordance with the procedures set out in Article III of CSU Executive Order 1096 (if the Complainant is an Employee or a Third Party) or Article III of Executive Order 1097 (if the Complainant is a Student).

Individuals should not be deterred from reporting any incidents of Sexual Harassment or participating in an investigation as a Complainant or witness 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 in investigations or proceedings involving Sexual Harassment 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 conduct places the health and safety of another person at risk, or is otherwise egregious. The Campus may, however, have an educational discussion with the person or pursue other educational Remedies regarding alcohol or other drugs.

The University will keep confidential (except as may be permitted by the FERPA statute or FERPA regulations, or as required by law, or to carry out the purposes of this Addendum, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder) the identity of:

- a. any Individual who has made a report or Formal Complaint of Sex Discrimination, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment, as defined under this Addendum;
- b. any Complainant;
- c. any Individual who has been reported to be the perpetrator of Sex Discrimination;
- d. any Respondent; and
- e. any Witness.

Article XIII. Recordkeeping

A. Records relating to the Investigation and Hearing Process

The University shall maintain records of the following for a period of seven years (from the date of a record's creation), or the timeframe in accordance with the Campus records/information retention and disposition schedule, whichever is later:

1. each Sexual Harassment investigation including any determination regarding responsibility (this includes records created in relation to Formal Complaints that are dismissed);
2. any audio or audiovisual recording or transcript pertaining to the Formal Complaint process;
3. any disciplinary sanctions imposed on the Respondent;
4. any Remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;

5. any appeal and the result therefrom (including appeals pertaining to mandatory and discretionary dismissal of Formal Complaints);
6. any Informal Resolution and the result therefrom; and
7. all materials used to train Title IX Coordinators, Investigators, Hearing Officers, and any person who facilitates an Informal Resolution process. The University shall make these training materials publicly available on its website.

B. Records relating to Supportive Measures

The University must create, and maintain the following for a period of seven years or the timeframe in accordance with the Campus records/information retention and disposition schedule, whichever is later:

1. records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Sexual Harassment, as defined under this Addendum;
2. in each instance, the University must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's Education Program or Activity; and
3. if the University does not provide a Complainant with Supportive Measures, the University must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Authority

This policy is issued pursuant to [Section II of the Standing Orders of the Board of Trustees of the California State University](#), and as further delegated by the [Standing Delegations of Administrative Authority](#).

Endnotes

¹See John Doe v. Kegan Allee, Ph.D., et al., California Court of Appeal (January 2019): <http://www.courts.ca.gov/opinions/documents/B283406.PDF>

²Key capitalized terms are defined at Article VI of this Executive Order. Please see that Article for the full definitions. Terms contained within this policy and procedure are intended to be gender neutral.

³See Cal. Penal Code § 293; Cal. Gov. Code § 6254(f)(2). "The name of a victim of any crime defined by Section 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."

⁴Assaultive 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.

⁵See Cal. Penal Code §§ 11164-11174.3; see also CSU Executive Order 1083 or any superseding executive order.

⁶See Cal. Evid. Code § 1024.

⁷See Cal. Evid. Code § 1035.4.

⁸See Cal. Govt. Code §§ 3300-13.

⁹See Cal. Gov. Code § 12926(b).

¹⁰See 34 C.F.R. 110.3

¹¹See Cal. Penal Code § 13700 (b).

¹²See Cal. Code Regs. Title 5 § 42720 et seq.

¹³See Cal. Penal Code § 13700(b) and Cal. Family Code § 6211.

¹⁴See Cal. Code Regs. Title 5 § 42700(h).

¹⁵See Cal. Govt. Code § 12926(r).

¹⁶See Cal. Gov. Code § 12926(r); 34 C.F. R. 106.40

¹⁷See Cal. Govt. Code § 12926(g).

¹⁸See 2 Cal. Code Regs. § 11053.

¹⁹See Cal. Govt. Code § 12926 (i).

²⁰See Cal. Govt. Code § 12926(o).

²¹See Cal. Govt. Code § 12926(o).

²²See Cal. Govt. Code § 12926(q).

²³See Cal. Evid. Code §§ 1035.2 and 1035.4.

²⁴See Cal. Penal Code § 240.

²⁵See Cal. Penal Code § 242.

²⁶See Cal. Penal Code §§ 261-263.

²⁷See Cal. Govt. Code § 12926(s).

²⁸See Cal. Penal Code § 646.9

²⁹See 5 Cal. Code Regs. § 42406.

³⁰Capitalized terms are defined in this Addendum and in CSU Executive Order 1096 (*Systemwide Policy Prohibiting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking against Employees and Third Parties and Systemwide Procedure for Addressing Such Complaints by Employees and Third Parties*) and CSU Executive Order 1097 (*Systemwide Policy Prohibiting Discrimination, Harassment and Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking against Students and Systemwide Procedure for Addressing Such Complaints by Students*).

³¹In most Sexual Misconduct cases, credibility will be central to the finding. Therefore, Parties should presume that this Addendum applies to all matters alleging Sexual Misconduct.

³²The Informal Resolution process is available at any time prior to the issuance of the Hearing Officer's Report.

³³The copy of the Decision Letter issued to the Complainant will be redacted as to findings regarding conduct

that does not constitute a "crime of violence," Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking (34 C.F.R. § 99.31 et seq.).

³⁴Addendum B incorporates the requirements of the U.S. Department of Education's Federal Regulations and generally tracks language used in the regulations. However, in keeping with the most current best practices, this Addendum B has substituted other terms for "victim" where possible.

³⁵A Formal Complaint may exist even without a signature where something otherwise indicates that the complainant is the person filing the formal complaint. An e-mail from the Complainant would be sufficient.

³⁶By signing the Formal Complaint, the Title IX Coordinator does not become a party to the investigation or demonstrate bias.

³⁷See 20 U.S.C. 1092(f)(6)(A)(v).

³⁸See 34 U.S.C. 12237(a)(10).

³⁹See 34 U.S.C. 12291(a)(8).

⁴⁰See 34 U.S.C. 12291(a)(30).

⁴¹If a Party is not an "eligible student," as defined in 34 CFR 99.3 ("Eligible' student means a student who has reached 18 years of age or is attending an institution of postsecondary education"), then the University must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3 ("Parent' means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian").

⁴²Unless the Party informs the Investigator or Title IX Coordinator in writing that they do not wish for this information to be sent to their Support Advisor.

⁴³The copy of the Decision Letter issued to the Complainant will be redacted as to findings regarding conduct that does not constitute a "crime of violence," Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking (34 C.F.R. § 99.31 et seq.).

10/12/2021, 8/14/2020, 3/29/2019, 10/5/2016, 6/23/
2015, 6/3/2014, 10/23/2013, 1/6/2005, 10/31/2003,
5/17/2001, 1/19/1998, 7/1/1983, 6/1/1981, 2/27/1981

All revision dates:

Attachments

[Superseded Policy \(EO 1096 Revised\) Dated 8-14-2020.pdf](#)
[Superseded Policy \(EO 1096 Revised\) Dated 3-29-2019.pdf](#)
[Superseded Policy \(EO 340\) Dated 4-21-1981.pdf](#)
[Superseded Policy \(EO 345\) Dated 5-29-1981.pdf](#)
[Superseded Policy \(EO 419\) Dated 7-1-1983.pdf](#)
[Superseded Policy \(EO 675\) Dated 1-21-1998.pdf](#)
[Superseded Policy \(EO 774\) Dated 5-17-2001.pdf](#)
[Superseded Policy \(EO 883\) Dated 10-31-2003.pdf](#)
[Superseded Policy \(EO 927\) Dated 1-6-2005.pdf](#)
[Superseded Policy \(EO 928\) Dated 1-6-2005.pdf](#)
[Superseded Policy \(EO 1089\) Dated 10-23-2013.pdf](#)
[Superseded Policy \(EO 1096\) Dated 6-3-2014.pdf](#)

Superseded Policy (EO 1096 Revised) Dated 6-23-2015.pdf
Superseded Policy (EO 1096 Revised) Dated 10-5-2016.pdf
Attachment B Procedure Timeline.pdf
Attachment A Complaint Form

Approval Signatures

Step Description	Approver	Date
VC	Evelyn Nazario: Vice Chancellor, HR	10/12/2021
Area Manager/Owner	Sue McCarthy: SW Title IX CO & Sr SW DR	9/27/2021
Area Manager/Owner	Andy Alvarez: Sr Mgr HR Policy Admin	9/22/2021

COPY

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COMPLAINT FORM

Instructions: This complaint form is for use by individuals who are eligible to file a complaint of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence or Stalking under Executive Order 1097. Please fill in all of the information requested below as completely as possible and attach additional pages to this form, if necessary.

CSU Campus Work Phone

Last Name First Name MI Cell Phone

Mailing Address Home Phone

City Best time to call: AM/PM

State Zip Code E-mail

What is your relationship with the California State University campus listed above?

Current Employee? Yes No Former Employee? Yes No Last date of employment

An Applicant for employment? Yes No A Third Party? Yes No

Please specify your relationship with the University:

Was Early Resolution sought? Yes No If yes, with whom: Date

Indicate the type(s) of complaint being filed: Discrimination Harassment Retaliation

Sexual Misconduct Dating Violence Domestic Violence Stalking

If you are filing a Discrimination or Harassment complaint, indicate the Protected Status(es) that was/were the basis(es) of the alleged Discrimination or Harassment (Please select all that apply):

Race/Color Religion Sexual Orientation Medical Condition

National Origin/Ancestry Gender / Sex Disability Genetic Information

Marital Status Gender Identity/Expression Military/Veteran Status Age

If you are filing a Retaliation complaint, indicate the activity(ies) you engaged in that was/were the basis(es) for the alleged Retaliation.

COMPLAINT FORM

1. Identify the Respondent(s) against whom your complaint is made. For each Respondent, provide the identifying information requested below.

Respondent's name:	Relationship/Association with the campus:	Relationship/Association to you:
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

2. Describe the incident(s) or event(s), date(s), time(s), and location(s) giving rise to your complaint.

3. Describe the specific harm you have suffered resulting from the incident(s).

4. What did you or others do to try to resolve the issue? What was the outcome?

5. Identify individuals who may have observed or witnessed the incident(s) that you described.

Last Name	<input type="text"/>	First Name	<input type="text"/>	MI	<input type="text"/>	Telephone	<input type="text"/>
Position/ Job Title	<input type="text"/>					Cell Phone	<input type="text"/>
E-mail	<input type="text"/>						
Last Name	<input type="text"/>	First Name	<input type="text"/>	MI	<input type="text"/>	Telephone	<input type="text"/>
Position/ Job Title	<input type="text"/>					Cell Phone	<input type="text"/>
E-mail	<input type="text"/>						

COMPLAINT FORM

6. Do you have any documents or electronic communications (including text messages or email) that support your complaint?

Yes No (Please list and attach a copy.)

7. Do you have any physical evidence (such as photographs, videos, blood tests or rape kits) that support your complaint? (Please describe.)

8. Describe the outcome(s) you expect from filing your complaint. Be as specific as possible.

You may elect to have an Advisor present at meeting(s) and/or interview(s) which may be a Sexual Assault Victim's Advocate. If you indicate you will have an Advisor, you are authorizing that individual to accompany you to any meeting(s) and/or interview(s) regarding this complaint. The role of the Advisor is limited to observing and consulting with you.

9. If you will be accompanied by an Advisor, please provide the name and telephone number.

Last Name First Name MI Telephone
Cell Phone

CERTIFICATION

I certify that the information given in this complaint is true and correct to the best of my knowledge or belief.

Print name of Complainant _____
Signature of Complainant _____

Date

For University Use Only: Date Complaint Received _____ Signature _____

Executive Order 1096 Procedure Timeline

Executive Order 1096 provides a systemwide procedure for handling allegations of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking by certain individuals (see Article III C. 1. Filing a Complaint.) Below is a summary of the Executive Order 1096 procedure timeline. For a full understanding and complete text, please consult Executive Order 1096.

- **Immediately following an act/action/incident that falls under Executive Order 1096** or as soon as possible thereafter, Complainants who believe they are or may have been victims of Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating or Domestic Violence or Stalking, may initiate the **Article III. Campus Procedure for Responding to Complaints** to receive information about the procedures that exist for resolving such matters. All incidents should be reported even if a significant amount of time has passed. However, delaying a report or Complaint may impede the ability to conduct an investigation or take appropriate remedial actions.

For the purpose of this Executive Order, 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 Chancellor's Office (CO) where the Complaint Appeal is reviewed.

- **Within ten (10) Working Days after receipt of a Complaint**, an intake interview shall be conducted with the Complainant.
- **Within ten (10) Working Days** after reviewing all written Complaints and the information received during the intake interview, the Discrimination/Harassment/Retaliation (DHR) Administrator or Title IX Coordinator will notify the Complainant that the Complaint has been accepted for investigation and the timeline for completion of the investigation. If the DHR Administrator or Title IX Coordinator determines the Complainant has failed to state a Complaint within the scope of this Executive Order, s/he will provide the Complainant with written notice of this determination within **ten (10) Working Days**. The DHR Administrator or Title IX Coordinator will also inform the Complainant that if additional information is provided, the Complaint will be reviewed again.
- **Within sixty (60) Working Days after the intake interview**, the Investigator shall complete the investigation, write and submit an investigation report to the campus designated DHR Administrator or Title IX Coordinator. If this timeline is extended pursuant to Article V. E, it shall not be extended for a period longer than an additional **thirty (30) Working Days** from the original due date.
- **Within ten (10) Working Days of receiving the investigation report**, the DHR Administrator or Title IX Coordinator shall review the investigation report and notify the Parties in writing of the investigation outcome. If the DHR Administrator or Title IX Coordinator performed the investigation, s/he shall notify the Parties in writing of the investigation outcome within **ten (10) Working Days** of completing the investigation report. The Notice shall indicate whether or not this Executive Order was violated and the Complainant's and Respondent's right to file an Appeal under this policy.

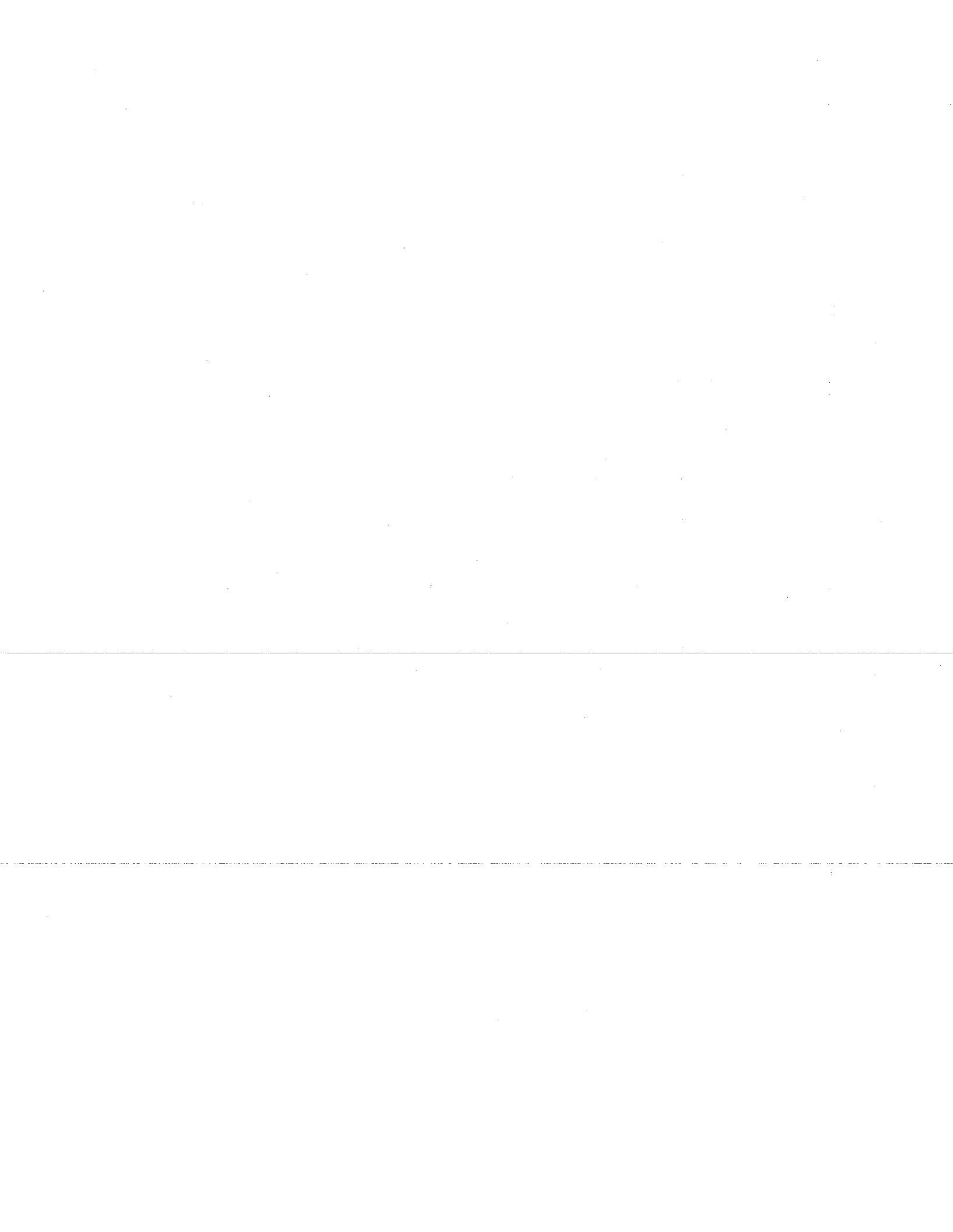
Executive Order 1096 Procedure Timeline

- **Within ten (10) Working Days** after the date of the Notice of Investigation Outcome, the Complainant may file a written appeal with the CO.
- **Within thirty (30) Working Days** after receipt of the written Appeal, the CO designee shall respond to the appealing party, unless the timeline has been extended pursuant to Article IV. G or Article V. E. A separate notification shall be provided to the non-appealing party, indicating whether or not the allegations were substantiated on Appeal by a Preponderance of the Evidence.
- **Closure.** The CO Appeal Response is final and concludes the Complaint and Appeal process under this Executive Order.

Pursuant to EO 1096, Article V. E, the timelines noted above may be extended as follows:

The timeline for the procedures contained within this Executive Order may be extended for any reason deemed to be legitimate by the Campus investigator/CO Appeal reviewer or by mutual agreement of the Parties. The timelines stated within this Executive Order will be automatically adjusted for a reasonable time period that should not exceed an additional **thirty (30) Working Days** for a Campus investigation or an additional **thirty (30) Working Days** for a reopened Campus investigation under Article IV. The Complainant and Respondent shall receive written notification of any period of extension.

***Note that for matters that fall under the scope of the 2019 Addendum, these timelines are not applicable. Please contact your campus Title IX Coordinator for additional guidance.



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Executive Order 1096 Procedure Timeline

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