

AGENDA

COMMITTEE OF THE WHOLE

Meeting: 10:30 a.m., Thursday, November 13, 2014
Glenn S. Dumke Auditorium

Lou Monville, Chair
Rebecca D. Eisen, Vice Chair
Roberta Achtenberg
Talar A. Alexanian
Kelsey Brewer
Adam Day
Douglas Faigin
Debra S. Farar
Margaret Fortune
Lupe C. Garcia
Steven M. Glazer
Lillian Kimbell
Hugo N. Morales
J. Lawrence Norton
Steven G. Stepanek

Consent Items

Approval of Minutes of Meeting of March 26, 2014

Discussion Items

1. Title IX Compliance Update - Preventing, Addressing and Eliminating Sexual Violence on California State University Campuses, *Information*

**MINUTES OF MEETING OF
COMMITTEE OF THE WHOLE**

**Trustees of The California State University
Glenn S. Dumke Conference Center
401 Golden Shore
Long Beach, California**

March 26, 2014

Members Present

Bob Linscheid, Chair
Roberta Achtenberg
Talar A. Alexanian
Adam Day
Rebecca D. Eisen
Douglas Faigin
Debra S. Farar
Margaret Fortune
Lupe C. Garcia
Steven M. Glazer
Lillian Kimbell
Lou Monville
Hugo N. Morales
J. Lawrence Norton
Steven Stepanek
Cipriano Vargas
Timothy P. White, Chancellor

Approval of Minutes

Chair Linscheid, hearing no objections, approved the minutes of September 25, 2013.

Discussion

Chancellor White introduced and welcomed guests Janet Napolitano, University of California President and Brice Harris, California Community Colleges Chancellor. Chancellor White expressed the commitment of the three segment leaders to reinvigorate California's Commitment to Higher Education. He also noted that the California State University East Bay campus will host the first California Public Higher Education Collaborative Financial and Administrative Services Conference.

President Napolitano presented her perspective regarding the segments' cooperation initiative to collectively improve public higher education for California's students.

President Napolitano provided specific examples of how the segments have worked together to lower costs.

Chancellor Harris, also offered his perspective on segmented cooperation in higher education. He noted the challenges of enhancing transfers, joining efforts in purchasing and business services, and the need for more outreach at the K-12 level.

Chair Linscheid thanked Chancellor White, President Napolitano and Chancellor Harris for their presentations and opened the floor for questions.

Trustee Perez offered his view that public education is in a much better place today because of the cooperation between the three system leaders.

Trustee Monville expressed his appreciation for the ongoing partnership among the three leaders as it relates to AB 1440 and transfer students.

General Counsel's Report

Executive Vice Chancellor and General Counsel Framroze Virjee presented his semi-annual report regarding significant litigation facing the CSU, including a PowerPoint presentation depicting litigation and claim statistics.

The meeting adjourned.

COMMITTEE OF THE WHOLE

Title IX Compliance Update - Preventing, Addressing and Eliminating Sexual Violence on California State University Campuses

Presentation By

Framroze Virjee
Executive Vice Chancellor
and General Counsel

Dianne Harrison
President
California State University, Northridge

Leslie E. Wong
President
San Francisco State University

Summary

This is an update regarding systemwide and campus efforts to prevent, address and eliminate sexual harassment and sexual violence in our campus communities. The safety and well-being of our students, employees, and campus visitors is of utmost importance. The University is committed to creating and sustaining an educational and working environment free of gender discrimination, sexual harassment, sexual violence, domestic violence, dating violence, and stalking.

Background

The issue of sexual violence on campus has been on the national, state and local stage. Our policies and procedures are being questioned and scrutinized by federal and state officials, the public, and most importantly, by our employees, students and their families. We recognize and affirm our responsibility to not only provide a safe environment for everyone, but also our responsibility to increase awareness of sexual violence, prevent its occurrence, and appropriately respond when incidents occur. In addressing these issues of gender-based misconduct, all members of the University community must come together to respect and care for one another in a manner consistent with our deeply held academic and community values.

Our policies and procedures are intended to ensure a safe and non-discriminatory educational and working environment, and to comply with Title IX of the Education Amendments of 1972

(20 U.S.C. §§ 1681 *et seq.*) and related regulations (34 C.F.R. Part 106) (Title IX); the Violence Against Women Reauthorization Act of 2013 (which amends the Jeanne Clery Disclosure of Campus Security and Campus Crimes Statistics Act, commonly known as the Clery Act) (20 U.S.C. 1092(f)) (VAWA) under its Campus Sexual Violence Elimination Act provision (Campus SaVE Act); Title IV of the 1964 Civil Rights Act (42 U.S.C. §§ 2000c *et seq.*); the California Equity in Higher Education Act (Cal. Educ. Code §§ 66250 *et seq.*); California Education Code §§ 67380, 67385.7, 67386 and 67390-91; and the Governor's 2004 *California Campus Blueprint to Address Sexual Assault*.

Legislative Requirements

Title IX is a federal law that applies to educational institutions receiving federal financial assistance and prohibits discrimination on the basis of gender in an educational institution's programs or activities, including employment, academic, educational, extracurricular and athletic activities (both on and off campus). Title IX protects all people regardless of their gender or gender identity from gender discrimination, including sexual harassment and sexual violence, which are forms of gender discrimination. Title IX requires institutions to take necessary steps to prevent sexual assault on their campuses, and to respond promptly and effectively when an assault is reported. The Clery Act requires colleges and universities to report annual statistics on crime, including sexual assault and rape, on or near their campuses, and to develop and disseminate prevention policies. VAWA/Campus SaVE Act clarifies that "sexual violence" includes domestic violence, dating violence and stalking, which must be included in campus Clery reports, and also requires that institutional policies address and prevent sexual violence through training, education, and certain discipline procedures.

The California Equity in Higher Education Act prohibits discrimination based on any protected status, including gender, in all postsecondary institutions in the state. California Education Code §§ 67385.7 *et seq.* requires the CSU to provide educational and preventive information about sexual violence to students. The *California Campus Blueprint to Address Sexual Assault* provides guidance on steps that should be taken to improve individual campus responses to sexual assault.

Together, these laws require CSU campuses to (1) publish and widely disseminate a notice of nondiscrimination on the basis of gender; (2) designate one employee to coordinate Title IX compliance on each campus (including compliance with VAWA/Campus SaVE Act, and all other relevant gender discrimination/harassment/violence legislation); (3) adopt appropriate complaint and investigation procedures; (4) implement education and prevention programs for students and employees, as well as victim resource programs for victims of sexual harassment or sexual violence; (5) provide written rights and options information to victims of sexual violence; (6) provide training to the campus community on how to prevent, identify and report gender discrimination (including sexual harassment and sexual violence); (7) provide training on how to

conduct investigations to those employees who investigate allegations of gender discrimination (including sexual harassment and sexual violence); and (8) provide related training to student conduct hearing officers.

CSU Executive Orders

After several months of revision and collaboration across divisions and with all campus constituencies, Executive Orders 1095, 1096, 1097 and 1098 were issued on June 3, 2014.¹ These executive orders set forth CSU's systemwide policies and procedures related to gender-based discrimination complaints, investigation procedures, and student conduct rules:

Executive Order 1095 – Implementation of Title IX, VAWA/Campus SaVE Act, and Related Sex Discrimination, Sexual Harassment and Sexual Violence Legislation (<http://www.calstate.edu/EO/EO-1095.pdf>).

Executive Order 1096 – Systemwide *Policy* Prohibiting Discrimination, Harassment and Retaliation Against Employees and Third Parties and *Procedure* for Handling Discrimination, Harassment and Retaliation Allegations by Employees and Third Parties (<http://www.calstate.edu/EO/EO-1096.pdf>).

Executive Order 1097 – Systemwide *Policy* Prohibiting Discrimination, Harassment and Retaliation Against Students and Systemwide *Procedure* for Handling Discrimination, Harassment and Retaliation Complaints by Students (<http://www.calstate.edu/EO/EO-1097.pdf>).

Executive Order 1098 – Student Conduct Procedures (<http://www.calstate.edu/EO/EO-1098.html>).

Although new federal regulations were not implemented until October 2014, we were expected to make a good faith effort to comply with VAWA/the Campus SaVE Act in the interim, which we have done. Examples of some of the new, key provisions include: (1) new definitions for sexual violence, dating violence and stalking; (2) a detailed consent definition (which is already compliant with California Senate Bill 967, signed by the Governor in September 2014); (3) a Victim's Rights and Options Notice; (4) confidential reporting options; (5) improved reporting, complaint and investigation procedures; (6) coordination between Title IX administrative and separate law enforcement proceedings; (7) simultaneous notice and disclosure of investigation and discipline outcomes to the victim and accused; (8) mandatory training for new students and employees; (9) mandatory annual training for all employees involved in implementing these policies; (10) additional mandatory education, prevention, awareness and outreach programs and training for all students and employees; (11) on and off campus victim resources and support.

¹ Formerly, Title IX and related laws and guidance were addressed in Executive Orders 1072, 1073, 1074 and 1089.

These executive orders represent just the beginning of our efforts to address the serious problem of sexual violence on campus.

Recent New and Pending Laws and Guidance

In addition to Title IX, Clery, VAWA/the Campus SaVE Act and a variety of state statutes, several new laws and guidance have recently either been issued, or are pending, at the federal and state levels. These new laws and guidance will be incorporated into the next round of executive order revisions, as appropriate.

On the federal side, detailed new VAWA/Campus SaVE Act regulations were published last month, and will take effect in July 2015. United States Senator Barbara Boxer's Survivor Outreach and Support (SOS) Campus Act is pending. That bill, among other things, calls for independent, confidential sexual assault advocates on every campus. The CSU had already committed to have these confidential advocates in place by June 2015 pursuant to the California State Auditor's Report on Sexual Harassment and Sexual Violence at California universities (discussed below). The Campus Accountability and Safety Act (CASA) is also pending. If passed, this legislation will establish a framework for investigations, and penalties and fines to encourage sexual violence reporting. The bill also prohibits university departments – including athletic departments – from conducting their own investigations. It also calls for a federally created, maintained and implemented campus climate survey regarding sexual violence, which will be voluntary as early as 2015, but likely mandatory in 2016. The HALT Campus Sexual Violence Act is also pending. This bill increases transparency and reporting of campus sexual violence and improves enforcement. Clery violation penalties would be increased from \$25,000 to \$100,000, and would make climate surveys mandatory in 2016. HALT also creates a private cause of action for Clery violations, with appropriate equitable relief and compensatory damages. A private right of action already exists under Title IX and the California Education Code.

The Department of Education's Office for Civil Rights (OCR) issued its April 2014 *Questions and Answers on Title IX and Sexual Violence* (Q&A). While this document is guidance and not law, it constitutes the OCR's position on technical assistance, interpretation and best practices related to its *2011 Dear Colleague Letter on Sexual Harassment*. The Q&A further clarifies requirements on a variety of issues: (1) Title IX procedural requirements, including the preponderance of the evidence standard; (2) all students are protected by Title IX, including international students, undocumented students, and LGBTQ students; (3) the campus obligation to respond to sexual violence; (4) responsible employees and reporting; (5) confidentiality weighed against the University's obligation to respond to sexual violence; (6) investigations and hearings; (7) interim measures to support victims; (8) remedies and notices of outcome; (9) appeals; (10) Title IX training, education and prevention efforts; (11) retaliation prevention and response; (12) First Amendment issues; and (13) the intersection between Title IX, Clery and VAWA/Campus SaVE Act.

The United States White House Task Force *Not Alone* report is a significant guidance resource to inform efforts and responses to sexual violence on campus. The report includes: (1) several resource documents and toolkits; (2) recommendations for campus climate surveys; (3) information related to engaging men and bystanders in prevention and awareness efforts; and (4) information regarding effective response to student sexual assaults that is comprehensive and trauma-informed. The report calls for greater transparency and improved enforcement, which includes the federal government's increased investigation efforts and the OCR's public posting of information regarding all schools being investigated.

United States Senator Claire McCaskill's recent report provides several key recommendations to address and eliminate sexual violence on campus: (1) annual student climate surveys; (2) encouraging reporting; (3) additional training; (4) provision of adequate support services for victims; (5) emphasis on a team approach; (6) protocols on how University administration and law enforcement will coordinate efforts; (7) best practices for adjudication efforts; (8) athletic departments should not oversee their own complaints and investigations; (9) balancing the rights of victims with the rights of perpetrators; (10) preponderance of the evidence standard; and (11) use of effective penalties to hold perpetrators accountable and ensure campuses are safe.

The *It's On Us* campaign was launched in September 2014 as an awareness and cultural movement campaign aimed at fundamentally shifting the way we think about sexual assault. The campaign invites everyone to realize the solution begins with all stakeholders. Everyone needs to create an environment, be it in a dorm room, at a party, in a club or sports team, or the greater college campus community, where sexual assault is unacceptable and survivors are supported. The campaign includes branding, public service announcements, posters, and social and digital media that can be used by all universities nationwide to get the word out.

In California, there are a number of laws and significant guidance related to sexual violence on campus. Perhaps most significant, Senate Bill 967, the "Yes Means Yes" bill, was signed by Governor Brown in September 2014. This bill is the first of its kind in the United States. We worked alongside various groups and Sacramento lawmakers on this bill which defines consent as "an affirmative, conscious, and voluntary agreement to engage in sexual activity." CSU's executive orders are already substantially compliant with SB 967. CSU's executive orders contain a detailed and comprehensive consent definition including the following language: "An informed, affirmative, conscious decision by each participant to engage in mutually agreed upon sexual activity." SB 967 also sets out a number of protocols to include in detailed and trauma-informed policies and procedures that must be based on "best practices and current professional standards."

The California State Auditor's (CSA) June 2014 *Report on Campus Sexual Harassment and Sexual Violence* sets forth recommendations for implementation at all CSU campuses. After

reviewing UCLA, UC Berkeley, San Diego State, and Chico State, the CSA made recommendations for implementing better/improved efforts around addressing and preventing sexual harassment and sexual violence on campus. Chancellor White agreed to implement each of the recommendations on every CSU campus by June 24, 2015. Many if not most of the recommendations have been or are being implemented on every campus now. The recommendations include: (1) annual training for all faculty and staff; (2) training for all resident advisors/campus housing staff twice a year; (3) annual training for all athletics coaches, staff and student athletes; (4) training for all incoming students as close as possible to when they arrive on campus for the first time, but no later than the first two weeks of their first term; (5) training for all fraternity and sorority members that is focused on their activities, including rape awareness; (6) determining what student groups on each campus are at risk and ensuring they receive annual training; (7) refresher training for all students on how to handle and report incidents, including bystander intervention training; (8) appropriate distribution and posting of written policies and CSU's notice of nondiscrimination to all students and employees at the beginning of every academic year, and at new student orientations; (9) imposition of consequences/sanctions, like registration holds or student discipline, when students fail to complete required education and training; (10) confidential resource advocates to help students obtain the services they need when they experience an incident of sexual harassment or sexual violence; (11) wide distribution of a Title IX brochure; (12) a document that explains what students can expect from the complaint process with an overview of the process, relevant timelines, the legal standard (preponderance of the evidence), issues related to confidentiality, and expectations regarding notification of case status updates and outcomes; (13) provision of regular updates on the status of an investigation to both parties, and timely notice of resolution of the investigation; (14) maintenance of appropriate records; (15) regular evaluation of timeliness of investigations in a systematic manner, to ensure that investigations are completed within the established timelines; (16) ensuring that all complaints and reports are fully resolved and appropriate discipline is imposed; (17) creating a summary of student incidents reported to the university; (18) evaluating this summary data to identify trends specific to demographics, as well as timing, location and frequency of incidents to better inform strategies to protect students and direct outreach efforts; (19) establishing campus-based sexual violence task forces or committees that includes participants such as high level campus administrators, academic leaders, and student leaders.

Recent CSU Milestones and Campus Practices

CSU executive orders were revised to include new laws and guidance as of the spring 2014. A process has been developed for regular review and revision of these executive orders as the law and guidance continues to evolve and change. Significant revisions are currently underway to incorporate new laws and guidance since spring 2014 – a cross-divisional effort and collaboration between the Chancellor's Office and all 23 campuses.

We have recently hired a systemwide Title IX Compliance Officer – which we believe is the first position of its kind in the nation. Our new system Title IX officer is scheduled to start working on December 1, 2014. The position's primary duties will include: (1) providing oversight, technical assistance, leadership, and guidance over institutional efforts to coordinate system compliance; (2) responsibility for system strategic initiatives, programs and projects; (3) ensuring all executive orders, policies and procedures are adequate and up-to-date; (4) ensuring all 23 campuses are consistently implementing practices and standards; (5) serving as primary system liaison for, trainer of, advisor to, facilitator of, and support for all 23 campus T9C's and other administrators involved in gender/sex DHR issues/matters; (6) preparing reports on the number, nature, and disposition of all complaints, investigations, and adjudications – identifying patterns, if any, and making recommendations to resolve them and increase prevention efforts; (7) working collaboratively with all university partners to assess effectiveness of efforts to prevent and eliminate sexual harassment and violence; (8) coordinating with outside agencies and other institutions regarding compliance, related policies and best practices; and (9) representing the CSU at government and legislative hearings.

We have engaged in extensive training on a systemwide basis and at the campus level. In June 2014, a full day, systemwide in-service training was attended by over 100 campus and Chancellor's Office personnel, and live-streamed to hundreds of other campus employees and administrators. We have reviewed and vetted student online training modules for use at each campus. We have also reviewed and vetted an employee online training module. In turn, each campus has engaged in a full array of training sessions, both in-person and online, for students and employees.

A confidential Title IX SharePoint site and separate listserv have been established, along with a system Title IX Coordinator Committee made up of six campus-based Title IX Coordinators, who regularly collaborate with members of the Human Resources, Academic Affairs, and General Counsel's offices.

A systemwide Chancellor's Office Work Group has been established to work with each of the campuses to assist with implementation of the California State Auditor's recommendations. The Work Group is collaborating with, advising, and helping to develop action plans for each campus to fully implement the recommendations before June 24, 2015.

As a result of meetings and discussions amongst the campus Presidents at Executive Council meetings, each campus President has established their own action plans to address the problem of sexual harassment and sexual violence on their campuses.

And these are just the beginning of our efforts. Each campus has developed an array of good practices to lead and implement in creative and innovative ways to get the word out. One size does not fit all as every campus is unique. Each campus has its own customized approach to engaging in prevention and awareness campaigns. Among the many ongoing campus efforts are:

(1) easy to find and use webpages containing critical information for students and employees; (2) outreach efforts; (3) creative and innovative live and online training tools for targeted student groups where risk is high; (4) smartphone applications, and other multi-media tools such as video presentations, handouts, brochures, and flyers; (5) campus-based sexual assault advocates and centers; and (6) memoranda of understanding and/or partnerships with community resources, such as 24-hour rape crisis centers.

Conclusion

It is up to us to set the tone, change existing cultures, and break down barriers. We must devote sufficient resources to not only meet our significant compliance obligations, but shine and lead to get out ahead of the curve and stay there. We need to get the word out, think ahead, and provide resources and support to those who are victimized by sexual assault. The challenges are great: (1) regularly updating our policies and procedures as the law and guidance rapidly evolve; (2) updating and improving our training and prevention efforts to conform with trauma-informed good practices and policy revisions; (3) significant staffing and resource constraints; (4) Title IX Coordinator and staff fatigue as they implement these new requirements and try to stay ahead of the tidal wave of requirements and responsibilities; (5) weighing victim requests for confidentiality against the need to prevent and correct; (6) partnering with our bargaining units to ensure their involvement and commitment to prevent and eliminate sexual harassment and sexual violence; and (7) staying in compliance in order to avoid federal and state investigations, and resulting fines and penalties.

While it may seem counterintuitive, more incident reporting is a good thing in the long run. Without adequate reporting, we are hindered in our awareness and prevention efforts. Without adequate reporting, we cannot fully address incidents of sexual violence and prevent them from recurring in the future. We want to encourage everyone in the campus community that it is safe to report what happens to them, and to assure them that the full force of the CSU's efforts will come to bear to eliminate, prevent and address sexual harassment and sexual violence on and off campus.