

Addendum B/Track 1


Vice Presidents for Student Affairs as Student Sanction Decision-Makers

Office of the Chancellor
The California State University

Implementing the Title IX Regulations for the CSU

- **Addendum A/Track 2:** Following the January 2019 CA Court of Appeal decision involving another California university
- **Addendum B/Track 1:** Following Federal Regulations
- This means cases will be addressed under one of three possible procedures:
 - Track 3 (non-hearing process)
 - Addendum A/Track 2: State Mandated Hearing Addendum
 - Addendum B/Track 1: Federal Mandated Hearing Addendum

Current Status: Active PolicyStat ID: 8453516



Origination:	10/5/2016
Last Revised:	8/14/2020
Next Review:	8/14/2022
Owner:	Linda Hoss, SW Title IX CO & Sr SW DR
Area:	Human Resources
Codes:	EO 1097

Systemwide Policy Prohibiting Discrimination, Harassment & Retaliation, Sexual Misconduct, Dating & Domestic Violence, & Stalking Against Students & Procedure for Addressing

Executive Order 1097 (Revised August 14, 2020) supersedes Executive Order 1097 (Revised March 29, 2019). This policy and procedure applies systemwide, in conjunction with Executive Orders 1095 (Revised June 2, 2015) and 1098 (Revised August 14, 2020) and any superseding executive orders.

This executive order (EO 1097) 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. [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.B.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.

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 OHR 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;

Track 1 – Federal Mandated Hearing Process

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

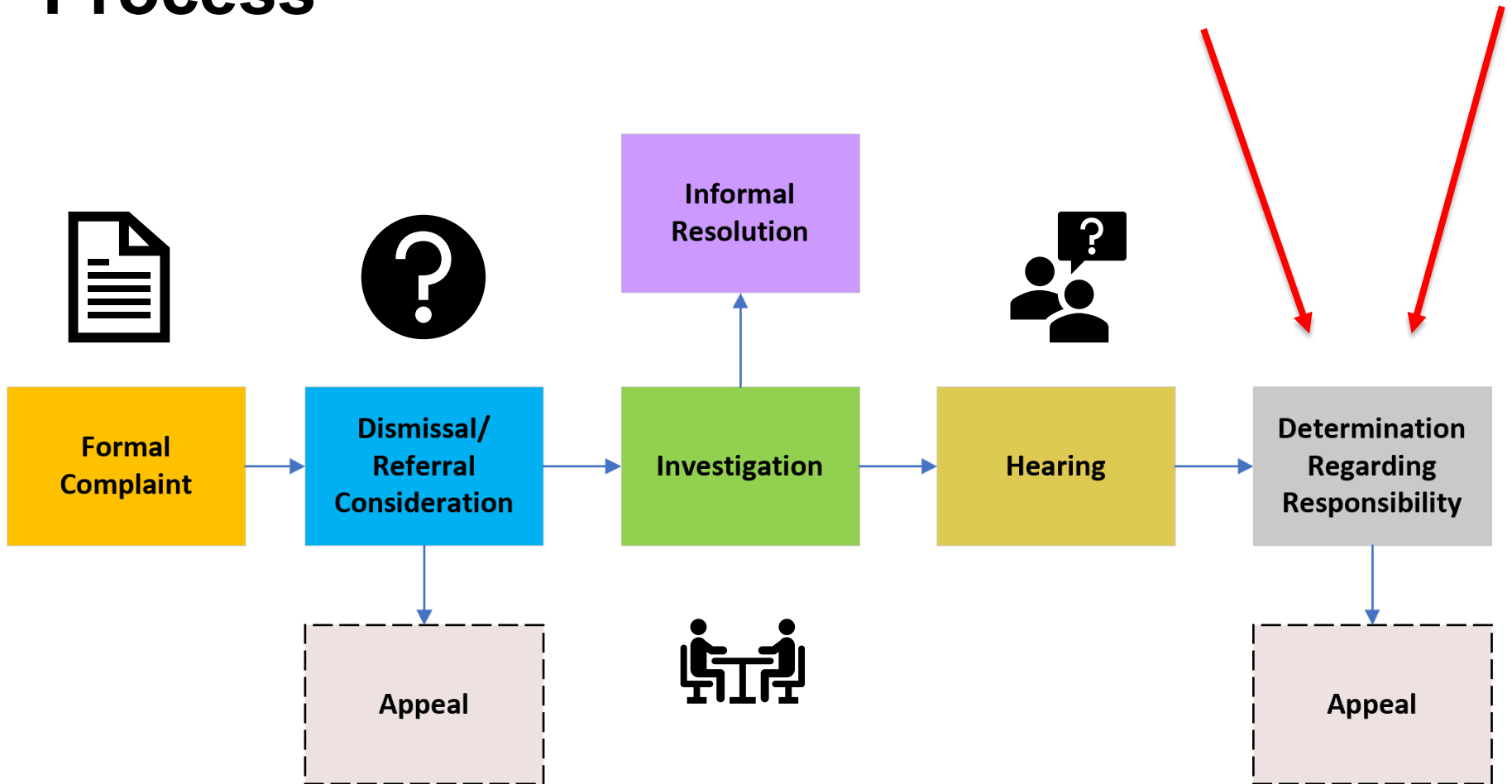
Track 2 – State Mandated Hearing Process

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

Track 3 – Non-Hearing Process

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

Overview of the Addendum B/Track 1 Process



Highlights of Addendum B/Track 1 Hearings

- “Sexual Harassment” is both an umbrella term and prohibited conduct
- The Hearing Officer will initially question every witness by asking questions that the Hearing Officer has drafted
- The Parties **must** have Hearing Advisors
- Hearing Advisors permitted to ask witnesses all Relevant questions and follow-up questions, including those that challenge credibility

Non-Participation in the Hearing

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

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

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

No Violation Found

Usually within 15 Working Days of hearing:

- Hearing Officer sends report to Title IX Coordinator, Student Conduct Administrator and Parties

Title IX Coordinator will review the Hearing Officer's report to ensure compliance with EO

President or Designee is informed, and Parties notified of outcome via Decision Letter (includes appeal rights)

Sanctioning

Violation Found

Usually within 15 Working Days of the close of the hearing:

- Hearing Officer sends report to Title IX Coordinator, Student Conduct Administrator and Parties (Title IX Coordinator will review the Hearing Officer's report to ensure compliance with EO)

Within 5 Working Days of Parties' receipt of report:

- Parties may submit written impact statement (2000-word limit)
- Student Conduct Administrator and Title IX Coordinator submit written statement → aggravating/mitigating factors and recommendation as to disciplinary outcome

Within 5 Working Days of Hearing Officer's receipt of statements:

- Hearing Officer submits Final Hearing Officer's Report to President or Designee with recommendation and rationale for disciplinary outcome

Within 10 Working Days of receipt of Final Hearing Officer's Report with sanction recommendation:

- President or Designee issues Decision Letter (includes appeal rights)

Serving Impartially

Serving impartially includes avoiding the following:

- **Prejudgment of the facts at issue** – an opinion about a situation or a person that is formed before knowing or considering all of the facts (Cambridge English Dictionary)
- **Conflicts of interest** – a conflict between the private interests and the official responsibilities of a person in a position of trust (Merriam Webster Dictionary)
- **Bias** – the action of supporting or opposing a particular person or thing in an unfair way, because of allowing personal opinions to influence your judgment (Cambridge English Dictionary)

Bias

“Whether bias exists requires examination of the particular facts of a situation and the Department encourages recipients to apply 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, exercising caution not to apply generalizations that might unreasonably conclude that bias exists [...].”
(FR 30252)

Examples of generalizations (provided by OCR in preamble):

- Assuming that all self-professed feminists, or self-described survivors, are biased against men
- Assuming that a male is incapable of being sensitive to women
- Assuming that prior work as a victim advocate, or as a defense attorney, renders the person biased for or against complainants or respondents in a Title IX role

(FR 30252)

Disciplinary Sanction Decision

- Hearing Officer considers statements submitted by the Parties, Title IX Coordinator and Student Conduct Administrator
- Makes sanction recommendation, including rationale
- Submits recommendation to President or Designee (amended Final Hearing Officer's Report)
- President or Designee may:
 - Impose recommended disciplinary sanction/s
 - Adopt a different disciplinary sanction*
 - Reject disciplinary sanctions altogether*

* Must set forth reason in Decision Letter

The Decision Letter

- Issued by the President or Designee to the Complainant and Respondent
- Must include:
 - The outcome of the hearing
 - Name of the Respondent
 - Any sanction imposed
 - Appeal information
 - Whether any Remedies will be provided to the Complainant
- Final Hearing Officer's Report attached to Decision Letter
- Addendum B Decision Letter template available!

Appeals

Appeals

Appeal granted where:

- the hearing outcome is not supported by substantial evidence (in other words, there was no reasonable basis for such findings or conclusions);
- a procedural irregularity occurred that affected the outcome of the matter;
- 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 the addendum;
- 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; or
- the sanction(s) imposed as part of the outcome of the Formal Complaint process constituted an abuse of discretion based on the substantiated conduct.

Questions?





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