

Systemwide Human Resources DHR/Whistleblower/EEO Compliance 401 Golden Shore Long Beach, CA 90802-4210 www.calstate.edu

October 15, 2020

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Tina Leung

PERSONAL AND CONFIDENTIAL

Dr. David Stachura Associate Professor Department of Biological Sciences California State University, Chico

Sent via email to: <u>dstachura@csuchico.edu</u>

EXECUTIVE ORDER 1096 APPEAL RESPONSE

Dear Dr. Stachura:

This letter constitutes the Chancellor's Office ("CO") response to your Executive Order 1096 ("EO 1096") appeal of the outcome of the investigation into whether you violated CSU's policy prohibiting consensual relationships with a student and will address the issues raised.

I. PROCEDURAL SUMMARY

On or about June 25, 2020, California State University, Chico ("Chico State") received a report that you were engaging in a consensual sexual relationship with Chico student over whom you exercised direct authority.

The complaint was investigated under the procedures of EO 1096 by Robert Morton ("Investigator"), Title IX-DHR Investigator for Chico State. On September 15, 2020, a Notice of Investigation Outcome ("NOIO") was issued notifying you that the Investigator had concluded that you engaged in a Consensual Relationship with a student in violation of EO 1096. You thereafter filed a timely appeal of the investigation outcome with the CO on September 21, 2020.

II. <u>RELEVANT STANDARDS</u>

The following definitions are quoted, in relevant part, from EO 1096:

Consensual Relationships means "a sexual or romantic relationship between two persons who voluntarily enter into such a relationship... 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." (Article I, F.)

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." (Article VI, Z)

III. BASES OF APPEAL

Pursuant to Article IV, B. of EO 1096, a party may appeal an investigation outcome on one or more of the following three bases:

- (1) The investigation outcome is unsupported by the evidence, based on the Preponderance of the Evidence standard;
- (2) There were prejudicial procedural errors that impacted the investigation outcome to such a degree that the investigation did not comply with EO 1096; or
- (3) There is new evidence that was not available at the time of the investigation.

Your appeal was brought under the appeal bases (1) and (2) enumerated above.

IV. EVIDENCE CONSIDERED

The following materials were considered in reaching a decision in this appeal:

- The four-page Notice of Investigation and Imposition of Remedial Measure dated July 13, 2020;
- The 19-page Investigation Report dated September 15, 2020 containing exhibits;
- The three-page NOIO dated September 15, 2020;
- Your 23-page appeal filed with the CO on September 21, 2020 with attachment; and
- Your two-page follow-up appeal submission submitted to the CO on October 2, 2020.

V. <u>ANALYSIS AND FINDINGS</u>

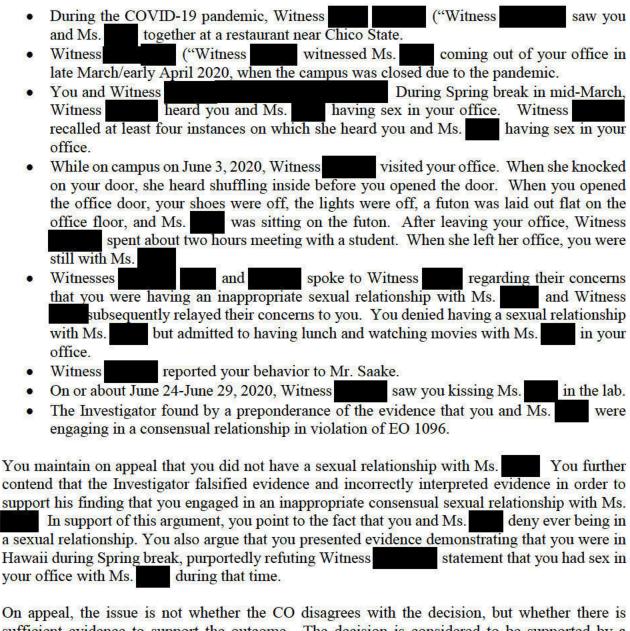
Appeal Basis (1):

On appeal, you contend that the investigation outcome is unsupported by the evidence based on the preponderance of the evidence standard.

CO Appeal Decision: There is Sufficient Evidence to Support the Investigator's Conclusion That You Violated EO 1096

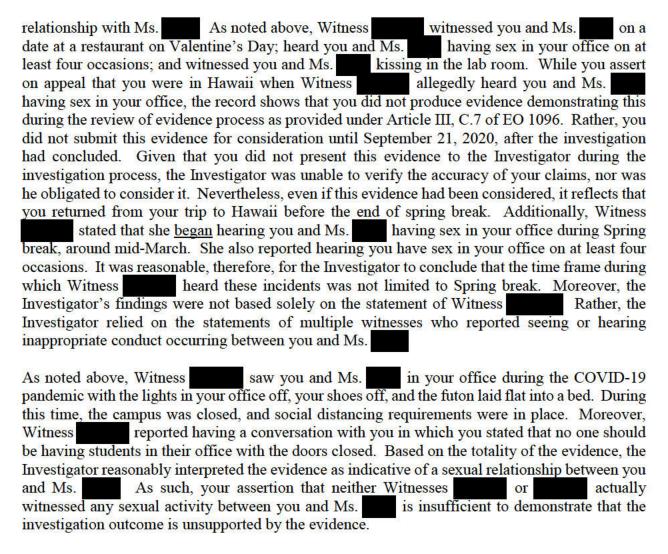
It appears that the following contentions set forth in your appeal rely primarily on basis (1) as the grounds for appeal:

 You contend that the Investigator falsified evidence and incorrectly interpreted evidence to erroneously conclude that you and Ms. had a sexual relationship. You contend that the information you provided demonstrating that you were in Have during spring break refutes Ms. allegation that you had sex with I in your office during that time frame. You dispute the credibility of the witnesses and contend that the statement of Witness should not have been considered in this matter. You contend that you have provided ample evidence demonstrating that Witness had a motive to falsify the allegations against you. You contend that the Investigator erroneously concluded that you and Ms. we prevaricating. You question the credibility of the Investigator and Dylan Saake ("Mr. Saake"), Title Coordinator at Chico State. 	vaii Ms. ness
The Investigation Report details the following facts and findings:	
 You are the Associate Professor of Biological Sciences at Chico State. Your resear focuses on blood development and the genetics of zebrafish. You operate a fish lab Chico State. You are also a Principle Investigator for a grant funded by the Nation Institutes of Health ("NIH"). Ms. was an undergraduate student at Chico from graduated Chico State in May with a Bachelor of Science degree in She is currently a graduate student at Chico State continuing studies. 	o at onal Ms.
You were Ms. has taken. manage the lab pre-med major advisor, research advisor, and taught two courses which she uses as a student which she uses a stud	You
The Investigator determined that you exercised or influenced, directly or otherw significant academic, administrative, supervisory, evaluative, counseling or extracurricular authority over Ms.	
• During the subscription of faculty and students, including Ms. When faculty and students moved away from the bar, yeremained at the bar with Ms.	to a
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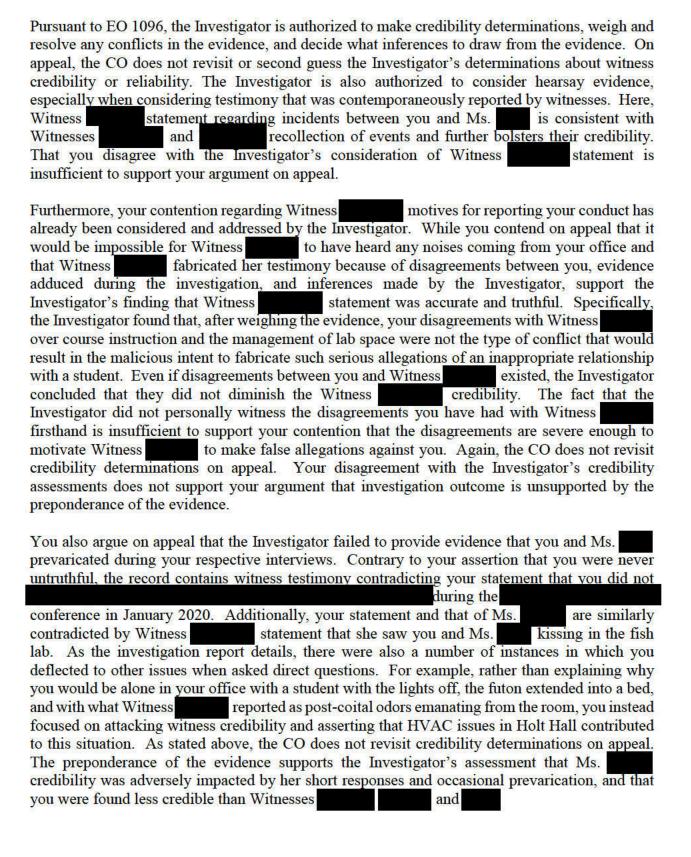
On appeal, the issue is not whether the CO disagrees with the decision, but whether there is sufficient evidence to support the outcome. The decision is considered to be supported by a preponderance of the evidence so long as there is some evidence in the record supportive of the decision that is both reasonable and credible in nature and bears a rational connection. The investigation outcome is also considered to be supported by a preponderance of the evidence if there is evidence contained in the record that would have allowed a reasonable person to reach that same decision. The decision is not supported by a preponderance of the evidence if, and only if, no reasonable person could have reached the same decision.

Contrary to your contentions on appeal, the preponderance of the evidence supports the Investigator's finding that you engaged in a sexual relationship with Ms. Multiple witnesses credibly reported witnessing interactions between you and Ms. which, when viewed in totality, demonstrate that you more likely than not engaged in an inappropriate consensual



The Investigator is authorized to determine what inferences to draw from the evidence. That you disagree with the Investigator's inferences is insufficient to support your arguments on appeal. On appeal, the CO does not reweigh the evidence, re-decide conflicts in the evidence, or second guess the Investigator's judgment about which inference or conclusion to draw when the evidence is reasonably capable of supporting two different inferences or conclusions. In weighing the evidence, the Investigator appropriately used the preponderance of the evidence standard, which means that the evidence on one side outweighs, or is more than, the evidence on the other side. Based on the preponderance of the evidence, the Investigator reasonably and rationally concluded that you engaged in a Consensual Relationship with a student over whom you exercise direct or otherwise significant authority in violation of EO 1096.

On appeal, you also question the Investigator's credibility determinations. Specifically, you contend that Witness statement should not be considered and disagree with the Investigator's assessment of your credibility and that of Ms. You also contend that Witness had motive to make false allegations against you and question the credibility of the Investigator and Mr. Saake.



Finally, the CO will not entertain your assertions regarding the Investigator's and Mr. Saake's credibility, as you have not presented any evidence supporting these contentions. In the absence of any credible evidence, this argument has no merit and will not be considered by the CO.

Your appeal also takes issue with several details in the report and contends that the Investigator allegedly misrepresented certain facts. For example, you contend that the report misstated that you had your back against the wall when you were seen kissing Ms. and assert that this could not have occurred because the room in which this allegedly happened was obscured by equipment. You also point to the fact that the Investigation report misidentifies the fish room as Holt 263 when it is in fact in Holt 301. The CO, however, will not revisit every issue you have regarding the alleged "miswording" on the Investigator's part, as these minor details, even if found to be true and corrected, do not impact the investigation outcome and will not be considered further.

Taking into account the entire record, the preponderance of the evidence supports the finding that you engaged in a Consensual Relationship with a student in violation of EO 1096. The record contains evidence that is credible and reliable, and bears a rational connection to the decision. The evidence in the record would have allowed a reasonable person to have reached the same decision. On appeal, you were unable to demonstrate that the Investigator's conclusion is unsupported by the evidence, based on the preponderance of the evidence. Therefore, your appeal on this ground is denied.

Appeal Basis (2):

You further contend on appeal that prejudicial procedural errors impacted the investigation outcome to such a degree that the investigation did not comply with EO 1096.

CO Appeal Decision #2: No Prejudicial Procedural Errors Impacted the Investigation Outcome

The following summarizes the arguments you raised on appeal under this ground:

- You contend that the Investigator declined to interview a witness you proposed for no apparent reason.
- You contend that you were inappropriately banned from the campus even before you were interviewed, resulting in a financially punitive sanction that hurts your career.
- You contend that you were never informed of the identity of the Complainant in this matter
- You contend that you were not provided with relevant exhibits or documents that were referred to in the final report.
- You contend that Mr. Saake violated confidentiality by sharing details of the matter with Mary Sidney ("Ms. Sidney"), CEO of Chico State Enterprises, Chico State's auxiliary organization.
- You contend that Mr. Saake and Ms. Sidney inappropriately reported to the NIH that you were under investigation and subsequently sent a copy of the final investigation report to NIH before the appeal process was final.

A prejudicial error is considered prejudicial only if the error substantially and materially reduced or adversely affected the right to a fair process provided by EO 1096. To prevail on appeal, a Party must not only allege a procedural error, but successfully demonstrate that the procedural error prejudicially affected a Party's right to a fair investigatory process.

On appeal, you argue that the Investigator failed to interview one of the witnesses you proposed without providing an explanation. While you identified witness someone who could "explain your relationship with Ms. the investigation report clearly articulates the Investigator's decision not to interview, as this witness was not present during any of the reported incidents. Pursuant to the EO, the Investigator retains discretion and authority to determine the relevance of witnesses and evidence. Your disagreement with the Investigator's decisions regarding these issues does not constitute a procedural error.

As to your contention that you were inappropriately banned from campus, the record reflects that the campus notified you in its Notice of Investigation on July 13, 2020 that you were instructed to temporarily stay off campus. Article VI, CC. of EO 1096 permits temporary measures to be taken prior to the conclusion of an investigation in order to immediately stop any potential wrongdoing and/or to reduce or eliminate any negative impact of such conduct. In light of the evidence developed in this matter, the campus' decision to implement an interim measure of temporarily limiting your access to the campus was appropriate and reasonable and does not constitute a prejudicial procedural error.

Additionally, your contention that you were never informed of the identity of the Complainant does not constitute a prejudicial procedural error. On the contrary, in the same Notice of Investigation provided to you by the campus, the letter identifies the Title IX Office as the entity initiating the investigation into this matter. Moreover, any confusion regarding this issue did not impact the investigation outcome in any manner. As such, it does not constitute a prejudicial procedural error.

You also contend on appeal that you did not receive the relevant exhibits or documents that were referred to in the final report. In support of your argument, you cite to documents identified as "EO 1096_0010003," "EO 1096_001012," and "EO 1096_001012—001013." Notably, those documents are letters you provided to the Investigator (see page 2 of the Investigation Report). Given that you were in possession of this evidence and have provided no other information demonstrating that there was other evidence relied upon in the final report that you did not receive, this argument has no merit.

With respect to your contention that EO 1096's confidentiality provisions were violated during the course of this investigation, Article III, C.6. of the EO authorizes the Title IX Coordinator to weigh any requests for confidentiality against the University's duty to provide a safe and nondiscriminatory environment for all members of the Campus community. It is noted that you have not demonstrated that you ever made any request for confidentiality. More importantly, even if you had, the EO specifically states that confidentiality cannot be ensured. Mr. Saake's consultation with Ms. Sidney, the CEO of Chico State Enterprises, the entity responsible for

oversight of NIH grants, was appropriate and reasonable under the circumstances and does not constitute a procedural error.

Finally, your contention that you were inappropriately reported to the NIH falls outside the scope of the CO's review on appeal, as reports to the NIH are not part of the Title IX investigation procedure. Under the CO's appeal review process, the issues and evidence raised on appeal shall be limited to those raised and identified during the investigation. Nevertheless, we note that NIH policies require grant recipients to notify the NIH of any restrictions imposed on a Principal Investigator or other senior/key personnel "including but not limited to, any restrictions on access to the institution or institution resources, or changes in their (employment or leave) status at the institution." (See NIH's "Policy Regarding a Change in Program Director's/Principal Investigator's Status," Notice Number: NOT-OD-18-172.) Accordingly, when interim measures were imposed against you, Ms. Sidney was required to report this information to NIH, as failure to adhere to NIH policies may have jeopardized the University's and Chico State Enterprises' standing with the NIH. Significantly and contrary to your assertions on appeal, the final investigation report, or any information about the investigation findings, have not been provided to the NIH pending the outcome of this appeal. To the extent you have questions or concerns about any future reports to the NIH, we encourage you to contact your union representative.

In short, your appeal does not demonstrate that prejudicial procedural errors impacted the investigation outcome to such a degree that the investigation did not comply with EO 1096. Therefore, your appeal on this ground is denied.

VI. CONCLUSION

All the information provided on appeal has been carefully reviewed. Since your appeal fails to demonstrate that the investigation outcome is unsupported by the evidence and that there were prejudicial errors that impacted the investigation outcome to such a degree that the investigation did not comply with EO 1096, your appeal is therefore denied.

This appeal response is final and concludes the EO 1096 complaint and CO appeal review process; the investigation findings and conclusions as documented in the September 15, 2020 NOIO are final, and the CO considers this matter closed.

Sincerely,

Tina Leung

Manager of Chancellor's Office Investigations, Appeals and Compliance CSU Office of the Chancellor

Copy: Laura Anson, Sr. Systemwide Director for DHR/Whistleblower/EEO Compliance Dylan Saake, Title IX Coordinator and DHR Administrator, Chico State