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October 15, 2020

PERSONAL AND CONFIDENTIAL

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

Sent via email to: dstachura@csuchico.edu

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 [REDACTED] ("Ms. [REDACTED]" a 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.

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Chico
Dominguez Hills
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Fullerton
Humboldt
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Maritime Academy

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Northridge
Pomona
Sacramento
San Bernardino
San Diego

San Francisco
San José
San Luis Obispo
San Marcos
Sonoma
Stanislaus

II. RELEVANT STANDARDS

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. ANALYSIS AND FINDINGS

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 the evidence to erroneously conclude that you and Ms. [REDACTED] had a sexual relationship.
- You contend that the information you provided demonstrating that you were in Hawaii during spring break refutes Ms. [REDACTED] allegation that you had sex with Ms. [REDACTED] in your office during that time frame.
- You dispute the credibility of the witnesses and contend that the statement of Witness [REDACTED] ("Witness [REDACTED] should not have been considered in this matter.
- You contend that you have provided ample evidence demonstrating that Witness [REDACTED] ("Witness [REDACTED] had a motive to falsify the allegations against you.
- You contend that the Investigator erroneously concluded that you and Ms. [REDACTED] were prevaricating.
- You question the credibility of the Investigator and Dylan Saake ("Mr. Saake"), Title IX Coordinator at Chico State.

The Investigation Report details the following facts and findings:

- You are the Associate Professor of Biological Sciences at Chico State. Your research focuses on blood development and the genetics of zebrafish. You operate a fish lab at Chico State. You are also a Principle Investigator for a grant funded by the National Institutes of Health ("NIH").
- Ms. [REDACTED] was an undergraduate student at Chico from [REDACTED] Ms. [REDACTED] graduated Chico State in May [REDACTED] with a Bachelor of Science degree in [REDACTED] [REDACTED] She is currently a graduate student at Chico State continuing her studies.
- You were Ms. [REDACTED] pre-med major advisor, research advisor, and taught two courses she has taken. [REDACTED] You manage the lab [REDACTED] which she uses as a student. [REDACTED]
- The Investigator determined that you exercised or influenced, directly or otherwise, significant academic, administrative, supervisory, evaluative, counseling or extracurricular authority over Ms. [REDACTED]
- During the [REDACTED] conference in January 16-20, 2020 in Santa Clara, witnesses saw you and Ms. [REDACTED] arriving together. During this conference, you went to a bar with a group of faculty and students, including Ms. [REDACTED] [REDACTED] When faculty and students moved away from the bar, you remained at the bar with Ms. [REDACTED]
- On February 14, 2020, Valentine's Day, Witness [REDACTED] saw you and Ms. [REDACTED] at a restaurant in downtown Chico. You and Ms. [REDACTED] appeared to be dressed for a date.

- During the COVID-19 pandemic, Witness [REDACTED] (“Witness [REDACTED] saw you and Ms. [REDACTED] together at a restaurant near Chico State.
- Witness [REDACTED] (“Witness [REDACTED] witnessed Ms. [REDACTED] coming out of your office in late March/early April 2020, when the campus was closed due to the pandemic.
- You and Witness [REDACTED] During Spring break in mid-March, Witness [REDACTED] heard you and Ms. [REDACTED] having sex in your office. Witness [REDACTED] recalled at least four instances on which she heard you and Ms. [REDACTED] having sex in your office.
- While on campus on June 3, 2020, Witness [REDACTED] visited your office. When she knocked on your door, she heard shuffling inside before you opened the door. When you opened the office door, your shoes were off, the lights were off, a futon was laid out flat on the office floor, and Ms. [REDACTED] was sitting on the futon. After leaving your office, Witness [REDACTED] spent about two hours meeting with a student. When she left her office, you were still with Ms. [REDACTED]
- Witnesses [REDACTED] and [REDACTED] spoke to Witness [REDACTED] regarding their concerns that you were having an inappropriate sexual relationship with Ms. [REDACTED] and Witness [REDACTED] subsequently relayed their concerns to you. You denied having a sexual relationship with Ms. [REDACTED] but admitted to having lunch and watching movies with Ms. [REDACTED] in your office.
- Witness [REDACTED] reported your behavior to Mr. Saake.
- On or about June 24-June 29, 2020, Witness [REDACTED] saw you kissing Ms. [REDACTED] in the lab.
- The Investigator found by a preponderance of the evidence that you and Ms. [REDACTED] were engaging in a consensual relationship in violation of EO 1096.

You maintain on appeal that you did not have a sexual relationship with Ms. [REDACTED]. You further contend that the Investigator falsified evidence and incorrectly interpreted evidence in order to support his finding that you engaged in an inappropriate consensual sexual relationship with Ms. [REDACTED]. In support of this argument, you point to the fact that you and Ms. [REDACTED] deny ever being in a sexual relationship. You also argue that you presented evidence demonstrating that you were in Hawaii during Spring break, purportedly refuting Witness [REDACTED] statement that you had sex in your office with Ms. [REDACTED] during that time.

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. [REDACTED]. Multiple witnesses credibly reported witnessing interactions between you and Ms. [REDACTED] which, when viewed in totality, demonstrate that you more likely than not engaged in an inappropriate consensual

relationship with Ms. [REDACTED]. As noted above, Witness [REDACTED] witnessed you and Ms. [REDACTED] on a date at a restaurant on Valentine's Day; heard you and Ms. [REDACTED] having sex in your office on at least four occasions; and witnessed you and Ms. [REDACTED] kissing in the lab room. While you assert on appeal that you were in Hawaii when Witness [REDACTED] allegedly heard you and Ms. [REDACTED] having sex in your office, the record shows that you did not produce evidence demonstrating this during the review of evidence process as provided under Article III, C.7 of EO 1096. Rather, you did not submit this evidence for consideration until September 21, 2020, after the investigation had concluded. Given that you did not present this evidence to the Investigator during the investigation process, the Investigator was unable to verify the accuracy of your claims, nor was he obligated to consider it. Nevertheless, even if this evidence had been considered, it reflects that you returned from your trip to Hawaii before the end of spring break. Additionally, Witness [REDACTED] stated that she began hearing you and Ms. [REDACTED] having sex in your office during Spring break, around mid-March. She also reported hearing you have sex in your office on at least four occasions. It was reasonable, therefore, for the Investigator to conclude that the time frame during which Witness [REDACTED] heard these incidents was not limited to Spring break. Moreover, the Investigator's findings were not based solely on the statement of Witness [REDACTED]. Rather, the Investigator relied on the statements of multiple witnesses who reported seeing or hearing inappropriate conduct occurring between you and Ms. [REDACTED].

As noted above, Witness [REDACTED] saw you and Ms. [REDACTED] in your office during the COVID-19 pandemic with the lights in your office off, your shoes off, and the futon laid flat into a bed. During this time, the campus was closed, and social distancing requirements were in place. Moreover, Witness [REDACTED] reported having a conversation with you in which you stated that no one should be having students in their office with the doors closed. Based on the totality of the evidence, the Investigator reasonably interpreted the evidence as indicative of a sexual relationship between you and Ms. [REDACTED]. As such, your assertion that neither Witnesses [REDACTED] or [REDACTED] actually witnessed any sexual activity between you and Ms. [REDACTED] is insufficient to demonstrate that the investigation outcome is unsupported by the evidence.

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

Pursuant to EO 1096, the Investigator is authorized to make credibility determinations, weigh and resolve any conflicts in the evidence, and decide what inferences to draw from the evidence. On appeal, the CO does not revisit or second guess the Investigator's determinations about witness credibility or reliability. The Investigator is also authorized to consider hearsay evidence, especially when considering testimony that was contemporaneously reported by witnesses. Here, Witness [REDACTED] statement regarding incidents between you and Ms. [REDACTED] is consistent with Witnesses [REDACTED] and [REDACTED] recollection of events and further bolsters their credibility. That you disagree with the Investigator's consideration of Witness [REDACTED] statement is insufficient to support your argument on appeal.

Furthermore, your contention regarding Witness [REDACTED] motives for reporting your conduct has already been considered and addressed by the Investigator. While you contend on appeal that it would be impossible for Witness [REDACTED] to have heard any noises coming from your office and that Witness [REDACTED] fabricated her testimony because of disagreements between you, evidence adduced during the investigation, and inferences made by the Investigator, support the Investigator's finding that Witness [REDACTED] statement was accurate and truthful. Specifically, the Investigator found that, after weighing the evidence, your disagreements with Witness [REDACTED] over course instruction and the management of lab space were not the type of conflict that would result in the malicious intent to fabricate such serious allegations of an inappropriate relationship with a student. Even if disagreements between you and Witness [REDACTED] existed, the Investigator concluded that they did not diminish the Witness [REDACTED] credibility. The fact that the Investigator did not personally witness the disagreements you have had with Witness [REDACTED] firsthand is insufficient to support your contention that the disagreements are severe enough to motivate Witness [REDACTED] to make false allegations against you. Again, the CO does not revisit credibility determinations on appeal. Your disagreement with the Investigator's credibility assessments does not support your argument that investigation outcome is unsupported by the preponderance of the evidence.

You also argue on appeal that the Investigator failed to provide evidence that you and Ms. [REDACTED] prevaricated during your respective interviews. Contrary to your assertion that you were never untruthful, the record contains witness testimony contradicting your statement that you did not [REDACTED] during the [REDACTED] conference in January 2020. Additionally, your statement and that of Ms. [REDACTED] are similarly contradicted by Witness [REDACTED] statement that she saw you and Ms. [REDACTED] kissing in the fish lab. As the investigation report details, there were also a number of instances in which you deflected to other issues when asked direct questions. For example, rather than explaining why you would be alone in your office with a student with the lights off, the futon extended into a bed, and with what Witness [REDACTED] reported as post-coital odors emanating from the room, you instead focused on attacking witness credibility and asserting that HVAC issues in Holt Hall contributed to this situation. As stated above, the CO does not revisit credibility determinations on appeal. The preponderance of the evidence supports the Investigator's assessment that Ms. [REDACTED] credibility was adversely impacted by her short responses and occasional prevarication, and that you were found less credible than Witnesses [REDACTED] [REDACTED] and [REDACTED].

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. [REDACTED] 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 [REDACTED] as someone who could "explain your relationship with Ms. [REDACTED]" the investigation report clearly articulates the Investigator's decision not to interview [REDACTED], 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