

Proposition 209

Friday, March 24, 2017

LIB 242

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Purpose of Meeting

This presentation resulted from a training session provided by Lori Redfearn of the Chancellor's Office (slides taken from said training).

The purpose is to:

- Educate our campus representatives on Prop 209 (especially Development Directors, Scholarship Administrators, etc).
- Hear your challenges about working in a Prop 209 environment and obtain questions that we can pose to the Chancellor's Office of General Counsel.



What is Proposition 209?

- California Constitutional Amendment passed November 1996.
- States that the granting of preferences in public employment, public education and public contracting to any individual or group on the basis of **race, sex, color, ethnicity or national origin** is illegal discrimination.



What is Preferential Treatment?

The granting of preferences:

- A tangible benefit to an individual or group because that person or group falls within one (or more) of the protected characteristics (i.e., race, sex, color, ethnicity or national origin).
- Conversely, a policy or practice that treats all individuals or groups in exactly the same way, regardless of protected characteristics, would not be considered preferential treatment.



What is Preferential Treatment?

- What about preferential treatment based on other categories such as for veterans, sexual orientation, disability, age and religion?
- Discrimination in any form is wrong so you may not discriminate based on these categories or characteristics either.
- However, preferences are fine but you should always review specific language with counsel.
- NOTE: There is differing opinion about whether LGBT falls under the sex category in Prop 209 or sexual orientation.



Who Does Prop 209 Apply To?

- Because Prop 209 governs “public education,” it applies to the University including fundraising (gifts, grants, donor relations), admissions, employment, financial aid, etc.
- It also applies to related entities that benefit the CSU such CSU auxiliary organizations (the Foundation, UCorp, ASI), alumni associations, centers and institutes.
- Prop 209 may not prohibit establishing or maintaining eligibility for any federal program (i.e. Title IX), where ineligibility would result in loss of federal funds.



Specific Areas/Activities

- Scholarships/Fundraising
- Outreach & Admissions Activities
- Student Activities & Services
- Academic Programs



Scholarships

Permissible

- First generation, AB540 eligible, and educationally disadvantaged.
- Promotion of academic values such as diversity and inclusion, e.g. demonstrated leadership in promoting cross-cultural understanding, demonstrated interest in topics of race, gender or multi-culturalism.
- Intercollegiate athletics in accordance with Title IX requirements for gender equity.

Impermissible

- Proxy language for race or ethnicity such as “minority”



Quiz #1 – Permitted Yes or No?

- A donor wants to fund 15 scholarships in the STEM field with at least one-third directed to under-represented minorities.

Answer

No. Because proxy language for race and ethnicity such as “minority” is not permissible.

NOTE: We recently found out that “immigrant” is not a preferred status.



Quiz #2 – Permitted Yes or No?

- Alumna Billie Jean King wants to fund scholarships for women's tennis.

Answer

Yes. Because intercollegiate athletics, in compliance with Title IX regulations for gender equity, is permissible.



Outreach & Admissions Activities

Permissible

- Outreach based on demographics evidencing low college attainment (i.e. Super Sunday, Ferias de Educación, Journey to Success, Yield Events).
- Participation in federally-funded programs such as Upward Bound, GEAR UP, CAMP, Talent Search
- Educational Opportunity Program (EOP) and AB540 – Dream Act.

Impermissible

- Limiting participation based on protected characteristics
- Quotas or admission set-asides
- Allowing students to attend at different costs based on preferences.



Quiz #3 – Permitted Yes or No?

- The Foundation is asked to provide a sponsorship for Super Sunday to expand information about college admission, financial aid and career options to the Spanish-speaking community.

Answer

Yes. Outreach activities geared at college admissions and retention for demographics with low college attainment is permissible.



Quiz #4 – Permitted Yes or No?

- The Alumni Association is hosting welcome events for accepted students from the African American community to encourage them to attend and to provide their families with a supportive network.

Answer

Yes, as long as the event does not limit attendance to African Americans.



Student Activities & Services

Permissible

- Cultural centers, Dreamers centers, clubs promoting cultural awareness (must be open to all)
- Heritage events
- Awards programs for cultural leadership

Impermissible

- Cultural centers not open to all.



Quiz #5 - Permitted Yes or No?

- A student dorm wants to design an intentional living community affirming the cultural experiences of lesbian, gay, bisexual, transgender, queer, non-identifying and questioning residents, and their allies.

Answer

Yes, for two reasons:

1. As long as anyone may live in the dorm.
2. Because there is differing opinion as to whether “sexual orientation” is a preferred status under Prop 209.



Quiz #6 – Permitted Yes or No?

- Students and alumni approach the student union to house a DREAMers Resource Center to provide study space, support services, and guidance to undocumented students.

Answer

Yes, as long as the Resource Center is open to all students.



Academic Programs

Permissible

- Lectures, town halls, guest speakers, other discussions on the topics of race, sex, color, ethnicity, or national origin.
- Academic programs such as Gender and Women's Studies, LGBTQ Studies, Ethnic Studies, African-American Studies...
- Institutional or academic research about topics of race, sex, color, ethnicity, or national origin.

Impermissible

- Cohort programs based on race, gender or ethnicity.



Quiz #7 – Permitted Yes or No?

- A research project to assess student achievement and progress on eliminating the achievement gap requires data collection of student race and gender.

Answer

Yes. Institutional or academic research about topics of race, sex, color, ethnicity, or national origin is permissible.



Options of Last Resort

- The purpose of Prop 209 is to eliminate preferential treatment in the public education, employment and contracting based on race, sex, color, ethnicity and national origin.
- As such, every effort should be made to comply (i.e. use of broad language to placate donors while adhering to intent of legislation).
- Understanding donor sophistication and a reluctance to broaden language around intent, especially those close to their heart.
- What are the options of last resort?



Options of Last Resort (cont'd)

Option #1

Allow donor to indicate preference for protected characteristic.

- Acknowledge in gift agreement that preference will be honored if at some future date it becomes legally permissible.
- Agree to mechanism for distribution in the meantime:
 - Open to all applicants regardless of protected characteristic, or
 - Matched to qualified candidates selected through a non-preferential process such as a Presidents Scholars on Honors Program.



Options of Last Resort (cont'd)

Example:

- The Presidents Scholars Program (PSP) awards \$3,000 annually on a non-preferential basis.
- We have the Asian Leadership Endowed Scholarship for Asian Americans with a 3.0 GPA. The scholarship awards \$5,000 annually (so this is based on preference - race/ethnicity).
- If we receive an Asian student through the non-preferential process (PSP), we can award the student with funds from the Asian Leadership Endowed Scholarship but the amount cannot be more than the amount for the non-preferential program (PSP) or \$3,000.



Options of Last Resort (cont'd)

Option # 2

- Have a third party administer the scholarship – Community Foundation, Hispanic Scholarship Fund, United Negro College Fund (UNCF).
 - See pgs. 7 & 8 of handbook on ways we can assist without violating Prop 209)
- On the fundraising side: For us to count the gift, the donor must clearly state that the funds are solely for the benefit of SF State students.
- On the Financial Aid side: Funds must be deposited directly to the student's account. The 3rd party foundation could not give SF State the funds to hold for the benefit of the student.





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QUESTIONS?

