

Title IX and Discrimination, Harassment, and Retaliation (DHR) Assessment Systemwide Report

The California State University

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July 17, 2023

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I. Introduction

In March 2022, the Board of Trustees of the California State University (CSU), through the Office of the Chancellor, engaged Cozen O'Connor to conduct a systemwide assessment of the CSU's implementation of its programs to prevent and address discrimination, harassment, and retaliation (DHR) based on protected statuses, including sex and gender (under Title IX).¹ The stated goal of the engagement is to strengthen CSU's institutional culture by assessing current practices and providing insights, recommendations, and resources to advance CSU's Title IX and DHR training, awareness, prevention, intervention, compliance, and support systems.

The impetus for this review stemmed in part from high-profile incidents, including the resignation of the former CSU Chancellor in mid-February 2022. On March 1, 2022, the CSU announced Cozen O'Connor's engagement as follows:

*The CSU is initiating a Title IX assessment across the nation's largest public four-year higher education system to ensure the health, safety and welfare of our students, faculty and staff. We will continue to fortify our commitment to be leaders of Title IX innovation and response.*²

We are grateful to the Chancellor, the Board of Trustees, the Presidents, all faculty, staff, administrators and students across the CSU for entrusting us with this critically important endeavor. Throughout this engagement, we had the opportunity to engage with hundreds of students, staff, administrators, and faculty, and to learn from the nearly 18,000 university community members who participated in a systemwide survey issued as part of the assessment. We were heartened by the level of participation and engagement, and are deeply appreciative of the countless individuals who shared their experiences, insights, perspectives, hopes, and fears with us. We have been fortified by the candor and care CSU constituents brought to their comments, and we are humbled and honored to contribute to and support this important and difficult work. We hope to reflect the depth and breadth of the community

¹ Definitions for discrimination, harassment, and retaliation, including the protected statuses under federal and state law are defined in the [CSU Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking, and Retaliation](#) (Nondiscrimination Policy).

² See *CSU Takes Action to Strengthen Title IX Procedures and Reform Retraat Rights* (March 1, 2022), available at <https://www.calstate.edu/csu-system/news/Pages/CSU-action-strengthen-title-ix.aspx>.

engagement through this candid, frank and comprehensive assessment and accompanying recommendations.

Our work began in earnest in the summer of 2022. At its core, our work involved 24 separate and distinct assessments of each of the CSU's 23 universities and the Chancellor's Office headquarters.³ At the CSU, all 23 universities are part of a broader system, governed by one Chancellor, a Board of Trustees, and one systemwide policy that addresses all forms of protected class discrimination, harassment, and retaliation. While we reviewed each university independently, we also reviewed the universities in the context of this broader system to identify opportunities for systemwide coordination, alignment, oversight, and efficiency. Each university assessment involved:

- intensive engagement with employees or external professionals who perform various functions as part of prevention and education and/or the institutional response, investigation, or resolution of reports;
- a comprehensive review of policies, prevention and education materials, Title IX and DHR records, template communications, and written resources;
- multiple opportunities for community engagement, including through in person or Zoom meetings and through a systemwide survey issued at each university; and,
- a careful synthesis of all information gathered to inform a fair and balanced assessment.

Our observations and recommendations for each university are summarized in a university-specific written report (University Report), which must be read in conjunction with this Systemwide Report. The University Reports are available here: [The CSU's Commitment to Change | CSU \(calstate.edu\)](#). This Systemwide Report provides a distillation of the core themes and observations across all 23 universities, as well as our observations about systemwide coordination. It does not attempt to, nor could it, capture every nuance and detail gathered in our year-long assessment of the system. Rather, it prioritizes the aggregation of information to provide the evidence base and support for urgent and critical recommendations for the CSU.

³ We recognize that the CSU is one legal entity made up of 23 universities and the Chancellor's Office. For ease of reference throughout the Systemwide Report, the Summary Report, and the University Reports, we use the term university and campus interchangeably.

On May 24, 2023, we presented a high-level summary of the scope of the assessment, our observations, and accompanying recommendations at the public session of the Board of Trustees Committee on University and Faculty Personnel. The PowerPoint from the presentation is attached as Appendix I, and is available [here](#). A recording of the presentation can be accessed [here](#).

II. Summary of Observations and Recommendations

We observed tremendous opportunity and need for greater coordination, oversight, and support to be provided by the Chancellor's Office to the 23 universities. We recommend that the Chancellor's Office shift from the current consultative model to an active oversight model to introduce tiered accountability and ensure effective collaboration, leadership and advice. While the Chancellor's Office has taken a number of proactive steps over the past decade, there is much more the Chancellor's Office can and should do to assist the 23 universities in meeting the needs of their students, staff and faculty. We recognize that this is a paradigm shift for the Chancellor's Office and the 23 CSU universities and will require investing in significant additional personnel, shifting the current philosophy and manner of engagement, developing tools and processes to support efforts, ensuring the sustainability of the program, and communicating the new model, philosophy, leadership, and resources to the CSU community.

As we began to synthesize and aggregate information learned at each of the 23 CSU universities, clear observations emerged that were common across most, if not, all universities:

- The infrastructure for effective Title IX and DHR implementation is insufficient, as designed, to carry out care and compliance responsibilities.
- On most campuses, there are significant gaps in the provision of prevention and education programming required by the Clery Act and state law, as well as a need for expanded training and professional development beyond the online modules required by state law and system policy.
- On every campus, there is no policy, process, or practice for consistently responding to *other conduct of concern*⁴ that may not rise to the level of a violation of the University's

⁴ We use the term *other conduct of concern* to refer to conduct that may not rise to the level of protected class discrimination or harassment, but may nonetheless violate other university policies or be disruptive to the learning, living, or working environment. This includes, for example:

- Conduct on the basis of protected status that does not rise to the threshold of a potential policy violation because it is not severe, persistent, or pervasive

Nondiscrimination Policy (typically, where the conduct is not severe, persistent or pervasive) or that is not based on a protected status (for example, unprofessionalism, bullying, abusive conduct).

- We learned of significant trust gaps across the system, including amongst and between campus constituents based on their role as staff, administrator, faculty, and student.
- We observed a significant need for accountability processes, both to hold campuses accountable in carrying out an effective Title IX and DHR program, and to hold individuals accountable for conduct that violates policy.

We prepared comprehensive recommendations at the system and campus level. The recommendations fall into six general categories: recommendations to strengthen the Chancellor's Office oversight and supervision; recommendations to address infrastructure challenges; recommendations about prevention, education, training and awareness; recommendations to address *other conduct of concern*; recommendations to address the trust gap; and recommendations for enhanced accountability.

III. Scope of Engagement

As noted above, in March 2022, we were engaged by the Chancellor's Office on behalf of the Board of Trustees to conduct a systemwide assessment of the CSU's implementation of its Title IX and DHR programs. The engagement seeks to strengthen CSU's institutional culture by assessing current practices and providing insights, recommendations, and resources to advance CSU's Title IX and DHR training, awareness, prevention, intervention, compliance, and support systems.

Our work involved a comprehensive assessment of infrastructure and implementation of CSU policies and procedures at the system and individual university levels. We evaluated the coordination of information and personnel, communications, record keeping and data management, and all other aspects relevant to ensuring effective and legally compliant responses to sexual and gender-based harassment and violence, protected class discrimination and harassment, and *other conduct of concern*.

-
- Conduct not based on protected status, but that may implicate other policies (e.g., professionalism)
 - Conduct that may not be subject to discipline because of free speech or academic freedom principles

Our work evaluated the strengths, challenges, and resources at each of the 23 individual universities within the CSU and Human Resources at the Chancellor’s Office headquarters,⁵ and an assessment of the systemwide opportunities for coordination, alignment, oversight, and efficiency. Specifically, the review included an assessment of:

- Infrastructure and resources at the systemwide Title IX and DHR Office and at each of the CSU universities;
- Training, education, and prevention programming for students, staff, faculty, and administrators at the university level and for Board members, administrators, and staff at the Chancellor’s Office;
- The availability of confidential or other resources dedicated to supporting complainants, respondents, and witnesses;
- The life span of a Title IX or DHR report from intake to resolution, including: intake, outreach and support protocols; case management systems and processes; staffing and models for investigations, hearings, sanctioning/discipline, grievances, and appeal processes; investigative and hearing protocols; inter-departmental campus collaboration, information sharing, and coordination in individual cases and strategic initiatives; document and data management protocols; timeliness of case resolutions, and factors impacting timeliness; informal resolution processes; and protocols for responding to reports of *other conduct of concern* (misconduct by students or employees that do not rise to the level of a Title IX or DHR policy violation);
- Campus culture and climate regarding Title IX and DHR issues; and
- Support and resources offered to campus Title IX or DHR staff by the CSU’s systemwide Title IX and DHR Office staff at the Chancellor’s Office.

⁵ In this report, references to the Chancellor’s Office “headquarters” are to the Human Resources department that serves employees who work at the Chancellor’s Office in Long Beach, which was assessed as a 24th “campus.” References to the Systemwide Title IX and DHR Office are to the unit in Systemwide Human Resources at the Chancellor’s Office that is responsible for developing systemwide policy and providing support services to all 23 CSU universities.

IV. Context and Temporal Factors

Preliminarily, we note the significance of the context and temporal factors that impacted the findings, observations, and recommendations in this assessment. Most importantly, this assessment represents a snapshot – or in some instances, multiple snapshots – of the CSU’s Title IX and DHR programs at a particular moment in time. Our review occurred as universities across the country continued to address the ongoing impacts of the COVID-19 pandemic; reconfiguring Title IX processes in response to significant legally required changes to the Title IX legal framework; and reflecting upon the role and capacity of higher education to address racial, economic, and other systemic injustice issues. We note that our review occurred during a time of heightened and – at times – highly polarized dialogue and activism about equity issues including systemic racism and injustice, trans rights, abortion, immigration, and economic justice. In addition, our engagement was precipitated by high-profile incidents at the Chancellor’s Office and leadership changes at several universities following issues related to sexual and gender-based harassment and violence. These issues have necessarily shaped community members’ perspectives of systemwide and campus leadership and CSU Title IX and DHR programs. Below, we offer additional observations about how these factors may have impacted the CSU’s implementation of its Title IX and DHR programs in the years immediately prior to our engagement.

A. Legal Overview re: Sexual and Gender-Based Harassment and Violence

The institutional response to sexual and gender-based harassment and violence is governed by a complex federal and state legal and regulatory framework. The federal framework is based on two primary statutes: Title IX of the Education Amendments of 1972⁶ (Title IX), and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act⁷ (Clery Act), as amended by Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA).⁸ Effective institutional responses demand a coordinated and integrated approach to Title IX, Clery and VAWA. Educational institutions must also carefully consider obligations under state and laws and local rules or ordinances.

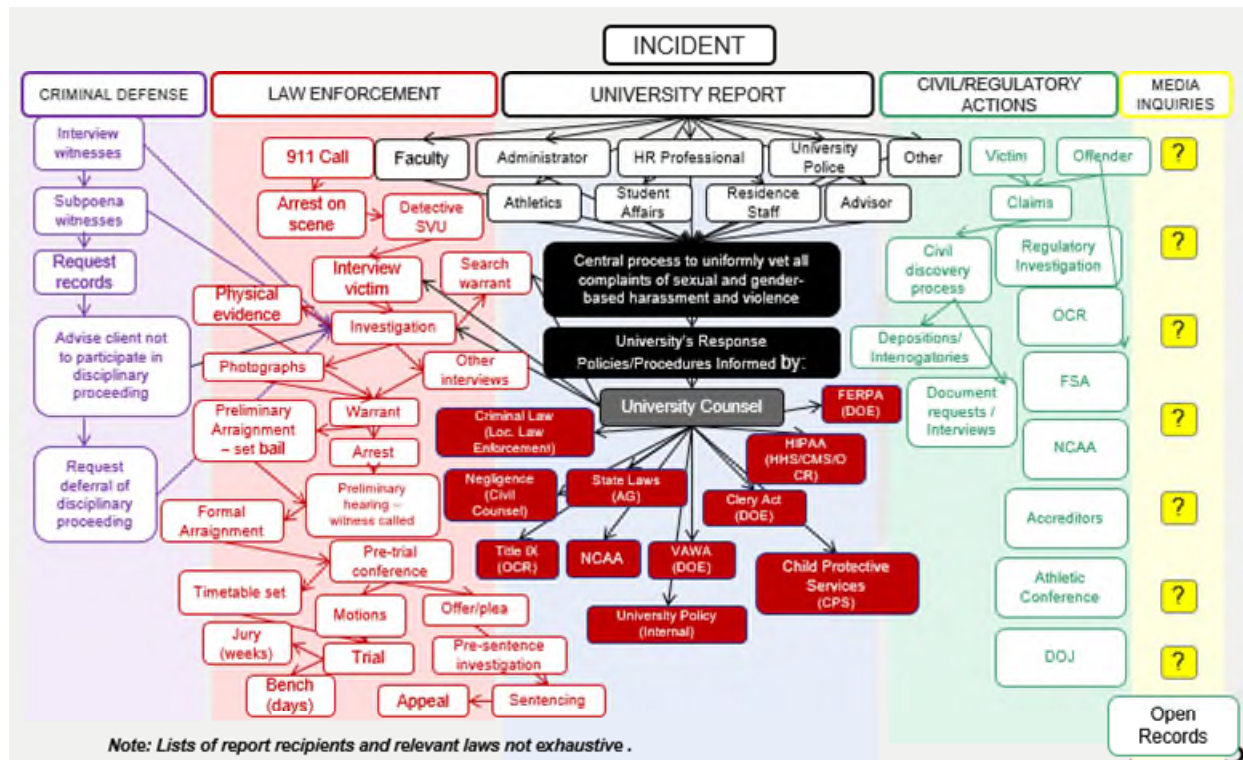
The following graphic displays the complexity of the broader context of law enforcement, civil and regulatory actions, and the myriad laws that inform campus responses for institutions of higher education,

⁶ Title IX is codified starting at 20 U.S.C. § 1681.

⁷ 20 U.S.C. § 1092(f).

⁸ Pub. L. 113-4, Violence Against Women Reauthorization Act of 2013 (Mar. 7, 2013).

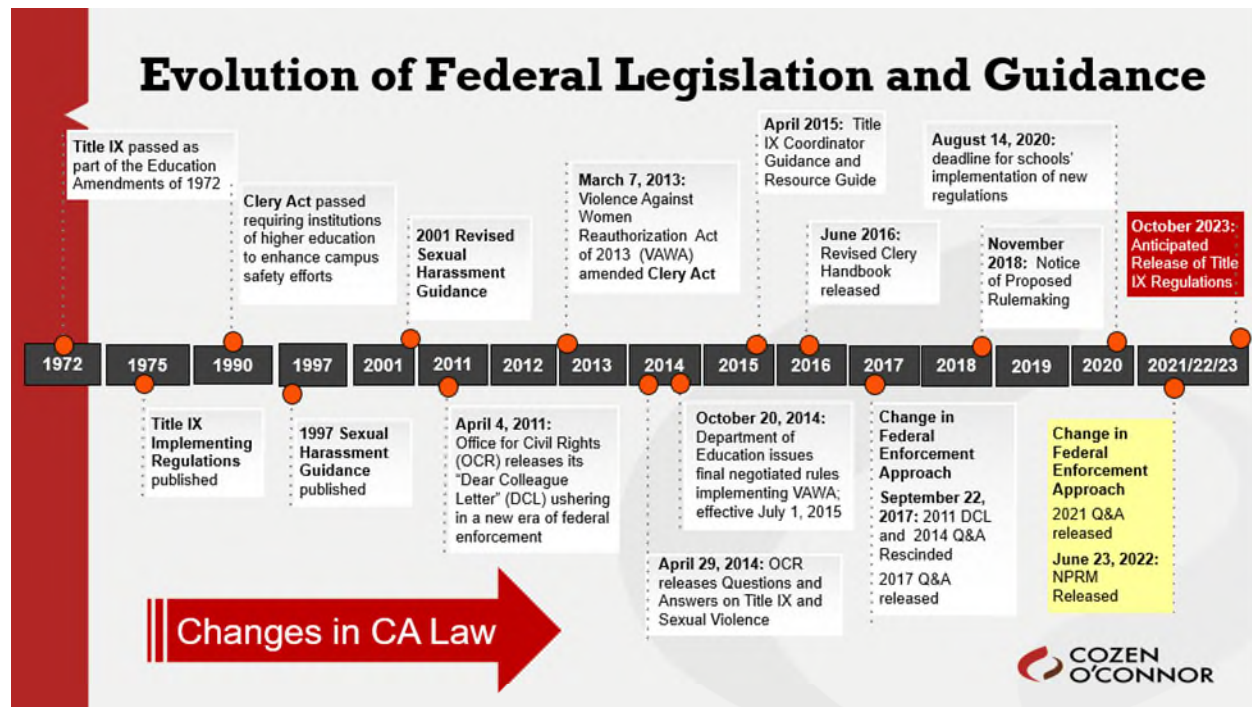
all in the realm of a public institution that must seek to balance privacy in individual matters with the public's right to know:



Since 2011, the federal legal frameworks have shifted, evolved, and further compounded the complexity of implementing effective responses to sexual and gender-based harassment and violence. As detailed below, the Title IX legal landscape over the past twelve years has been marked by one constant – change. Educational institutions faced significant evolutionary changes as the Title IX guidance shifted in 2011, 2014, and 2017, followed by new Title IX regulations in 2020. We are expecting yet another significant revision to the Title IX regulations in the fall of 2023. The Clery Act framework has also shifted. In October 2013, amendments to the Clery Act led to an expansion of institutional responsibilities related to sexual assault, dating violence, domestic violence, and stalking. Notably, until 2020, the changes in Title IX and the Clery Act were intersecting, yet not aligned, with each federal framework requiring overlapping but distinct institutional responses. While still not fully aligned in all respects, the current framework closes many gaps between Title IX and Clery requirements.⁹

⁹ In contrast, Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975 have

The following graphic provides an overview of the extensive changes in federal law over the past ten years:



In addition, over the past decade, California lawmakers have passed legislation designed to address issues related to the federal framework. The legislation has followed significant federal law or guidance and has the stated goal of addressing gaps or limitations in the federal framework. For example, the California legislature has enacted or amended relevant legislation in 2012, 2014, 2017, 2018, 2020, and 2022. And in 2019 and 2020, the California courts issued rulings requiring heightened procedural protections – a live hearing with the ability to conduct cross-examination to test credibility – for resolving reports of sexual misconduct or domestic violence involving students in the post-secondary context.

Because of the rapidly evolving nature of the federal and state legal framework, educational institutions have been in a perpetual state of flux, revising policies, realigning practices, and redesigning systems to comply with evolving requirements. Often, these federal and state changes have not come with sufficient time for large and complex institutions to effectively adapt existing legal obligations, policies, practices, and trainings to new legal requirements, particularly in a unionized environment where such changes may need to be bargained. Critically, while the federal and state changes require significant investment of

remained relatively stable, and the U.S. Department of Education has not issued significant guidance or set enforcement priorities in these areas in the same manner as Title IX and Clery.

additional resources, they have not been supported by funding streams to carry out the responsibilities, which have required significant investment of resources and uniquely trained personnel in light of the increasing complexity of the tasks required.¹⁰

Nationally, institutions of higher education struggle to stay current with the avalanche of federal and state law and regulation, promulgated without regard to intersections with existing laws and systems, the financial and personnel costs attendant to implementation, and the downstream social, legal, and psychological repercussions reverberating through higher education. The result is a burgeoning demand for Title IX professionals – including coordinators, investigators, decision-makers, advisors, and more – in a nascent industry that doesn't yet have sufficient ranks to meet the need. The myriad and shifting government regulations are not properly tethered to an informed understanding of the issues, the context, or the potential harm brought to students, faculty and staff – both complainants and respondents – by the very processes designed to help them. While eliminating sexual and gender-based harassment and violence is a shared and laudable goal, educational institutions are far better suited to arm their communities with primary prevention and education programming designed to address root causes and prevent violence, while leaving the intricacies of the legal processes to the courts – or to a regional center for investigations as outlined in Appendix VI. We call on all lawmakers, state and federal, from both sides of the aisle, to come together to reconcile the legal conflicts and provide resources for implementation, particularly for the most financially challenged institutions.

In light of this context, colleges and universities – particularly in the CSU – have had to do more with less, which inhibits responsiveness, effectiveness, and legal compliance, creates distrust, and ultimately harms students, faculty and staff. These caveats about the complexity are not offered as an excuse, but rather an explanation as to some of the many factors that complicate effective institutional responses.

¹⁰ See, for example, CA Assembly Bill 1968: “The bill would require the trustees, and request the regents, to implement the bill's provisions using existing funds and resources.” West's Ann.Cal.Educ.Code § 67395.7; Stats.2022, c. 115 (A.B.1968), § 1, eff. Jan. 1, 2023.

We also heard a perspective on many university campuses that there are *too many* administrators. In this context, we wholeheartedly disagree. Having sufficient administrative capacity is not only preferable, it is an imperative.

1. Title IX

Title IX of the Education Amendments of 1972 provides that no “person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”¹¹ Title IX prohibits discrimination on the basis of sex in all of an institution’s programs and activities for both students and employees.¹² Title IX applies to all forms of sex discrimination, including sexual and gender-based harassment and violence.¹³ Title IX is primarily enforced by the U.S. Department of Education, Office for Civil Rights (OCR) and interpreted pursuant to regulations promulgated by the Department (Title IX regulations).¹⁴ Further, Title IX applies to all educational institutions that receive federal financial assistance either directly or indirectly, including public and private elementary and secondary schools, school districts, colleges, and universities.¹⁵ The Title IX regulations apply to the participation of any person, including students and employees, in an institution’s education programs¹⁶ and in the employment context.¹⁷

¹¹20 U.S.C. § 1681(a).

¹²See generally 20 U.S.C. § 1681 *et seq.*; 34 C.F.R. Part 106.

¹³ See *e.g.*, 34 C.F.R. § 106.44 (setting forth an institution’s obligation to respond to allegations of sexual harassment). Also 34 C.F.R. § 106.30 (“Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct; (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or (3) ‘Sexual assault’ as defined in 20 U.S.C. §1092(f)(6)(A)(v), ‘dating violence’ as defined in 34 U.S.C. § 12291(a)(11), ‘domestic violence’ as defined in 34 U.S.C. § 12291(a)(12), or ‘stalking’ as defined in 34 U.S.C. § 12291(a)(36).”)

¹⁴These implementing regulations are codified at 34 C.F.R. Part 106, and have the force of law. In addition, although less frequently, other federal offices, including the U.S. Department of Justice and the U.S. Department of Health and Human Services also enforce educational institutions’ compliance with Title IX.

¹⁵20 U.S.C. § 1681(a); 34 C.F.R. § 106.11.

¹⁶The language of Title IX and the Title IX Regulations protect third parties as well as students and employees. Like the Title IX statute, the regulation provides that “no *person*” shall be subjected to discrimination on the basis of sex “in any education program or activity operated by a recipient” of federal funding, including academic, research, occupational training, extracurricular activities, or “other education program or activity.” (34 C.F.R. § 106.31(a) (emphasis added).

¹⁷See 34 C.F.R. § 106.8(b)(1) (requiring schools to adopt and publish grievance procedures for students and employees); 34 C.F.R. § 106.51 (prohibiting discrimination on the basis of sex in employment in education programs or activities); see also 2011 DCL at p.4 n.11 (“Title IX also protects employees of a

Foundationally, the Title IX regulations set forth three basic requirements: that an institution publish a non-discrimination statement;¹⁸ appoint a Title IX coordinator;¹⁹ and adopt grievance procedures that are prompt and equitable.²⁰ Within the grievance procedures, the Title IX regulations set forth prescriptive requirements about the procedural steps involved in the response to a report or formal complaint of sexual harassment, including the process for considering and offering supportive measures; intake and outreach; responding to a formal complaint; the content of a notice of allegations; dismissal criteria; investigation, evidence review, investigation report, and live hearing; notice of outcome; and, time frames for the major stages of the process. The Title IX regulations also set forth scope and jurisdiction, evidentiary considerations, and requirements about training, documentation, and records retention.

2. Clery Act

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) is a federal statute enacted in 1990 that requires all public and private postsecondary institutions that participate in any of the Federal financial aid programs under Title IV of the Higher Education Act of 1965²¹ to keep and publish information about crime on or near their campus.²² The purpose of the Clery Act is to provide students, their families, and employees with accurate, complete, and timely information about campus safety to better inform future decisions.²³ The Clery Act requires that schools report offenses and disclose statistics for crimes that were reported to the local police or campus security authorities (CSAs) in their annual security reports.²⁴ Specific provisions of the Clery Act were subsequently amended by Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA).²⁵ VAWA amended the

recipient from sexual harassment.”). The 2011 DCL has been rescinded and remains on web for historical purposes only - https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104_pg4.html

¹⁸ 34 C.F.R. § 106.8(b).

¹⁹ 34 C.F.R. § 106.8(a).

²⁰ 34 C.F.R. § 106.8(c).

²¹ 20 U.S.C. § 1001 *et seq.*

²² *See generally* 20 U.S.C. § 1092 (f); 34 C.F.R. § 668.46. In addition to reports on crime and dating violence, the Clery Act also requires institutions to submit reports on fire prevention procedures, missing person procedures, and on-campus safety procedures, which are not discussed in this report.

²³ 34 C.F.R. § 668.46; U.S. Department of Education issued a June 2016 Handbook for Campus Safety and Security Reporting (“Clery Handbook”) at xi, <http://www2.ed.gov/admins/lead/safety/handbook.pdf>. The Clery Handbook was rescinded in 2021. The guidance within the Clery Handbook, however, is still instructive.

²⁴ 20 U.S.C. § 1092(f)(1)(F); 34 C.F.R. § 668.46(c); Clery Handbook at 1-6.

²⁵ Public Law 113-4. VAWA regulations became effective July 1, 2015. 34 C.F.R. § 668.46.

Clery Act by revising colleges and universities' obligations with respect to prevention and education, reporting, and policies and procedures relating to sexual assault, and it further expanded those requirements to domestic violence, dating violence, and stalking.²⁶ VAWA requires that schools disclose statistics for reported incidents of dating violence, domestic violence, sexual assault, stalking, and newly added categories of hate crimes; implement and disclose programs to prevent dating violence, domestic violence, sexual assault, and stalking; disclose procedures victims should follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred; and implement and disclose procedures for institutional disciplinary action in cases of dating violence, domestic violence, sexual assault, and stalking.²⁷ The grievance procedures under VAWA include detailed and prescriptive elements, such as the provision of written information about resources and rights; the right to an advisor of choice; timely and equal access to any information that will be used in a disciplinary meeting or proceeding; and written notice of the outcome, the sanction, the rationale for each, and any changes that occur before the outcome is final.

3. California State Law

In California, there is a particularly complex set of laws governing campus responses to sexual and gender-based harassment and violence, all forms of discrimination and harassment based on protected statuses, and retaliation in connection with exercising one's civil rights in reporting or participating in a process related to protected status.

Two primary sources of California law govern the institutional response to matters of sexual and gender-based harassment and violence: the California Government Code and the California Education Code.²⁸ The California Education Code includes a number of provisions relevant to an institution's compliance obligations, many of which have been modified in recent years to codify or extend protections provided by the federal framework into state law. The Donahoe Education Act,²⁹ initially passed in 1960, has been amended and supplemented several times, including through the addition of sections collectively called

²⁶Sexual assault is defined as an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program. 34 C.F.R. § 668.46(a).

²⁷*Id.*

²⁸ The training requirements set forth in the California Government Code are detailed in Section VII.B.1.

²⁹ Cal.Educ.Code § 66000 et seq.; Stats.1976, c. 1010, § 2, operative April 30, 1977.

the Equity in Higher Education Act.³⁰ For example, in 2014, the Donahoe Higher Education Act was amended by Senate Bill 967 to require that public and private postsecondary institutions adopt a policy governing the response to sexual assault, domestic violence, dating violence, and stalking, involving a student, applicable both on and off campus.³¹ In addition, Senate Bill 967 required that postsecondary institutions “implement comprehensive prevention and outreach programs addressing sexual violence, domestic violence, dating violence, and stalking.”³² Senate Bill 493, passed in 2020 and effective in 2021, amended the Equity in Higher Education Act. Senate Bill 493 revised the definition of sexual harassment to include and define sexual battery, sexual violence, and sexual exploitation. Senate Bill 493 also set forth for the first time a set of procedural requirements for institutions of higher education to implement in responding to these types of misconduct. As recently as September 2022, Assembly Bill 1467 amended the Education Code to create new policy and procedure requirements, including clarifying the role of confidential sexual assault and domestic violence counselors and expanding written information that must be provided to victims.³³

These intersecting and constantly evolving legal frameworks create challenges in implementation. This is due, in part, to the complexities of the current federal Title IX regulations and, in part, to overlapping state legislation and decisions by the California courts. Although promulgated to protect students from sexual and gender-based harassment and violence, and to protect the procedural due process rights of accused students, these laws and court holdings have served to make implementation challenging – and processes for student complainants and respondents lengthier and more complex. Similarly, employees within the CSU have additional statutory protections, and for those employees who are part of a union, contractual protections under collective bargaining agreements. These statutory and contractual protections add to the protracted nature of the investigation, sanction, and resolution processes.

Notably, as these federal and state laws have been enacted, they have significantly expanded institutional responsibilities. While legislative history points to goals of improved institutional responses, these changes have also complicated policy and procedural frameworks. For example, Senate Bill 493 re-introduced a broader definition of sexual harassment for reports involving students, a broader scope, and

³⁰ Cal.Educ.Code § 66250 et seq.

³¹ Cal.Educ.Code § 67386.

³² “A comprehensive prevention program shall include a range of prevention strategies, including, but not limited to, empowerment programming for victim prevention, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction.” Cal.Educ.Code § 67386 (d).

³³ Cal.Educ.Code § 67385.

variations in procedural requirements, thus necessitating a separate procedural track under the systemwide policy. In some respects, Senate Bill 493 directly conflicts with Title IX. For example, it returns to a pre-2020 Title IX regulations *constructive notice* standard, rather than the current federally required *actual knowledge* standard in Title IX. Senate Bill 493 also *prohibits* cross examination by an advisor, while the Title IX regulations *require* cross examination by an advisor. Senate Bill 493 also reintroduces the concept of a responsible employee for reporting purposes, a concept notably absent from the 2020 Title IX regulations, but expected to be revived in the pending 2023 regulations.

These conflicts in state and federal law require the drafting of policies to address combustible and irreconcilable conflicts that can be confusing, complex, and challenging for administrators to implement, and even more confounding for complainants and respondents and their advisors to understand.

4. California Case Law

In California, recent judicial decisions have created a live hearing requirement for certain types of cases and certain respondents. In 2019, the California Court of Appeals held that when a student accused of sexual misconduct faces severe disciplinary sanctions, and the credibility of witnesses (whether the accusing student, other witnesses, or both) is central to the adjudication of the allegation, fundamental fairness requires, at a minimum, that the university provide a mechanism by which the accused may cross-examine those witnesses.³⁴ In 2020, the California Court of Appeals held that in a domestic violence case, “...procedures were unfair because they denied Respondent a meaningful opportunity to cross-examine critical witnesses at an in-person hearing.”³⁵ Together, these two cases created the “live hearing” requirement in California for resolving reports of sexual misconduct or domestic violence involving students in the post-secondary context.³⁶ It remains to be seen whether these same requirements will be

³⁴ *Doe v. Allee*, 242 Cal. Rptr. 3d 109, 136 (Cal. Ct. App. 2019) (holding, in the context of a private institution, when “a student faces serious discipline for alleged sexual misconduct, and the credibility of witnesses is central to the adjudication of the charge, fundamental fairness requires that the university must at least permit cross-examination of adverse witnesses at a hearing in which the witnesses appear in person or by some other means (such as means provided by technology like videoconferencing) before one or more neutral adjudicator(s) with the power independently to judge credibility and find facts.”).

³⁵ *Boermeester v Carry*, 263 Cal. Rptr. 3d 261 (Cal. Ct. App. 2020). This case is under review by the Supreme Court of California; oral arguments were held on May 9, 2023.

³⁶ The pending revisions to the federal Title IX framework may depart from the current procedural requirements, which currently require a live hearing with cross examination at the decision-making stage. While this may restore some flexibility to educational institutions, in California, a live hearing will still be required under state law for cases involving student respondents.

extended in the context of reports against employee respondents, many of whom already have similar or greater protections built into their statutory or contractual employment rights.

B. Federal Framework for Other Protected Statuses

In contrast, the federal framework for responding to all other forms of protected status discrimination and harassment has remained fairly stable under Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975. While the prohibitions are analogous to Title IX – *no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the basis of articulated protected statuses* – the procedural frameworks are far less prescriptive and structured than the required Title IX grievance processes. This has generally allowed for more flexibility in institutional responses and more variance in policy and procedures across educational institutions.

C. National Context

In light of the incendiary and consequential nature of all protected class issues and together with the shifting, complex and overlapping nature of state and federal legal requirements, internal administrative processes at educational institutions across the country have become more and more technical and legalistic. In many respects, college and university grievance processes have begun to mimic our criminal legal processes, including the sometimes lengthy time frames for resolution. A key difference in the higher education context, however, is that while criminal legal processes are largely independent of civil review or civil litigation processes, colleges and universities are subject to legal action by complainants, respondents, and the state and federal government. Simply put, unlike the criminal justice process, there is no legal immunity for engaging in good faith investigation and resolution processes. Nationally, this has led to a shift in Title IX and DHR practices to incorporate more legalistic and protective practices to implement the many legal requirements. That shift has had the effect of reinforcing the perception of institutional bias, the perception that Title IX/DHR offices serve the university and not complainants or respondents, and the perception that the offices are overly legalistic.

Importantly, a core tenet of Title IX is the provision of supportive measures and remedies “designed to restore or preserve equal access to the . . . educational program or activity.”³⁷ This concept extends, by

³⁷ 34 C.F.R. § 106.30.

analogy, to the federal framework that governs institutional responses to conduct based on other protected characteristics. As educational institutions have shifted to implement the more rigorous and time-consuming elements of campus grievance procedures – including aspects of the investigation, hearing, and appeal processes – on many campuses, there has been less emphasis on the provision, documentation, and oversight of supportive measures. Even on campuses that have a robust process for providing supportive measures, there is often a perception that the administrators tasked with responding to Title IX and DHR matters are not empathetic, caring, or compassionate. This is often directly attributable to a fundamental misunderstanding of the role and function of a Title IX/DHR office and the individual administrators who are tasked with remaining neutral and impartial in their interactions with complainants and respondents. While personnel who fill these roles differ in their interpersonal communication skills, warmth, and manner of engagement, all must remain neutral.

In contrast, the confidential campus victim advocate (advocate), statutorily and by system policy, has a different function. The advocate’s primary responsibility is to provide confidential advice and assistance to victims of sexual misconduct, domestic violence, dating violence, and stalking. Their role is to support, to advocate, and to assist individuals who have experienced harm. The experience a complainant may expect when seeking help from an advocate or ally – warmth and care – may not align with what occurs when meeting with a neutral Title IX Coordinator or DHR Administrator who is tasked with both overseeing the provision of supportive measures and the implementation of a prompt and equitable investigation and/or resolution process. This disconnect between expectations and experiences can lead to disillusionment, distrust, and disengagement.

Another challenge we have observed nationally is a shortage of sufficiently trained or experienced professionals to fill Title IX Coordinator, Deputy Title IX Coordinator, and Title IX investigator positions. While the law has long required that educational institutions designate an individual to coordinate compliance responsibilities under Title IX, the responsibilities of the Title IX Coordinator have expanded exponentially, in both volume and complexity, over the past decade-plus as the federal regulations, guidance, state law, and state court decisions have evolved to include more and more prescriptive and complex requirements – a trend that continues in OCR’s June 2022 Notice of Proposed Rulemaking (NPRM). Prior to OCR’s April 4, 2011, Dear Colleague Letter (DCL), many institutions did not have a full-time, dedicated Title IX Coordinator, much less a full office resourced to carry out the wide range of care and compliance responsibilities. Most notably, and a first in the history of Title IX, the April 4, 2011 DCL’s explicit pronouncement – “Sexual harassment of students, which includes acts of sexual violence, is a form

of sex discrimination prohibited by Title IX” – required institutions of higher education to investigate and adjudicate reports of potentially criminal sexual conduct under a specific Title IX framework rather than the institution’s code of conduct for students or employees. These cases, which often had potential criminal consequences, often require nuanced credibility analyses, an exploration and collection of available physical and digital evidence that can only be obtained by subpoena or search warrant, and a process marked by a separation of roles to guard against the perception of conflict. Student conduct and human resources professionals were, in large part, not sufficiently trained, experienced or resourced in the evaluation of these cases. As a consequence, to meet this significant shift in the legal framework of the past decade, we have seen an influx of new professionals, consultants, and training programs as the Title IX field has developed. Throughout this time frame, demand has consistently exceeded supply. In this relatively nascent industry, experienced and trained Title IX practitioners are hard to come by, and harder to keep, especially in the wake of a highly litigious environment of shifting legal standards, the COVID-19 pandemic, and the “great resignation” across industries, including in higher education, and especially amongst Title IX professionals.

In our work across the nation, and within the CSU, we have seen many searches fail for a lack of qualified applicants. Many institutions have resorted to hiring professionals with transferrable skills, but who may not have sufficient experience or expertise related to implementing Title IX, which as noted above, is increasingly more and more complex. Similarly, individuals who are tasked with oversight and supervision of the Title IX office, often do not have the requisite expertise to effectively supervise the office. While reporting lines and structures vary across campuses, common models have the Title IX Coordinator report to a president, provost, or a vice president (often in business, finance, or administration), student affairs, human resources, inclusive excellence or the chief diversity officer. Many of these administrators, while experienced, are not sufficiently trained in the nuances of Title IX to offer meaningful supervision. Out of respect for the integrity and independence of the Title IX functions, supervisors are often overly deferential and lack visibility into processes to meaningfully evaluate performance and effectiveness issues like responsiveness, timeliness, and communication. Due to the lack of subject-matter expertise, supervisors are often unable to issue spot, drive effective practices, and ensure accountability.

These issues are exacerbated within the CSU for a number of reasons: 1) the salary structure makes it difficult to attract experienced candidates; 2) investigators and deputies hired at one university often move into more senior positions at other CSU universities or at the Chancellor’s Office, contributing to turnover, vacancies, and the need for interim or acting positions; and 3) in light of significant

underfunding, both Title IX Coordinators – and their supervisors – have portfolios that are far too broad, which impacts their ability to effectively carry out and monitor core responsibilities.³⁸ As discussed in Section VII.E.2, there is a great need for quality control, quality assurance, and accountability.

D. CSU Context

Based on our observations and our year-long engagement with more than 1,000 faculty, staff, administrators and students across the CSU campuses, as well as the nearly 18,000 responses to our systemwide survey, these issues are as acute at the CSU as they are at any of the hundreds of educational institutions with whom we have worked.

Below, we address several important and contextual aspects of the CSU that impact the implementation of Title IX: its transformative mission and work; the high-profile cases that have emerged over the past year; the context of unionization; and free speech and academic freedom considerations in a public institution.

1. Transformative Education

Since developing the Institutional Response Group practice model in 2006, we have worked with colleges and universities across the nation, including private institutions, public universities and systems, community colleges, single-sex institutions, and faith-based institutions. Our engagements have encompassed work with institutions in 40 of the 50 states, ranging from small colleges with a population of 300 students to large public universities with a population of more than 60,000 undergraduate and graduate students, and every model in between.

In the context of this vast experience, the CSU stands out for its social justice mission and commitment to civil rights, the transformative impacts of education for the students it serves, and its astonishing ability to do so in the context of historically limited resources. We cannot overemphasize how impressed we are with the CSU students, staff, administrators, faculty and leadership – individuals who are deeply

³⁸ In addition, while campus Title IX/DHR professionals have access to legal advice through University Counsel, each university has *only one counsel* assigned to handle *all* of the university's legal needs. Given the increasing complexity of the legal issues in the Title IX/DHR context, there is a need for significantly expanded legal resources and personnel within the Chancellor's Office of General Counsel.

committed to the CSU mission and who serve the CSU community with a universal sense of pride in the institution. We marvel at the resilience, spirit, and grit of CSU employees and students. We are also deeply appreciative of the CSU’s openness to this assessment.

In the fall of 2022, the CSU enrolled nearly 460,000 students from diverse backgrounds, including the most ethnically, economically, and academically diverse students in the nation.³⁹ According to the CSU website, “The California State University is the nation’s largest and most diverse four-year public university, providing opportunities for upward mobility to students across the state and empowering them to become leaders in the changing workforce.”⁴⁰ The CSU has nearly 130,000 graduates annually, with more than 4 million alumni to date. Of those students and alumni, nearly half are designated as underrepresented minorities, and nearly one third are the first in their families to attend college.⁴¹ Twenty-one of the 23 CSU universities are designated as Hispanic-Serving Institutions (HSI) and 14 of the 23 are designated as Asian American and Native American Pacific Islander-Serving Institutions (AANAPISI).⁴² In Fall 2021, the most recent year for which Pell Grant data is available, 43% of systemwide state-supported undergraduate students received Pell Grants, which are federal grants usually awarded only to undergraduate students who display exceptional financial need.⁴³

³⁹ <https://www.calstate.edu/csu-system/about-the-csu/facts-about-the-csu/Pages/default.aspx> (last accessed May 12, 2023)

⁴⁰ <https://www.calstate.edu/csu-system/about-the-csu/facts-about-the-csu/Pages/introduction.aspx> (last accessed May 12, 2023)

⁴¹ Systemwide, 52% of state-supported students enrolled in Fall 2022 were traditionally underrepresented, and 31% were the first in their family to attend college. For purposes of this data, “traditionally underrepresented” refers to students with ethnicities of Hispanic, Black/African American, or Native American/Alaska Native. https://tableau.calstate.edu/views/SelfEnrollmentDashboard/EnrollmentSummary?iframeSizedToWindow=true&%3Aembed=y&%3AshowAppBanner=false&%3Adisplay_count=no&%3AshowVizHome=no

⁴² HSIs are defined under the Higher Education Act as colleges or universities where at least 25% of the undergraduate, full-time enrollment is Hispanic; and at least half of the university’s degree-seeking students must be low-income. See <https://www2.ed.gov/about/offices/list/ope/idues/eligibility.html>. AANAPISIs are defined under the Higher Education Act as colleges or universities with an undergraduate enrollment that is at least 10% Asian American and Native American Pacific Islander. Additionally, at least half of the University’s degree-seeking students must be low-income. See <https://www2.ed.gov/programs/aanapi/eligibility.html>

⁴³ https://tableau.calstate.edu/views/SelfEnrollmentDashboard/EnrollmentSummary?iframeSizedToWindow=true&%3Aembed=y&%3AshowAppBanner=false&%3Adisplay_count=no&%3AshowVizHome=no. For information about Pell Grants, see U.S. Department of Education, Federal Student Aid, <https://studentaid.gov/understand-aid/types/grants/pell>.

The CSU’s success stems directly from the administrators, faculty, and staff who come together as the backbone and foundation of the CSU’s 23 individual universities and the Chancellor’s Office. As of the fall of 2022, the CSU employed nearly 56,000 staff, faculty, and administrators across the system:⁴⁴

Headcount of Employees by Employee Group, Fall 2022	Full Time	Part Time	Total	Percent
Instructional Faculty	13,601	14,199	27,800	49.4%
Non-Instructional Faculty	1,036	306	1,342	2.4%
Staff	18,794	661	19,455	34.6%
Executive and Management	4,510	27	4,537	8.1%
Represented Student Employees	0	3,122	3,122	5.5%
TOTAL	37,941	18,315	56,256	100%

Instructional Faculty by Time Base Fall 2022	Count	Percent
Full-Time	13,601	48.9%
Part-Time	14,199	51.1%
TOTAL	27,800	100%

Full Time Instructional Faculty by Academic Rank Fall 2022	Count	Percent
Professor	4,559	33.5%
Associate Professor	3,024	22.2%
Assistant Professor	2,920	21.5%
Lecturer	3,098	22.8%
TOTAL	13,601	100%

We had the privilege of observing the many strengths, gifts, and skills of individual employees across the CSU, both within campus Title IX/DHR programs and beyond. We saw firsthand their passion, dedication, and tireless efforts, even in the face of extraordinary resource constraints. At every campus, we observed positive examples of innovation, collaboration, and individual and communal contributions to student welfare and academic growth. We were particularly impressed with programs that identified and sought to provide care for students’ basic needs, including food, housing, and emergency support. We know these efforts actively remove barriers to education and promote retention, graduation, engagement and

⁴⁴ <https://www.calstate.edu/csu-system/about-the-csu/facts-about-the-csu/Pages/employees.aspx> (last accessed May 12, 2023)

belonging. Campus CARE Teams also served to leverage campus resources, create information-sharing channels, and provide opportunities for collaboration to support students of concern.

On many campuses, we noted creative approaches to meeting campus needs related to Title IX/DHR, including – at one university, supporting a student-led (and award-winning) bystander intervention program – and, at others, developing online and in-person training programming tailored to the campus. Several campuses formed Title IX and DHR ambassador programs to provide additional training and information to interested campus partners. Many campuses developed infographics, FAQ pages, and resource handouts to help demystify the function of the Title IX and DHR programs and provide information on policies, procedures, and resolution pathways. These efforts are critically important to help reduce barriers to reporting, encourage reporting and the use of campus resources, and increase the visibility of campus Title IX and DHR programs.

2. High Profile Cases and Immediate Institutional Responses

As described above, the impetus for our engagement in March 2022 involved significant events and incidents at both the Chancellor’s Office and at individual CSU universities. Additionally, after our engagement and during our review, many CSU universities found themselves in the headlines when records were released in response to Public Records Act requests about reports involving employee respondents. We understand that many of the issues are more complex than necessarily reflected in media accounts, and that in many instances, additional information would inform public perception, but cannot be released due to federal and state privacy laws. We highlight the media accounts of recent events, not to endorse their coverage or conclusions, but to share the incidents that have shaken trust in the CSU system, individual universities, and individual actors.

In 2020, **San José State University (SJSU)** found that the university’s former Head Athletic Trainer had inappropriately touched student-athletes in the course of providing treatment. SJSU also addressed reports of retaliation against employees who raised concerns about the trainer. In September 2021, the U.S. Department of Justice (DOJ) resolved a Title IX compliance review at SJSU, which resulted in a resolution agreement to enhance SJSU’s Title IX program, establish a “Wellbeing Attendant” (chaperone) policy in Athletics, develop updated informational materials and resources, issue campus-wide and

targeted surveys, and undergo ongoing monitoring by the DOJ for a period of three years.⁴⁵ The Chancellor's Office also engaged an external professional to investigate the sufficiency of SJSU's response to reports and complaints involving the Head Athletic Trainer. The investigation found, generally, that SJSU's response was inadequate.

In February 2022, national media highlighted a series of concerns at **Fresno State** including the former university President's response to reports of sexual harassment by a former university Vice President between July 2014 and November 2019. Two central concerns at Fresno State were the multiple complainants' unwillingness to participate in formal university processes because of fear of retaliation, and the sufficiency of the disciplinary response by the then-President (who subsequently became Chancellor of the CSU system), including the circumstances of the Vice President's separation from the CSU and the letter of recommendation written by the then-President. The Chancellor's Office engaged an external professional to investigate the sufficiency of the university's response to the reports and released a public report of the findings in September 2022.⁴⁶ In the spring of 2022, the new President of Fresno State established a multidisciplinary Title IX Task Force that engaged in a comprehensive review of the Title IX program and in December 2022, issued a set of recommendations to improve Fresno State's Title IX program.⁴⁷

In April 2022, a series of concerns emerged at **Sonoma State**. The concerns – as they were described publicly – included allegations that the university President's husband engaged in sexually harassing conduct toward employees and that those employees declined to participate in investigative processes because they feared retaliation. National media cited a former provost who said she experienced retaliation after reporting the President's husband's conduct. Articles also highlighted concerns about the Chancellor's Office's decision not to formally investigate due to a lack of participatory witnesses. The President subsequently resigned.

In April and May 2022, media outlets published accounts of events at **Cal Poly Humboldt**, **Channel Islands**, and **Chico State**. According to reports, in 2015, a Cal Poly Humboldt Dean had been found responsible for

⁴⁵ See *San José State University Resolution Agreement* (September 21, 2021), available at <https://www.justice.gov/crt/case-document/san-jose-state-university-resolution-agreement>.

⁴⁶ See *Summary Investigation Report California State University-Fresno* (September 29, 2022), available at <https://www.calstate.edu/csu-system/news/Documents/CSU%20Report%20%289-29-22%29.pdf>.

⁴⁷ See *Title IX Task Force Report* (December 2022), available at <https://president.fresnostate.edu/documents/title-ix-tf-final-report.pdf>.

sexual harassment. After returning from paid leave while the matter was investigated, the Dean was permitted to “retreat” (return) to a faculty position at the university pursuant to a term in his appointment letter granting him that right if his administrative role ended. The media also highlighted a 2018 report about a Channel Islands Vice President who was alleged to have engaged in sexual harassment while at Channel Islands, before moving to a similar role at Sonoma State. Citing information disclosed in response to Public Records Act requests, media articles represented that the Vice President was found not responsible for sexual harassment, but was found to have engaged in “unprofessional conduct.” According to the articles, the reports against the Vice President arose after he retired and after he accepted the new position at Sonoma State. The Vice President did not face any discipline. Media accounts also spotlighted a matter involving a former Vice President at Chico State who was found responsible for sexual harassment of an employee. According to media reports, the Vice President was placed on paid administrative leave during the pendency of an investigation and then permitted to resign.

In June 2022, national media focused on Title IX issues at **San Marcos**. In a case involving a finding of responsibility for sexual harassment against a faculty member that involved four separate complainants, San Marcos negotiated a settlement with the professor that allowed him to remain on campus, despite a prior intent to terminate his employment. According to reports, the settlement was negotiated, in part, because of concern about the potential that required union arbitration processes would reinstate the professors’ employment. In response to the widespread concerns raised by his case on campus, San Marcos engaged an external professional to conduct an external Title IX review, which included review of “[s]pecific cases provided by the University to be reviewed . . . in which a student initiated an allegation of sex/gender misconduct against a faculty or staff employee” and subsequently shared the report of the consultant’s findings publicly.⁴⁸ In addition, as represented in media reports, two professors were permitted to resign voluntarily after they were found responsible for sexual harassment and misconduct in separate cases. According to reports, the university negotiated the professors’ separations in exchange for their agreement not to seek reemployment within the CSU, again, in part because of concern about the potential that required union arbitration processes would reinstate the professors’ employment.

Between June and August 2022, concerns arose about the timing of **San Diego State University’s** (SDSU) response to a reported off-campus sexual assault of a minor by multiple SDSU football players. The issue

⁴⁸ See *California State University San Marcos Title IX Assessment Observations and Recommendations* (January 9, 2023) <https://www.csusm.edu/title9/review-reform/documents/tngfinalreport.pdf>.

concerned when, and if, SDSU had notice that would have triggered the need to conduct an investigation, as well as what steps, if any, SDSU could have taken in the face of direction by the San Diego Police Department to not take any action that could compromise the integrity of the law enforcement investigation. SDSU shared available information with the campus community and created a website with detailed information about its response and multiple statements to the community.⁴⁹ In January 2023, SDSU also commissioned a Blue Ribbon Presidential Task Force on Gender-Based Violence.

In September, October, and November 2022, media recounted concerns at **Cal Poly Humboldt, East Bay, Cal Poly San Luis Obispo, and Sacramento State**. Reporting focused on public remarks by Cal Poly Humboldt President's about the privacy of Title IX matters. In response, a student-athlete publicly described her experience reporting inappropriate conduct by her coach's husband. In October 2022, media published articles describing the "fourth sexual assault at Sacramento State in a span of five weeks." In January 2023, the Sacramento State President published an action plan to address sexual assault. Other outlets covered the arrest of a fitness trainer at CSU East Bay's Recreation and Wellness Center. In February 2023, CSU East Bay's student-run newspaper published accounts of several women alleging that the trainer inappropriately touched them.

In November 2022, the **Cal Poly San Luis Obispo** community learned that the former Fresno State President and CSU Chancellor would be joining their faculty. The former Chancellor chose to exercise his right to retreat to a faculty position upon leaving his administrative role (as set forth in his appointment letter as Chancellor). Some members of the Cal Poly community, including the Academic Senate, publicly registered their disapproval.

In December 2022, reporting focused on a **Chico State** professor who, according to media, was alleged to have threatened to kill two colleagues because they participated in an investigation regarding the professor's relationship with a graduate student. The media reported that, despite being found responsible for engaging in a sexual relationship with someone over whom he had authority, Chico State retained the professor. Media reports cited a University spokesperson as saying that the University did not impose a harsher penalty because it would be overturned in union-required arbitration.

⁴⁹ See Investigation into Reported Off-Campus Incident, <https://titleix.sdsu.edu/university-statements> (last updated May 18, 2023).

In December 2022, and February and April 2023, media focused on **Cal Maritime**. In December 2022, reports described campus unrest at Maritime related to reports of widespread sexual misconduct, racism, and hostility toward women and transgender and nonbinary students. In February 2023, the media reported on the 2021 death of a cadet at Cal Maritime who died by suicide after being accused of sexual misconduct. In April 2023, national media published an article about whether Cal Maritime forwarded reports of sexual assault and sexual harassment to the United States Maritime Administration, which owns the vessel where incidents were alleged to have occurred. According to the media, Cal Maritime was required to report pursuant to a Memorandum of Agreement between Cal Maritime and the U.S. Maritime Administration.

We were not tasked with investigating individual university and Chancellor’s Office responses in those matters. We did, however, review the campus task force reports that sought to understand and assess the institutional response to specific incidents or issues, and in some instances, the underlying investigative reports and documents related to the incidents. For example, we reviewed the DOJ findings in the DOJ resolution agreement and the external investigator’s report at SJSU, the external investigation report at Fresno State, and the external review report at San Marcos. We also reviewed the Cal Maritime Presidential Task Force recommendations to improve the culture and climate aboard the [Training Ship Golden Bear](#) (TSGB).⁵⁰ In addition, at Fresno State, we had the opportunity to work closely with the President’s Title IX Task Force between July 2022 and March 2023. During our visit to San Marcos, we met with the Sexual Harassment Task Force as well as the outside consultant who conducted the external review. At Sonoma State, we met with the Presidential Advisory Council on Title IX. And at Cal State Los Angeles, we met with the Equity Diversity and Belonging (EDB) Task Force.

In some instances, the CSU has already taken steps to address the concerns publicly identified and assessed through these internal and external reviews. For example, on March 22, 2022, the CSU's Board

⁵⁰ The Training Ship *Golden Bear* (TSGB) serves as the primary training platform on which cadets apply technological skills introduced in the classroom and leadership skills acquired from their work assignments and responsibilities with the Corps of Cadets.

of Trustees passed a resolution approving the development of systemwide policies regarding retreat rights for administrators and a policy on letters of recommendation:⁵¹

Policy on Recommendation Letters

In July 2022, the Board adopted a revised policy on recommendation letters, which states that the CSU will not provide any official positive letters of recommendation or reference, either verbally or in writing, for a current or former CSU employee who: (i) is subject to a finding that the CSU employee has engaged in misconduct that resulted in the employee being non-retained, terminated, or is separated through mutually agreed upon settlement terms; (ii) is currently under investigation for misconduct or violation of university policy (in abeyance until the completion of the investigation and any appeals); or (iii) has had their retirement benefits rescinded under The Public Employees' Pension Reform Act due to criminal misconduct associated with their official duties.⁵² For purposes of the recommendation letter policy, a “finding” includes a final internal report following any appeals, an internal or external audit, an administrative decision by a state body, a civil or criminal judgement following any appeals, a finding of improper governmental activity, or an admission of any of the above-referenced misconduct by the employee.

Policy on Retreat Rights

In July 2022, the Board adopted a revised policy on retreat rights, which specified that administrators would be ineligible to exercise their option to retreat to faculty positions under the following circumstances: (1) a finding has been made that resulted in the Administrator being non-retained, terminated, or separated through mutually agreed upon settlement terms; or (2) the Administrator's retirement benefits have been rescinded under The Public Employees' Pension Reform Act due to criminal misconduct associated with their official duties.⁵³ For purposes of the retreat policy, a “finding” is a

⁵¹ CSU Trustees Pass Resolution to Strengthen Institutional Culture, CSU press release issued March 22, 2022, <https://www.calstate.edu/csu-system/news/Pages/Trustees-Investigations-and-Systemwide-Policy-Assessment-Mar-2022.aspx>.

⁵² CSU Policy Library, “Employment Policy Governing the Provision of Employee References,” effective August 3, 2022. <https://calstate.policystat.com/policy/12142918/latest>.

⁵³ CSU Policy Library, “Employment Policy Governing Administrator Employees' Option to Retreat,” effective November 16, 2022, <https://calstate.policystat.com/policy/12715152/latest>.

determination that an administrator engaged in misconduct or a policy violation that renders the administrator unsuitable to have continued direct interactions with CSU students or employees. Such determinations may be made in the course of proceedings including, but not limited to a university investigation following any appeals, an internal or external audit, an administrative proceeding by a state body, a civil or criminal proceeding following any appeals; a proceeding that leads to a determination of improper governmental activity. An admission by the administrator may also constitute a finding for purposes of the retreat policy.

Despite this swift action by the CSU to address gaps identified in institutional responses to particular incidents, there is still significant work to be done. Our recommendations include steps to address some of the concerns identified in these external reports, including issues related to barriers to reporting or participating in a campus process, concerns about potential retaliation, and challenges in the accountability processes for employees under contractual and statutory processes.

Importantly, what we heard at many CSU universities were deeply held feelings of anger, grief, and pain in response to the incidents highlighted publicly. CSU students, faculty, staff and administrators alike shared their candid reactions to the facts as they understood them. Across all constituencies, we heard grave disappointment and sorrow in what many viewed as institutional betrayal.

This moment in time is important.

While the CSU has, and will continue to take action, to address gaps in policies, practices, and training, and remedy individual failings, the CSU can only move forward in a meaningful manner if the changes are anchored in an understanding of the impacts of those gaps on individuals, communities, and institutional culture.

We understand that because of the timing of these publicly chronicled incidents, the feedback we received may skew more negatively than it might at another time – that by conducting the assessment following high profile incidents, the lens through which constituents view the CSU is impacted by the public narrative. In some instances, those perspectives are supported by our objective assessment of campus policies and practices, and in other instances, we recognize that the perceptions may be more negative than a close reading of the facts might warrant. In either case, the perceptions contribute to a

widely reported trust gap that must be addressed. This trust gap, and some of the underlying factors contributing to the trust gap, are discussed in Section VII.D.

3. Context of Unionization within a Public University

The CSU is the largest public university system in the nation. As described above, the system has 56,000 employees across all 23 universities and the Chancellor’s Office. More than 90% of those employees are represented by a union. Consistent with the Higher Education Employer-Employee Relations Act (HEERA), the terms and conditions of employment are governed by collective bargaining agreements negotiated between the specific bargaining units and the CSU. The Chancellor’s Office provided the following data that encompasses information about union representation for all employees systemwide (as of October 2022):

Employee Groups Not Represented by Unions		
GROUP	HEADCOUNT*	TYPES OF EMPLOYEES
Executives	30	Chancellor, Presidents, Vice Chancellor
Management Personnel Plan	4,581	Vice Presidents, Deans, Directors, Managers
Confidential	480	Confidential Administrative and Other Support
Excluded	1,177	Casual Worker, Special Consultant

Employee Groups Represented by Unions		
GROUP	HEADCOUNT*	TYPES OF EMPLOYEES
Union of American Physicians & Dentists (UAPD)	88	Physicians & Dentists
California State University Employees Union (CSUEU)	15,624	Health Care Support, Operations Support, Clerical/ Administrative Support, Technical Support
California Faculty Association (CFA)	29,921	Instructional Faculty, Coaches, Counselors & Librarians
Academic Professionals of California (APC)	3,454	Student Services, Advisors, Financial Aid, Counselors
Teamsters Local 2010	1,062	Building Trades
Statewide University Police Association (SUPA)	327	Police
International Union of Operating Engineers (IUOE)	13	Building Trades at CSU Maritime Academy
Academic Student Employees (UAW)	10,968	Teaching Assistants, Graduate Assistants, Instructional Student Advisors
CSUEU English Language Program Instructors (Monterey Bay)	2	Instructors in ESL at Monterey Bay

During our campus visits and in later community engagement, we extended opportunities to meet with union representatives and members across the CSU.⁵⁴ Members of the CFA and CSUEU, which collectively represent the largest populations of CSU employees, were the most vocal and participatory in our campus discussions.⁵⁵ They participated in frank and candid discussions with us and openly shared their views, perspectives, and frustrations.⁵⁶ Not surprisingly, the views expressed by union members were diverse and represented multiple viewpoints. We heard a variety of perspectives, ranging from a strong distrust of “the administration” by union members, to more neutral assessments of campus leaders, to internal frustration with union leadership by union members because of their representation of individuals who reportedly engaged in egregious conduct, and with respect to the CFA, their staunch support of faculty respondents over faculty complainants.

A number of core themes emerged from our engagement with these campus community members: 1) campus constituents tended to be siloed by role (faculty, staff, administrator) and individuals in one role often displayed distrust for individuals in other roles based solely on their affiliation (e.g., faculty distrust of administrators); 2) the response framework for grievance procedures under the collective bargaining agreements has resulted in shifting human resources and faculty affairs functions away from a traditional employee relations/counseling framework toward a pure grievance response framework; 3) the processes for discipline, particularly for faculty members in the CFA, are protracted, not aligned with federal law, and contribute to concerns about lack of accountability for misconduct by faculty members; and, 4) efforts

⁵⁴ We did not meet with all union representative on all campuses. On many campuses, we extended an invitation to meet with union leadership and representatives and individuals self-selected whether to participate.

⁵⁵ We were particularly impressed with the CFA leadership at Chico State, who took the time to gather data from CFA members in advance of our campus meeting. They posed the following questions to members and came prepared to share responses, including responses that were critical of the role of the CFA in faculty discipline matters:

1. Have you had any experiences, personal or otherwise, with Title IX, and if so, how would you describe those experiences?
2. What are your impressions about the efficacy of Title IX at Chico State? How would you say you arrived at those impressions?
3. How do you think the broader campus perceives Title IX at Chico State? (This can mean admin, faculty, staff, students?) Why do you feel this way?

⁵⁶ We also viewed a November 17, 2022 post on the CFA website entitled, [Performative, Minimal Title IX Changes by CSU Management Not Enough to Fix Systemic Sexual Violence Issues](#). In this post, the CFA expressed skepticism about the engagement of Cozen O’Connor, as well as the CSU’s response more broadly to issues of sexual and gender-based harassment on violence on CSU campuses. We address the concerns raised by the CFA more specifically in Appendix II, Section IV.

to mandate or increase training requirements for employees have been met with resistance. We address each of these themes in subsequent sections of this report.

The focus of our review is the CSU's implementation of its Title IX and DHR programs, and our discussion of the relevant sections of the collective bargaining agreements and state contractual provisions is solely through the lens of effecting the goals of federal and state civil rights laws – to promote campuses free from discrimination, harassment and retaliation. We do not express any judgement or criticism of the right to unionize or the existence of unions. To the contrary, we recognize that unions play a vital role and provide many positive benefits for the employees they represent and for institutions more broadly. In the context of this assessment, however, a number of factors were identified by campus constituents – including union members – that impact and at times, detract from, the collegiality of campus relationships and the effectiveness of Title IX/DHR programs. Those factors, which include the impacts of protracted disciplinary processes, are discussed more specifically in the subsequent section on the trust gap and accountability.

The context of the collective bargaining agreements is complicated by the frequent changes in federal law and guidance, state law, and case law, often with minimal runway time to implement changes. In some instances, the federal government has given sufficient leeway in timing, albeit not in the provision of funds, to enact new compliance requirements. For example, the 2013 VAWA amendments to the Clery Act were not implementable until July 1, 2015, nearly two years after the law was enacted, and more than 8 months after the implementing regulations were finalized. This gave campuses a longer runway to adjust policies and practices and to increase staffing where needed. In contrast, Title IX's implementing regulations, which were released in May 2020, provided educational institutions only three short months to redesign policies and practices and identify personnel to fill newly required roles. Those three months fell during the first few months of the COVID-19 pandemic and during the summer when students and faculty were present in much smaller numbers. Importantly, to date, the legally required changes to the federal Title IX framework have not accounted for challenges in imposing institutional change in such short order, nor have they accounted for the extensive community and constituent engagement necessary for implementation in light of shared governance and statutory and contractual obligations. With respect to the impact of the 2020 Title IX regulations on existing collective bargaining agreements, OCR failed to acknowledge these combustible legal conflicts, relying instead on federal preemption:

With respect to the general at-will employment doctrine, or the fact that recipients often have employment contracts or collective bargaining agreements in place that govern employee misconduct, where Title IX is implicated the Department has determined that the protections and rights set forth in these final regulations represent the most effective ways to promote Title IX's non-discrimination mandate, and recipients of Federal financial assistance agree to comply with Title IX obligations as a condition of receiving Federal funds. Recipients' contractual arrangements with employees must conform to Federal law, as a condition of receipt of Federal funds.⁵⁷

In essence, for the CSU, given the processes for opening and renegotiating contracts, the reality is that the system cannot fully comply with changes in federal or state law for some period of time until changes can be effectively bargained. This status quo is untenable and reflects the challenges of seeking to implement a regulatory framework that does not fully account for the context and characteristics of the educational institutions it regulates.

We understand that many of the issues addressed in this report are complex, fraught, and are not easily reconciled with pithy solutions. They require partnership – partnerships between federal and state governments, partnerships between higher education and government, and partnerships between faculty, staff, administrators, students, and representative unions. We hope that all stakeholders across the CSU will be open to engaging in dialogue with the system and the 23 universities regarding the issues and concerns identified through this assessment.

4. Free Speech and Academic Freedom

As it relates to an educational institution's ability to respond to provocation, microaggressions, potential bias incidents, or acts of intolerance, one of the most pressing issues on college campuses and in educational institutions more broadly is the intersection of free speech and academic freedom considerations. The question at the center of this issue is, "How does a University protect free speech and

⁵⁷ [Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance](#), 85 Fed. Reg. 30,026 (May 19, 2020) (to be codified at 34 C.F.R. pt. 106). Notably, the 2020 Title IX regulations had the effect of expanding employee rights for some employees by requiring additional levels of procedural due process that would not otherwise be required under state law for at will employees – and are not required for non-Title IX conduct.

academic freedom while also creating a respectful community that upholds safety and supports inclusion and belonging?"

These issues have come into sharper focus as the political climate has become more polarized. Students, faculty and staff across the nation continue to engage in spirited discussions about systemic racism, social injustice, acts of intolerance, and core social issues that have the attention of the courts, legislatures and executive branch leaders. Increasingly, campus law enforcement professionals have been engaged with students, faculty, and staff about reimagining campus policing. These conversations are long overdue. At the same time, our nation is seeing a backlash in some circles, with political leaders and state legislatures seeking to limit discourse on campuses on issues related to diversity, equity and inclusion. And through it all, social media has become the new quick hit forum for the expression of ideas.

Later in this report, we address the challenge of addressing conduct that may not rise to the level of a policy violation based on protected status or other workplace standard,⁵⁸ but that is nonetheless disruptive to the fabric of the learning, living, and working environment. While the CSU cannot discipline for legally protected speech, no matter how hurtful or offensive the speech may be, "protected" speech may still have significant impacts on other individuals. Where discipline is not appropriate or available, these impacts can still be addressed by responding to the speech in many ways, such as meeting speech with speech, providing individual supportive measures, or developing community remedies.

Over the past several years, the way individuals choose to engage publicly has raised questions on many campuses about the intersection of free speech and protected statuses. This is a nuanced legal, political, and social issue that does not lend itself to full treatment in a report of this nature, but we flag the importance of reconciling these vital protections in the design of campus policies, procedures, and responses, with advice from and in coordination with CSU's Office of General Counsel and other subject matter experts within the Chancellor's Office and the system.

⁵⁸ At the CSU, workplace standards are defined by statute in section 89535 of the California Education Code, and any "permanent or probationary employee may be dismissed, demoted or suspended for . . . unprofessional conduct" and other prohibited behavior. Cal.Educ.Code § 89535.

E. Foundational Concepts in the Assessment

Our assessment of the CSU's Title IX and DHR programs is not limited to legal compliance. Rather, we apply a holistic framework that recognizes that an institution's response to discrimination and harassment, including sexual and gender-based harassment and violence, must also be guided by other vital considerations, including the psychological impacts (which require an understanding of the dynamics of sexual and gender-based harassment and violence, trauma, barriers to reporting, and other related concepts) and cultural context (an institution's unique policies, procedures, personnel, resources, culture, climate, and institutional values). Our lens and orientation to these issues integrates the legal and regulatory framework with an understanding of the psychological and cultural issues at play.

We have had the opportunity to share our approach with many campus community members through individual and group interactions. At the same time, we recognize we have not had the opportunity for direct engagement with most CSU students, staff and faculty. We also recognize that our role, as external professionals conducting an assessment, is viewed with skepticism by some, given individual perceptions – or misperceptions – of our role. To that end, this section sets forth some core concepts in how we approach the work which may help to inform an understanding of our orientation and lens.

1. Care-Compliance Continuum

We analyze the institutional responses to discrimination, harassment, and retaliation through the lens of the *care-compliance continuum*, a term we have coined to capture the equal importance of care for our community members with compliance with the law. This integration of priorities is enormously complex as higher education institutions seek to implement all aspects of Title IX and analogous legal frameworks in a manner consistent with institutional values and mission. The concept of the *care-compliance continuum* recognizes that the effective implementation of legal requirements requires: the need for trauma-informed supportive measures, resources, and care for the individual as well as any impacted community member; prompt, equitable, and procedurally fair investigation and resolution processes; and a formal legal structure with appropriate checks and balances to ensure that key elements of effective practices are set forth in policy, resourced in action, and monitored for effectiveness and sustainability.

A key step in maintaining this balance is the separation of systems of advocacy from systems of adjudication – both in structure and language used to describe the differences between these concepts. In the system of advocacy, the relationship between the complainant and advocate, mental health

counselor, or medical professional is focused on support of the complainant, without regard for whether the conduct occurred as reported. In this system, terms like “survivor” and “perpetrator,” “trauma,” “empowerment,” “healing” and “harm” are common and accepted. In contrast, in the system of adjudication, as described above, a more neutral and impartial approach is required to ensure an equitable and fair process without bias or appearance of partiality. In this system, terms like “threshold,” “preponderance of the evidence,” “advisor,” “relevance,” and other legal terms abound. Both systems must exist – and co-exist – in the campus ecosystem, necessarily in a coordinated and collaborative manner. There must be a recognition that both play a critically important role on campus – and advocates and Title IX Coordinators can find many ways to intersect to support students, faculty and staff as they navigate reporting and resolution processes. In policy, in written resources, and in campus communications, setting and reinforcing clear expectations about roles and responsibilities can help to build trust and reinforce the perception of the integrity of campus processes.

Even within a Title IX/DHR office, there are roles more closely aligned with the *care* end of the continuum and roles closer to the *compliance* end of the continuum. For that reason, we recommend that the individuals who oversee supportive measures and engage in ongoing support and resource provision for parties not be the same individuals who serve in neutral investigative and adjudicative roles. Effective practices, where staffing levels allow, require dedicated intake staff who can help facilitate supportive measures, share information, serve as a resource, and build trust in the office and the process. Those dedicated personnel can help shift the emphasis from compliance to care in the care-compliance continuum – and help to reduce the perception that Title IX/DHR processes are merely legalistic and compliance-based. This separation also reinforces the neutrality and impartiality of the investigator’s role and diminishes potential concerns about conflict of interest or bias.

2. Gaps in Communication Get Filled with Negative Inference

Clear, consistent, and frequent communication about university processes for reporting and responding to discrimination, harassment, and retaliation is critical to fostering increased reporting, enhancing trust in university processes, and reinforcing the credibility and reliability of institutional commitment. In our decades of history working in the areas of sexual and gender-based harassment and violence, interpersonal conflict, and care and compliance systems in K-12 and post-secondary institutions, we have witnessed a common and readily recognizable phenomenon: where there is a gap in communication, the gap is often filled with negative inference.

Unfortunately, gaps in communication are all too frequent in this context. As an initial matter, we do not all have shared lived experiences, vocabulary, or comfort in discussing and confronting complex topics. We are also at a moment in our nation where dialogue has become particularly fraught, polarized, frayed, and frequently limited to impersonal platforms and nuance-starved sound bites. That requires us to work harder to be empathetic, to seek to fill the gap by flipping the lens to seek to understand another's perspective, and to be open to alternative explanations that bridge understanding rather than defaulting to a negative inference. These issues are critical at both the macro (system) and micro (individual) level.

In the Title IX and DHR context, there is sometimes a gap in communication between the Title IX/DHR office and the parties. In some instances, there are gaps in responsiveness caused by limited staffing, limited systems of oversight, and inconsistent protocols for responding to reports promptly. In other instances, the gaps are simply a function of the time required for protracted investigation and resolution processes. In either event, a common perception is that the individuals within Title IX/DHR offices lack care – a perception that is often belied by continued interactions with these offices. While we heard many examples of interactions between Title IX/DHR professionals that did not leave a complainant or respondent feeling heard, seen, or understood, we did not hear accounts of malfeasance at the level of the campus practitioner.

More often, it is our experience, as it has been at the CSU, that Title IX Coordinators and DHR Administrators are well intentioned, committed individuals who have chosen to engage in this work because of their commitment to civil rights and to promoting campus environments free from discrimination and harassment. They often step into this work knowing it is fraught by the very nature of the role they are charged with undertaking. In every contested matter that a Title IX Coordinator or DHR Administrator oversees, at least one (and sometimes both) of the parties will not feel served by the outcome, and the response to the outcome may be exacerbated by challenges or gaps in process or communication along the way. In the current context and climate, we see an overgeneralization and stereotyping of the individuals who serve as Title IX Coordinators and DHR Administrators, with blame being leveled at the feet of individuals, rather than at the lack of institutional resources and the legal constraints of the process. While not all have equal subject matter expertise, competencies, communication skills, or organizational abilities, *all* are under resourced to do the level of work required of them by law and policy, often without sufficient personnel or budgetary support. In the long term, this creates an untenable framework for effective responses, which then contributes to the trust gap.

An additional complication in the Title IX/DHR arena is a commonly held perception that *nothing happens* in response to a report, when in fact, appropriate action may have been taken based on the facts and wishes of the complainant. The current federal framework gives great deference to individual complainant agency and autonomy to choose whether, and if so, how, to proceed. Those procedural options may include supportive measures only, a formal complaint and investigation, or some alternative resolution. In addition, as discussed elsewhere in this report, some reported incidents, even if accepted as credible, do not raise actionable facts under the law or university policy. Given the federal privacy requirements in Title IX and DHR processes, while the underlying incidents or conduct may be known within the community (for example because a complainant or others chose to disclose it), the manner of resolution and specific outcome typically cannot be shared and may not be known as widely. And because outcomes are private, those who were not directly involved as a complainant or respondent, but who intersect with the process, such as a witness or a responsible employee, may walk away without a complete picture of what happened or actual knowledge about how a report was resolved. For those more peripherally involved, who are not privy to the details of specific cases, resolutions or outcomes, this lack of visibility creates a gap that often gets filled with negative inferences against the process, the university, system, or individual administrators. Those negative inferences are sometimes warranted, as examples of institutional failures and gaps across the country reflect. In other instances, those negative inferences are often caused by the required regulations and complex processes, yet default to overgeneralizations or assumptions that default to the perception of institutional bias to explain challenges and gaps.

Stripping Title IX and DHR processes of critically important privacy protections would have a chilling effect on reporting and hinder educational institutions' ability to take meaningful action in response to discrimination and harassment. The challenge, then, is how to combat this negative perception when information must be retained as private. Left unaddressed, negative inferences that result from protecting individual privacy and process integrity also suppress reporting, which may lead to fewer impacted individuals receiving access to supportive measures and information, allow misconduct to occur without the opportunity to intervene, and widen the trust gap. Shifting this perception requires extraordinary, diverse, and consistent engagement by Title IX and DHR professionals to continue to conduct outreach, be visible on campus, and raise awareness about resources, supports, information and options.

3. Breaking Down the Silos

In higher education, the siloed environment is often panned as negative and disruptive. Undoubtedly, there can be negative impacts, especially where silos contribute to gaps in communication and trust, or inhibit the coordination of personnel and information. Silos, however, also have positive aspects – they allow for specialization, for deep attention and exploration of issues, and for a greater level of service to the constituents within the silo. The goal, therefore, is to create policies, processes, and practices that encourage and reinforce information-sharing and cross-silo collaboration and coordination. A former compliance officer at a major university in New York has labeled the goal as transforming silos into “breathable cylinders of excellence,” a phrase we have adopted in our work.

Often, information sharing is based on relationships developed across silos through repeated, but not standardized, interactions. This relational model is harder and harder to sustain over time as the volume of reports rises and the complexity of the tasks increases. Further, the relational model is rendered less effective by the high rate of turnover in campus administrators – not only does a university lose institutional history when individuals depart, but personnel also have to invest additional time and effort to establish and sustain trust with new personnel. As reflected elsewhere in this report, shifting from the *ad hoc* relational model requires more formal protocols for coordination, information sharing, and documentation.

4. Tyranny of Temporal Compression

We coined the phrase “the tyranny of temporal compression” to refer to the tendency, in hindsight, to compress all facts learned over a period of time as if they were all known at one earlier point in time. We see this phenomenon when there is a long, often unreported or undocumented pattern of misconduct that precedes more egregious conduct. Individuals tend to presume that because the conduct was occurring, it must have been known – and disregarded – by administrators. In some instances, subsequent review of the facts indeed reflects malfeasance, willful blindness, or poor judgment by administrators. In other instances, however, subsequent review reveals scattered and incomplete records, not coordinated or viewed centrally, which precludes the institution’s ability to identify and address repeated misconduct. As highlighted elsewhere in this report, ensuring that information is consistently documented and shared centrally with the Title IX/DHR office will help to ensure that there is complete information and data to support informed decision-making about patterns of misconduct, eliminate pockets of information

dispersed and held by individuals and departments, and deconstruct temporal compression to provide a clear accounting of reports, responses, and resolutions.

As the facts have unfolded in public and government reports, incidents at many campuses, including Fresno State and SJSU, are susceptible to the tyranny of temporal compression in the reporting and public perception of the available information. For example, individuals naturally presumed that all information about the conduct of individual employees was immediately known by ultimate decision-makers and that the university and system made deliberate choices not to act on that information. In fact, in reviewing the facts in detail, we understand – as is often the case – that information came in over a period of time, sometimes without complete detail or context, and sometimes tentatively or from individuals who did not wish to have their identities disclosed. To understand and evaluate the incidents fairly, it is necessary to disentangle the facts and understand what information was known – and by whom – in real time with respect to each set of facts and circumstances. To view the facts from the literal 20/20 lens, as if all facts were known in real time, does a disservice to the more gradual and iterative manner in which information unfolds. This is particularly salient when the information pertains to conduct that at first blush, and in real time, might not rise to the level of a policy violation, but when viewed in cumulative hindsight through the lens of additional facts, has much more significant implications. A nuanced understanding of the dynamics of harassment, particularly sexual harassment, will drive effective practices, including ensuring that reports and responses are documented and tracked, that actions are taken to evaluate and understand patterns, and that other steps are taken to evaluate options, including supportive measures and educational approaches, to respond to concerning conduct.

F. Continued Synthesis and Analysis of Information

As a final caveat, we note that our review of data and information gathered in the Title IX/DHR survey we issued in December 2022 is still ongoing, as is our follow up to individuals who completed the survey and requested an opportunity for a follow up discussion, either individually or as part of a focus group. That said, we gathered enough information to provide a solid evidence base for our observations and recommendations.

From the nearly 18,000 responses to the surveys, we have incorporated the most common themes in this Systemwide Report and in the individual university reports. Our review of this data continues, and we plan to share the campus-specific feedback, redacted of any personally identifiable information, with campus leadership and the Implementation Teams.

V. Overview of Engagement

This section provides an overview of Cozen O’Connor’s Institutional Response Group, our approach to the assessment, the scope of our document review, the scope of campus interviews, community engagement, and the creation of the 24 Implementation Teams to continue the work begun through this assessment.

A. The Institutional Response Group

This review was led by Gina Maisto Smith and Leslie M. Gomez, co-chairs of the Institutional Response Group at Cozen O’Connor. Institutional Response Group team members who participated in campus visits and assessments also included attorneys Devon T. Riley, Maureen P. Holland, Adam Shapiro, Cara Sawyer, and Dylan Davison.⁵⁹ The Institutional Response Group is a practice comprised of a diverse group of professionals dedicated exclusively to designing, implementing, and improving institutional responses to sexual and gender-based harassment and violence, child abuse, protected class discrimination and harassment, and other forms of interpersonal violence. We are focused on providing advice for the successful design and implementation of policies and procedures that integrate the federal and state legal and regulatory framework, a nuanced understanding of the dynamics of trauma and the impacts of sexual and gender-based harassment and violence, and an educational institution’s unique mission, climate, culture, personnel, resources, and context. The Institutional Response Group works with colleges and universities across 40 of the 50 states.

A foundational principle of our legal practice is that we do not engage in civil litigation – either for or against educational institutions. We acknowledge the perception of institutional bias that may exist because we are engaged by the system. We can affirm, however, that we have been given full autonomy and independence in determining how to conduct the assessment, what documents to review, and whom to interview. Moreover, our observations, findings, and recommendations are wholly our own, reached without interference or direction by the CSU.

Cozen O’Connor had limited prior engagement with the California State University. Those engagements did not involve defense of the CSU in the context of any civil litigation or union negotiation. Additional

⁵⁹ Our work was also supported by attorneys Jeff Bourgeois and Kendyl Gilmore, as well as administrative and legal support staff, Mary Sotos, Megan Lincoln, Mary Beth McAndrews, Lauren Smith and Jeanmarie McDonald.

information about the Institutional Response Group, our qualifications, and our prior engagement with the California State University is detailed in Appendix II.

B. Approach to the Assessment

Cozen O'Connor conducted this assessment with a commitment to open-ended exploration of the issues and sought to follow the facts where they led. We consistently inquired about foundational programmatic elements at each university, but remained open to unique context, concerns, and challenges across the system. The assessment process integrated appropriate protocols to support a neutral, impartial, and thorough assessment and to report the information gathered in the assessment to the Chancellor, the Board, and the 23 universities in an objective, organized, synthesized, and dispassionate manner. Cozen O'Connor sought to gather all relevant information and tie our findings and observations to available contemporaneous documents and witness interviews.

As described below, our work necessarily intersected with broader issues related to shared governance or structural considerations that fall outside of our scope. We offer comments, observations, and recommendations on those intersections, and recognize that some of our recommendations may need to be integrated with the system's ongoing work. We are mindful of staying within our lane of expertise and the scope of our engagement. In some instances, we identify a concern for further action, and leave the corresponding recommendation open-ended, rather than specific, for the reasons described above.

This report does not include encyclopedic reference to every fact, insight, or lived experience gleaned through interviews or documents. Rather, to balance accessibility and ease of access for the broader community, we sought to identify themes and provide examples to provide the evidence base for our recommendations.

During the assessment, we learned invaluable lessons about communication, the order of operations, and the importance of community engagement. We are grateful to those systemwide governing bodies who took the time to engage with us to help contextualize the CSU, including the Academic Senate of the California State University (ASCSU), the Council of Campus Senate Co-Chairs, the California State Student Association (CSSA), and members of the Associated Students Incorporated (ASI) across the 23 universities. We are also deeply appreciative of the members of the Chancellor's Office Title IX Assessment Team, which includes members of the Systemwide Title IX and DHR Office, Academic and Student Affairs, and

the Office of General Counsel. Their feedback also helped us to better communicate our role and clarify our process in response to questions from community members.

C. Review of Documents and Online Resources

From each university, we requested the following categories of documents:

- Title IX and DHR templates and communications, including:
 - Initial outreach email
 - Mandatory/discretionary dismissal email
 - Formal complaint form or website
 - Notice of allegations or notice of investigation
 - Notice regarding evidence review phase
 - Notice of hearing
 - Template investigation report
 - Template written determination
- Informational materials, including pamphlets, brochures, handouts (e.g., rights and resources, supportive measures, process options)
- Training materials, used to provide training to, students, faculty, staff, and Title IX/DHR professionals (including Title IX Coordinators, DHR Administrators, investigators, decision-makers, appellate authorities, and individuals who facilitate informal resolutions)
- A representative sample of investigation reports and case files for the prior 1-2 years
- Clery Annual Security Reports issued in 2021 and 2022
- Pamphlets, brochures, or handouts for key campus partners (e.g., counseling, health services, campus police)
- Any task force or working group reports related to Title IX and/or DHR
- Any audits or reviews of Title IX or DHR completed in the last 3 years
- Organization charts for senior leadership, student affairs, faculty affairs, HR, Title IX, residence life, and athletics
- Information related to recent cases reported on in the media (i.e. cases that may have impacted the campus community's perception of Title IX/DHR or created barriers to reporting)
- Any other public information (media, social media, etc.) that reflects the campus perspective of Title IX/DHR efforts, barriers to reporting, adequacy of resources, etc.
- Any results of campus climate surveys
- Annual Title IX reports for the prior four academic years

In addition, during our interviews and follow up synthesis of the information, we requested additional documents and written materials from stakeholders and campus constituents.

D. Interviews

For each of the CSU’s 23 universities, we conducted a 3-day site visit. We also interviewed current and former administrators at the Chancellor’s Office headquarters. For most of the 23 universities, the site visit occurred in person. For some, given the impacts of COVID-19 or other complications, we conducted our site visit via Zoom. In addition to our scheduled 3-day engagement, we facilitated additional engagement before and after our site visit to ensure we connected with as many of the relevant stakeholders and constituents as possible.

Our campus visits occurred as follows:

July 2022	August 2022	September 2022
Chancellor’s Office Fresno State	Sonoma State San José State Channel Islands	Northridge San Francisco State Stanislaus State Maritime Bakersfield Chico
October 2022	November 2022	December 2022
Sacramento State San Marcos San Bernardino East Bay	San Diego Long Beach Los Angeles	Monterey Bay Humboldt Pomona
January 2023	Additional Visits	
Dominguez Hills San Luis Obispo Fullerton	Sonoma State (January 2023) San José State (March and April 2023)	

In our site visits, we sought to meet with campus administrators and individual employees most directly involved in prevention and education, campus resources, and campus investigation and resolutions (sometimes referred to as implementers). On each campus, that included, at a minimum, individuals in the following roles and departments:

- President
- Provost
- Vice Presidents with oversight of Title IX/DHR
- Vice President for Student Affairs
- Dean of Students
- Title IX Coordinator
- Deputy Title IX Coordinators
- Title IX Investigators
- DHR Administrator
- Clery Coordinator
- Campus Confidential Advocate
- Student Conduct Administrator
- Residence Life/Housing
- Human Resources
- Academic Affairs/Faculty Affairs
- Diversity and Inclusion/Chief Diversity Officer
- University Police Department
- Counseling and Psychological Services

- Health Services
- Health Promotion
- Prevention & Education Professionals
- University Counsel
- Fraternity and Sorority Life
- Athletics Director
- Ombuds (if any)
- Identity Center or Affinity Groups
- Students of Concern
- Threat Assessment Teams

We have attached a sample campus agenda as Appendix III.

On some campuses, we also had the opportunity to meet with campus task forces and committees, including, for example, at Fresno State, San Marcos University, Sonoma State, and Cal State Los Angeles. At other campuses, like Long Beach, we met with many cross-campus constituent bodies, including members of the President’s Equity and Change Commission (PECC), the President’s Commission on the Status of Women, the Campus Climate Committee (CCC), the Queer and Trans Faculty and Staff Affinity Group, the Transgender Advocacy Coalition (TAC), and Campus Women of Color.

In each interview, we followed a consistent protocol. At the beginning of each interview, we described our role, the scope of our review, the lens we bring to the work, how community members could share information as part of the systemwide assessment and how information shared with us would be used. We informed individuals with whom we spoke that information would not be personally attributed to them; rather, we would de-identify quotes or information provided to us, and aggregate themes and observations as a whole. We explained that we anticipated the CSU would request that Cozen O’Connor prepare a written report for public release. Cozen O’Connor sought to provide campus stakeholders and constituents with a full and fair opportunity to share information, ask questions, and follow up with any additional information. Relevant de-identified and aggregated information from the interviews is set forth in the sections that follow, and Cozen O’Connor has maintained notes of each interview as attorney work product within our confidential files; these files will not be shared with the CSU.

Across all campuses, we found the individuals we spoke with to be candid and not hesitant to offer constructive feedback, to identify challenges, and to share their insights. This included administrators, who embraced the opportunity to participate in the assessment in the hopes that this work would lead to enhancements to policies, procedures, and practices. Many of the administrators with whom we met described high levels of exhaustion and burnout. Many were serving in interim or acting roles, and many were also covering responsibilities for other positions that were vacant. The severe impact of resource constraints was palpable.

As described in the Community Engagement section below, we also sought to include the perspective of students, staff, and faculty.

E. Community Engagement

Administrator and implementer interviews helped us to understand the infrastructure, systems, policies and procedures, and practices, which is foundational to our understanding of how each campus is structured, resourced, and organized. To understand the effectiveness of the Title IX and DHR programs, the issues related to culture and climate on each campus, constituent experiences and perceptions engaging with campus resources, it was critically important to seek feedback from students, faculty and staff. We offered multiple modalities to do so.

1. Systemwide Engagement

As a priority, we met with groups of individuals across the system to provide information about the assessment and to seek input and feedback from a wide range of campus constituents about the issues under review in the assessment, as well as the nature and manner of the assessment itself.

In June 2022, we met with all campus Presidents and Vice Chancellors, as well as all Title IX Coordinators. In July, we met with the Board of Trustees to present our qualifications and share information about how the assessment would be conducted. In August, we met with all DHR Administrators. In September, we met with the ASCSU. In October, we met with the Council of Campus Senate Chairs, the pool of individuals who served as hearing advisors, the ASCSU, the ASI CSSA, as well as with all confidential victim advocates. In December, we met with all campus Vice Presidents and Assistant Vice Presidents for Human Resources and Academic/Faculty Affairs in a daylong workshop. In January 2023, we met with the CFA Womxn's Caucus Tri-Chairs and the ASCSU. In May, we met, again, with the Council of Campus Senate Chairs and the ASCSU.

Throughout the engagement, we also met with members of the Chancellor's Office as part of our assessment of the Chancellor's Office headquarters and the work of the Systemwide Title IX and DHR Office (related to systemwide collaboration and oversight). This included routine engagement with the Chancellor's Office Title IX Assessment Team, as well as interviews with more than twenty current and former CO administrators. Throughout our review, we had the privilege of meeting with Chancellor

Koester and Board Chair Wenda Fong on a monthly basis, and to provide periodic updates to the Board of Trustees.⁶⁰

As noted in the individual university reports, we also met with academic, faculty and/or university senate members, affinity groups, union representatives, and campus task forces at each campus.

2. Individual Meetings and Focus Groups

On each campus, as reflected above, we had the opportunity to meet with students, staff and faculty. Those meetings were held between July 2022 and May 2023, in person and by Zoom.

3. CalStateReview@cozen.com

In October 2022, we created an email address to allow campus community members to contact us directly to share information, raise questions, or request the opportunity to meet during a campus visit or by Zoom. This platform allowed us the opportunity for in-depth engagement with individuals who identified as complainants, respondents, witnesses, or who had otherwise participated in campus processes; who were responsible employees; or who were part of shared governance bodies.

In total, more than 160 individuals used this option to share information. As with all information we gathered, information shared with us by email or in subsequent meetings has been maintained by Cozen O'Connor as private and not for attribution. The aggregate themes and observations have been incorporated into our systemwide observations and individual campus reports.

⁶⁰ We met with the Board of Trustees in September 2022, November 2022, March 2023, and May 2023.

4. Survey

In December 2022, we asked each campus President to disseminate an invitation to participate in an online survey meant to provide a platform for all community members to share their experiences, perspectives, and insights. Nearly 18,000 students, staff and faculty participated in the survey, as follows:

University	Number of Survey Responses	Number of Student Respondents	Student Body Population	Student Participation Rate	Number of Employee Respondents	Total Employees at University	Employee Participation Rate
Bakersfield	751	583	9,621	6.06%	183	1281	14.29%
Channel Islands	577	375	6,233	6.02%	216	949	22.76%
Chancellor's Office	161	0	0	N/A	161	681	23.60%
Chico	552	275	14,183	1.94%	310	1996	15.53%
Dominguez Hills	330	197	16,449	1.20%	135	1728	7.81%
East Bay	326	161	13,693	1.18%	174	1707	10.19%
Fresno	1,056	517	24,002	2.15%	567	2643	21.45%
Fullerton	747	579	40,386	1.43%	180	3792	4.57%
Humboldt	562	364	6,026	6.04%	213	1217	17.50%
Long Beach	753	483	39,059	1.24%	282	4533	6.22%
Los Angeles	690	419	26,464	1.58%	290	2811	10.32%
Maritime	123	67	849	7.89%	58	263	22.05%
Monterey Bay	687	462	7,045	6.56%	228	1066	21.39%
Northridge	1,899	1,268	37,583	3.37%	671	1909	35.15%
Pomona	1,460	1,088	27,506	3.96%	357	2801	12.75%
Sacramento State	478	230	31,852	0.72%	259	3358	7.71%
San Bernardino	785	457	19,812	2.31%	354	2255	15.70%
San Diego State	1,314	665	37,510	1.77%	700	4742	14.76%
San Francisco State	464	194	25,323	0.77%	294	3433	8.56%
San José State	1,448	882	35,719	2.47%	581	3858	15.06%
San Luis Obispo	926	518	22,051	2.35%	432	2903	14.88%
San Marcos	213	90	15,182	0.59%	125	1790	6.98%
Sonoma State	231	89	6,649	1.34%	143	1186	12.06%
Stanislaus	1,385	1,208	10,155	11.90%	210	1354	15.51%
Total:	17,918						

The survey provided the opportunity for members of the CSU community to respond anonymously to questions with respect to the following areas:

- Physical Safety and Security. Survey respondents were asked to rate their physical safety on campus, including locations in which they felt more or less safe.

- Culture of Inclusivity and Respect. Survey respondents provided feedback on the culture of inclusivity and respect in their working, living, and classroom environments.
- Prevention, Education and Training Programs. Survey respondents were asked to rate the quality and effectiveness of the prevention, education, and training programs provided by the University.
- Interactions with Title IX/ DHR. Survey respondents were asked to describe their interactions with Title IX and DHR programs, share their perspectives as to whether complaints were addressed properly, and provide any insights and recommendations they had as community members to foster reporting and build trust in these resources.
- Barriers to Reporting. Survey respondents were asked about their perspectives of campus resources, including confidential resources and reporting options, and to share feedback about potential barriers to reporting.

While each survey posed the same questions, the surveys were customized to the individual university to ensure that we included the names of the offices and resources on campus and to ensure that the feedback was tailored to the unique issues on each campus. We used a third-party vendor to host the survey. Participants had the opportunity to respond anonymously or to request follow up engagement with Cozen O'Connor through an individual or focus group meeting. Given the overwhelming volume of the responses to the survey, we were not able to respond to all who requested a meeting. We anticipate continued communication with those who requested an additional opportunity to share information with us, and will incorporate any new information into the data and themes we aggregate on each campus. We anticipate sharing more specific information with each campus Implementation Team in a manner that preserves individual anonymity.

As a foundational matter, the surveys were meant to be qualitative, not quantitative. We sought qualitative information to assess perceptions and provide insights into complex issues, not quantitative data for measurement of rates of incidence or prevalence. While the number of survey respondents may not be statistically significant to qualify as representative of the campus population as a whole, their individual responses are nonetheless instructive in identifying and aggregating common themes at each university, as well as across the system.⁶¹ The purpose of the surveys was to ensure that all campus

⁶¹ "Qualitative inquiry is widely recognized as the method of choice for generating insight into complex phenomena, the contexts in which they occur, and their consequences." Creswell, J. W. (2013). *Research design: Qualitative, quantitative, and mixed methods approaches*. Los Angeles, CA: Sage. "Such methods are understood to be particularly well suited to foregrounding and illuminating the experiences and perceptions of those considered to be victims and others whose perspectives have been little voiced, or whose expected experiences have few precedents in prior research." Sofaer, S. (1999). *Qualitative methods: What are they and why use them?* Health Services Research, 34(5 Pt 2), 1101.

community members had the opportunity to participate in the review, and to do so in a manner that reduced barriers and allowed for candid participation without fear of retaliation. We recognize that even with nearly 18,000 participants, we cannot view the extrapolated themes from the comments as representative of the entire campus community. Rather, the qualitative feedback requested through the survey was to gather community input and understand how stakeholders interact with, and perceive, the system as a whole.

High level, aggregate themes from the survey have been incorporated throughout this report and the separate campus reports. Emerging themes from the survey data include:

- With respect to safety concerns generally, survey respondents identified concerns about parking structure safety, poorly lit campuses, and open campuses, particularly in light of nearby unhoused populations and recent California and campus shootings;
- While this was not a campus climate survey designed to elicit data about prevalence, survey respondents shared the following:
 - Survey respondents reported experiencing concerning conduct on their campuses, which was not being addressed by campus processes
 - Many survey respondents experienced racism and bias, including racial slurs
 - Survey respondents who identified as LGBTQIA+ described facing discrimination
 - Bullying was also reported to be prevalent across the system
 - Neurodivergent students reported difficulties navigating their educational environment
 - Students and employees with disabilities reported difficulty accessing accommodations
 - Survey respondents across the system expressed a fear of retaliation by the CSU in connection with reporting misconduct
- Title IX and DHR offices were viewed as serving their institutions, rather than CSU stakeholders
- The fallout of the former Chancellor's actions, and the actions of other senior leaders on other campuses, has served to erode trust across the system
- Many survey respondents felt that tenured faculty were less likely to face discipline than other stakeholders
- Staff and non-tenured faculty reported feeling less respected and empowered than tenured faculty and administrators
- Timeliness of investigations was a significant concern
- Survey respondents requested a single website location to find appropriate resources
- Training was viewed as routine and deficient

- Survey respondents at several universities described Instagram accounts or other social media accounts being used anonymously by students to express grievances about their Title IX and DHR matters, or about other concerns about campus culture and climate.

We recognize that the information, perceptions, and insights shared by university constituents and stakeholders reflect individual perspectives and experiences. We accept those perceptions as valid and do not discount them in any way. We also recognize that there may be many underlying root causes that inform these perspectives. Our goal in seeking broad feedback was to identify aggregate themes by synthesizing information gathered, which we could then review in the context of our own observations of policies, procedures and practices.

A copy of the survey questions is attached as Appendix IV.

F. Implementation Teams

Over the past year, our work has focused on assessment and review – on gathering facts and information that provide the evidence base for our observations and recommendations. Our assessment work is ending. For the CSU, however, the work continues, and in fact, the deep work of incorporating the recommendations is just beginning. To facilitate the implementation of recommendations, each President was requested to form a campus Implementation Team who could serve as an advisory, communications, and working group. The Implementation Teams include, at a minimum, the Title IX Coordinator and DHR Administrator, who serve as subject matter experts; representative members of staff, faculty, and student leadership, to provide community perspective and have visibility into progress on the recommendations; and, a member of senior leadership, who can assist with securing resources, removing operational roadblocks, and aligning institutional priorities. The Implementation Teams were created to help facilitate and support the implementation of the recommendations in a manner that is consistent with agreed-upon timelines, the goals of the assessment, and campus culture; and, to help develop a communications plan designed to keep the campus community apprised about the implementation process and status.

On April 18 and 28, 2023, the Chancellor's Office and Cozen O'Connor convened members of the Implementation Teams from all 23 universities, plus the Chancellor's Office, to provide a detailed briefing on our scope, our approach, the context, and our core findings and observations. The goal of these Implementation Team meetings was to provide an extensive orientation to the assessment, the issues identified in the assessment, and next steps for the campuses.

Concurrently with this Systemwide Report, we are releasing individual reports for each university. The University Reports are detailed, thorough and comprehensive. We recognize, however, that the universities have not had the opportunity to review the written reports and that there are areas where greater clarity or detail may be necessary, where updates should be included, and where additional facts or information should be included. To that end, Cozen O'Connor welcomes campus feedback on the university reports and will update individual reports to the extent necessary. We did not want to delay sharing the individual reports with each university and the public, but also wanted to be open to recognizing that our work, while comprehensive, is not infallible, especially given the sheer volume of information we received across the system and the rapid changes in campus staffing levels. Providing the reports at this juncture also allows the Implementation Teams to raise questions, seek clarification, and engage in further discussion with Cozen O'Connor. Campus Implementation Teams will have the opportunity to meet with Cozen O'Connor to discuss the reports, learn more about the survey feedback, and provide input to the Title IX Coordinator and DHR Administrator in developing a project plan that prioritizes the recommendations. We also expect that the membership of the Implementation Team may change over the course of the work (which might take many months or years). Under these circumstances, the maintenance of meeting minutes and progress notes will be especially important.

VI. Systemwide Policy, Resources and Oversight

The CSU is led by the Board of Trustees, whose members are appointed by the Governor. As set forth in the Trustees Code of Conduct, Trustees have three overarching duties: care, loyalty, and obedience:

The duty of care requires Trustees to carry out their responsibilities in good faith and use that degree of diligence, care, and skill that an ordinarily prudent trustee would reasonably exercise. The duty of loyalty requires Trustees to act in good faith and in a manner that is reasonably believed to be in the best interests of the University and its public purposes, and never in their own interests or the interests of another person or organization. The third fiduciary duty, is the duty of obedience, namely, to ensure that the University is operating in furtherance of its stated purposes and in compliance with the law.⁶²

⁶² <https://calstate.policystat.com/policy/13440474/latest>.

The Board of Trustees appoints the Chancellor, the chief executive officer of the system, as well as the Presidents, who serve the same role with respect to the individual campuses.⁶³ The Trustees, the Chancellor and the Presidents are responsible for developing systemwide policy. The ASCSU recommends academic policy to the Board through the Chancellor.

The CSU is currently led by Interim Chancellor Dr. Jolene Koester. Chancellor Koester leads a Chancellor's Council comprised of: Sylvia Alva, Executive Vice Chancellor, Academic and Student Affairs;⁶⁴ G. Andrew Jones, Executive Vice Chancellor and General Counsel; Steve Relyea, Executive Vice Chancellor and Chief Financial Officer; Leora D. Freedman, Vice Chancellor, Human Resources; Lori Redfearn, Administrator-in-Charge, University Relations and Advancement Division; Associate Vice Chancellor, Systemwide Advancement ; Jessica Darin, Interim Chief of Staff; and, Michelle Kiss, Associate Vice Chancellor and Chief of Staff, Board of Trustees.

A. Implementation of Systemwide CSU Policies and Procedures

In January 2022, the system implemented a revised [CSU Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking, and Retaliation](#) (Nondiscrimination Policy). This Nondiscrimination Policy applies to all students, staff and faculty. It governs the campus and system response to reports of discrimination and harassment on the basis of protected statuses, including age, disability (physical and mental), gender (or sex, including sex stereotyping), gender identity (including transgender identity), gender expression, genetic information, marital status, medical condition, nationality, race or ethnicity (including color, caste, or ancestry), religion (or religious creed), sexual orientation, and veteran or military status. It also governs the campus and system response to reports of sexual harassment, including hostile environment and quid pro quo; dating violence; domestic violence; sexual exploitation and stalking; sexual misconduct; and retaliation for exercising rights under the Nondiscrimination Policy, opposing conduct that a person believes in good faith is discrimination or harassment because of a protected status, or for participating, in any manner, in any related investigation or proceeding. Full definitions of these terms are available [here](#) and in Appendix V.

⁶³ <https://www.calstate.edu/csu-system/news/Pages/history.aspx#sthash.USCwTlo3.dpuf>.

⁶⁴ As of August 1, Sylvia Alva will serve as the interim president of California State University, Fullerton. Dilcie Perez and Nathan Evans will each serve as Deputy Vice Chancellors for Academic and Student Affairs.

The Nondiscrimination Policy incorporates legal requirements under Title IX, the relevant aspects of the Clery Act, Title VI and Title VII of the Civil Rights Act of 1964, the California Equity in Higher Education Act, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975; and other federal and state laws that prohibit discrimination, harassment, and retaliation.

It sets forth three tracks for investigation and resolution:

- Track One, which follows the federally mandated hearing process under Title IX
- Track Two, which follows the state mandated hearing process
- Track Three, which is a non-hearing process

Our scope did not involve review of the Nondiscrimination Policy for legal compliance, especially given the anticipated changes in 2023 to the Title IX Regulations. Rather, our assessment focused on the *implementation* of the Nondiscrimination Policy. We heard universal feedback from nearly every Title IX Coordinator and DHR Administrator that the Nondiscrimination Policy was dense, complex, challenging to explain, and difficult to implement, even for those experienced in the law and the issues. This is in large part due to the complex Title IX framework, California state law (particularly Senate Bill 493) and the impacts of California court precedents. Regardless of the cause, however, it is clear that the Nondiscrimination Policy must be streamlined in order to facilitate increased access and usability by students, faculty and staff. The silver lining in the shifting Title IX regulations is that the CSU will have a renewed opportunity to revise policy and procedures with the release of the revised Title IX regulations, currently slated for October 2023.

We also reviewed and received feedback about the CSU's consensual relationships policy, which is embedded within the Nondiscrimination Policy. A "Prohibited Consensual Relationship" is defined as "a consensual sexual or romantic relationship between an Employee and any Student or Employee over whom they exercise direct or otherwise significant academic, administrative, supervisory, evaluative, counseling, or extracurricular authority."

Another applicable framework for employee discipline is California Education Code § 89535, which provides that: "Any permanent or probationary employee may be dismissed, demoted, or suspended for the following causes: (a) Immoral conduct. (b) Unprofessional conduct. (c) Dishonesty. (d) Incompetency. (e) Addiction to the use of controlled substances. (f) Failure or refusal to perform the normal and

reasonable duties of the position. (g) Conviction of a felony or conviction of any misdemeanor involving moral turpitude. (h) Fraud in securing appointment. (i) Drunkenness on duty.”⁶⁵

In addition to the provisions of the Nondiscrimination Policy, discipline for most employees is also governed by the provisions of the statutory personnel board process. Discipline for represented employees is governed by the terms of collective bargaining agreements between the various unions and the system.

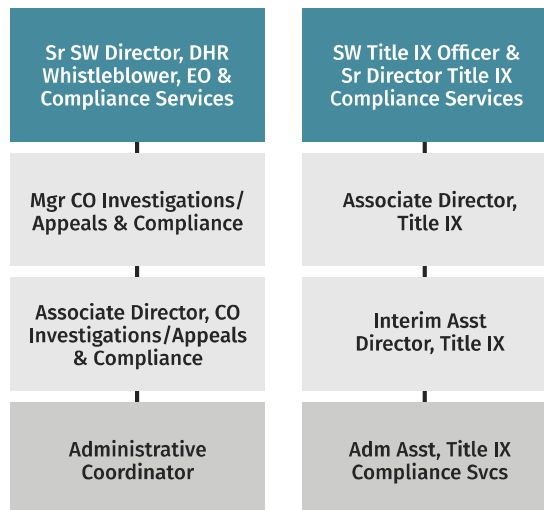
B. Chancellor’s Office Infrastructure and Oversight: Observations

1. Title IX and DHR

The Vice Chancellor for Human Resources has oversight over the Systemwide Title IX Officer and Sr. Systemwide Director, Title IX Compliance Services (Systemwide Title IX Officer), as well as the Senior Systemwide Director for DHR, Whistleblower, EO and Compliance Services (Systemwide Director for DHR). The Systemwide Title IX Officer is supported by an Associate Director of Title IX, an interim Assistant Director of Title IX (temporary position), and an administrative assistant. The Systemwide Director for DHR is supported by a Manager of CO Investigations, Appeals & Compliance; an Associate Director, CO Investigations, Appeals & Compliance; and an administrative coordinator. Currently, the organizational structure for Title IX and DHR compliance services is separate, although they are governed by the same systemwide policy as described above, the [CSU Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking, and Retaliation](#) (Nondiscrimination Policy).

⁶⁵ Cal. Educ. Code § 89535.

The current systemwide organizational structure is as follows:



The Systemwide Title IX Officer and the Systemwide Director for DHR also work closely with other members of the Chancellor’s Office, who come together in various combinations to form the Title IX working group, the Title IX Assessment Team, and the Chancellor’s Office Civil Rights Team. In addition to the individuals reflected in the organizational chart, other partners within the Chancellor’s Office include the Vice Chancellor for Human Resources; Systemwide Director, Student Affairs Programs; Associate Vice Chancellor for Student Affairs, Equity & Belonging; Assistant Vice Chancellor and Chief Counsel – Civil Rights, and the University Counsel for Chico; and University Counsel – Civil Rights.

This structure has evolved over time. In 2014, the CSU was the first public university system to appoint a systemwide Title IX Compliance Officer. This was very forward-looking at the time, especially considering that many colleges and universities were still in the beginning stages of incorporating guidance from OCR regarding an evolving understanding of the role of a Title IX Coordinator. While it had long been a requirement under Title IX’s implementing regulations to designate an individual to coordinate Title IX responsibilities, prior to OCR’s April 4, 2011, Dear Colleague Letter, many institutions of higher education did not have a full-time, dedicated Title IX Coordinator, much less a fully functioning, integrated, and coordinated approach to systemwide compliance. The role of the Title IX Coordinator has significantly shifted since 2011, with increasingly more and more responsibilities being folded into the role. In 2014, it was still a relatively new role across college campuses – with varying portfolios and staffing models. On April 24, 2015, OCR issued a Dear Colleague Letter (DCL) and Title IX Resource Guide that set for the role

and responsibilities of the Title IX Coordinator.⁶⁶ Although these guidance documents have since been rescinded, the underlying concepts described in the letter are still instructive and aligned with the current regulations.

In the 9 years since the systemwide Title IX role was created at the CSU, three individuals have served in the role of systemwide Title IX Compliance Officer. The approach of each systemwide Title IX Compliance Officer has varied with respect to the responsibilities and approach of the role. While some systemwide Title IX Compliance Officers have viewed their role as exercising oversight over individual campus Title IX programs, other systemwide Title IX Compliance Officers have viewed their function as more consultative or advisory in nature. For example, when the inaugural Title IX Coordinator began in December 2014, the CSU had just concluded an audit by the California State Auditor.⁶⁷ As part of that audit, the California State Auditor recommended, among other steps:

The Office of the Chancellor should direct all of the universities within the CSU system to comply with the recommendations in this audit report. Also, to ensure that its universities are complying with Title IX requirements, the Office of the Chancellor should conduct routine Title IX reviews. When conducting these compliance reviews, the Office of the Chancellor should determine whether universities have implemented this report's recommendations.⁶⁸

At that time, the Chancellor's Office committed to undertake routine reviews of compliance on individual campuses and to develop public reports of campus disciplinary actions.

As there has been transition in the role, there has been a shift in approach and philosophy by the Chancellor's Office. Later Title IX Compliance Officers were expected to position the systemwide office as

⁶⁶ April 24, 2015 Dear Colleague Letter, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>; April 24, 2015 Title IX Resource Guide, <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>. (Both of these have been rescinded and remain on web for historical purposes only.)

⁶⁷ See *Six Questions with CSU Systemwide Title IX Compliance Officer Pamela Thomason*, available at <https://www.calstate.edu/csu-system/news/Pages/six-questions-with-csu-systemwide-title-ix-compliance-officer-pamela-thomason.aspx#:~:text=As%20the%20CSU's%20first%20Dever,violence%20across%20the%2023%20campuses>

⁶⁸ See Report 2013-124: Sexual Harassment and Sexual Violence: California Universities Must Better Protect Students by Doing More to Prevent, Respond to, and Resolve Incidents (Release Date: June 2014), available at <https://www.auditor.ca.gov/reports/responses/2013-124/4>.

a support and resource, rather than oversight, with the intention of providing mentoring and encouraging the universities to seek support and assistance on their own accord. This approach is consistent with the general manner of engagement between the Chancellor's Office and the individual universities – to provide guidance, but to largely defer to the autonomy of individual universities. One Chancellor's Office employee observed, "There is a lot of history around the Chancellor's Office being hands-off – we stay neutral, give them the choices; this is a longstanding, deep, cultural Chancellor's Office personality trait." Over time, however, that model has proven to be an ineffective method of ensuring consistent and effective implementation related to Title IX and DHR at each of the 23 universities given the highly technical, complex, and frequently evolving requirements of the federal and state legal framework, and the level of turnover and transition in many CSU university Title IX/DHR programs.

In 2019, the Chancellor's Office recognized that the work was too significant for one individual, even in this advisory capacity, and that the systemwide approach should not be limited to Title IX. The position of Sr. Systemwide Director for DHR was created, as well as a new position, Assistant Director of Title IX, and two administrative positions. An Associate Director of Title IX position was created in late 2022. This level of staffing, however, has proven to be insufficient to carry out the compliance, oversight, and support functions required to ensure that the system – and all universities within the system – are implementing their Title IX and DHR programs with fidelity to the law, systemwide policy and effective practices.

Currently, the systemwide Title IX and DHR Compliance Services, which we refer to jointly, although they are structurally distinct, are responsible for the following tasks, among others:

- Draft systemwide policies and templates, including frequent revisions to incorporate evolving federal and state law;
- Conduct individual consultations with campus Title IX/DHR professionals;
- Provide initial onboarding for Title IX Coordinators and DHR Administrators⁶⁹;
- Review and consult with systemwide Learning and Development on systemwide online training modules;
- Provide systemwide training for Title IX Coordinators and DHR Administrators;
- Host an annual conference for Title IX Coordinators and DHR Administrators;
- Collect campus data for annual reports;

⁶⁹ This onboarding has become more structured over time, but as currently designed, provides only limited engagement as part of the onboarding process (typically a 90-minute meeting with an onboarding packet).

- Engage, coordinate and train external hearing officers;
- Coordinate the scheduling of hearings;⁷⁰
- Coordinate and train university-appointed advisors;
- Engage, coordinate, and train external investigators;
- Respond to records requests (including under the Public Records Act);
- Respond to external regulator/auditor requests;
- Hear Title IX/DHR appeals;⁷¹
- Respond to whistleblower complaints;
- Oversee and investigate reports involving certain members of campus senior leadership as set forth in the Nondiscrimination Policy; and
- Develop and share templates and other guidance documents on CSYou (CSU's internal web content).

These efforts, while widespread, have had varying levels of impact at each university. Some Title IX Coordinators and DHR Administrators have expressed tremendous gratitude to the partnership they have built with the Chancellor's Office. Others have been more critical of the systemwide resources, expressing the need for greater engagement and support. The individual administrators at the Chancellor's Office with whom we have met over the course of the past year have echoed the sentiment that the relationships between the Chancellor's Office and individual university Title IX/DHR professionals are varied with uneven levels of engagement – some seek assistance and support routinely, while others engage with the Chancellor's Office sporadically or not at all. One Chancellor's Office employee expressed a belief that there were several universities who were instructed by campus leadership not to consult with the Chancellor's Office. In sum, campus engagement has been *ad hoc*, upon request, and not tracked for systemwide consistency in advice and application of law and policy.

We observed tremendous opportunity and need for greater coordination, oversight, accountability measures, and support to be provided by the Chancellor's Office to the 23 universities. As described in

⁷⁰ The Chancellor's Office coordinates the scheduling of the hearing. In some instances, the Chancellor's Office also reviews the investigation report in advance of the hearing, attends and observes the hearing, and provides feedback and guidance following a hearing about process improvements.

⁷¹ We heard consistent feedback that Title IX/DHR appeals handled by the Chancellor's Office were often not resolved in a timely manner. We also heard concerns about a potential conflict of interest or perception of conflict of interest if the systemwide DHR personnel were tasked with overseeing an appeal for a case that they had previously provided hands-on advice to the campus Title IX/DHR office. Any restructuring of this function must address both conflict/perception of conflict, as well as the ability to provide timely responses to appeals.

Section VII.A, the infrastructure at each university varies greatly, as does the experience level and longevity of the Title IX Coordinator and DHR Administrator. We saw a wide variety of practices, and an even wider variety in effectiveness of campus programs. There is currently no framework to provide the level of supervision that could help promote more consistent, effective practices across the system. A member of the Chancellor's Office observed that the systemwide professionals have influence, not power. Another observed, "I have no authority over the campuses – 80% of what I do is relationship building and negotiation." Members of the Chancellor's Office confirmed, "The CO Civil Rights Team provides guidance, training, and consultative support services to campus Title IX Offices, but has neither the authority nor the resources to oversee campus Title IX operations." Another observed that the universities operated autonomously, which posed concerns about legal compliance and effective practices, especially given the high level of turnover and instability in some programs.

We observed significant gaps in the current functions and resources provided to campuses by the Chancellor's Office systemwide Title IX and DHR Compliance Services. The following competencies and services are needed to fill gaps in current functioning:

- Provision of routine oversight of campus Title IX/DHR offices and auditing of campus programs to ensure consistent application of policy, timeliness of responses and processes, and effective responses to reports and formal complaints;
- Intentional, routine, structured, and ongoing relationships with campuses designed to elevate and standardize effective practices across campuses;
- Consistent support and guidance to all campuses and tracking of advice and guidance given across campuses for the benefit of other campuses;
- Expanded onboarding and ongoing, hands-on oversight for new Title IX Coordinators/DHR Administrators;
- Expanded training for Board of Trustees, Presidents, senior leaders, or supervisors over Title IX/DHR;
- Systemwide strategic planning regarding training, prevention, and education responsibilities;

- Mandated contemporaneous notification to the Chancellor's Office of reports and investigations that might have the highest impacts to students, faculty, and staff (e.g., repeat offenders, respondents in a position of power or authority);
- Systemwide, centralized online reporting structure, including for anonymous reports;
- A shared case/data management system across the system to provide visibility into campus cases, trends, effectiveness, and responsiveness;
- Routine analysis and dissemination of data gathered through campus climate surveys;
- Consistent collection of data to track patterns and trends; and
- Prioritized, informed, and robust web presence from the Systemwide Title IX and DHR Office to set effective and clear tone at the top.

Our explicit recommendation, below, is that the Chancellor's Office shift its model from advisory to a deliberate oversight role designed to drive effective collaboration, leadership, advice, and tiered accountability. While the Chancellor's Office has taken a number of proactive steps over the past decade, there is much more the Chancellor's Office can and should do to assist the 23 universities in meeting the needs of their students, staff and faculty. We recognize that this is a paradigm shift for the Chancellor's Office and will require investing in additional personnel, developing a sustainable oversight model, modifying the current philosophy, and expanding the manner of engagement.

There is also much more that the Chancellor's Office can do to communicate its role, its leadership, and its resources to the CSU Community. Currently, there is extremely limited information on the public facing website about the role of the Systemwide Title IX Officer and Systemwide Director for DHR. There is virtually no information available on the external Chancellor's Office website (Calstate.edu) that reflects who holds these roles and what the office does. There is also limited information available about the Nondiscrimination Policy, Title IX/DHR training, or the CSU's commitment to fostering an environment free from discrimination or harassment. Increasing available information on the website can help to raise awareness, increase accessibility of the concepts, and reinforce institutional commitment. An enhanced website can help educate the broader CSU community about the systemwide structure, resources, and experienced professionals dedicated to CSU's Title IX and DHR programs. While more information is

available on CSYou, this is behind the university's firewall and not well-known to the university community.

Other key resources in the Chancellor's Office related to the implementation of federal and state compliance requirements include Learning and Development (a unit within Systemwide Human Resources), whose contributions are discussed in Section VII.3.a, as well as the Director of Systemwide Clery and Campus Safety Compliance. With respect to overseeing effective compliance of the Clery Act, the Director of Systemwide Clery and Campus Safety Compliance currently follows a model with regularly scheduled check-ins with each campus Clery Coordinator on a quarterly basis that focus on identified risk areas. This model, while still more advisory in nature than oversight, nonetheless seeks, with intentionality, to understand and direct campus-level practices with respect to core compliance elements. This enables the Systemwide Clery and Campus Safety Compliance Director to identify areas of concern, provide consistent systemwide guidance, and exercise some level of review to drive consistent practices.

2. Office of General Counsel

The [Office of General Counsel](#) (OGC), under the leadership of the Executive Vice Chancellor and General Counsel, provides, manages and coordinates all legal services for all 23 universities, the Chancellor's Office, and the Board of Trustees. Pursuant to the Standing Orders of the Board of Trustees, the General Counsel is the chief legal officer for the California State University and has full authority and responsibility for the legal affairs of the institution. In addition to General Counsel, OGC leadership includes an Associate Vice Chancellor & Deputy General Counsel⁷² and six Assistant Vice Chancellors & Chief Counsel, who each carry an individual workload and lead a practice team that advises the systemwide division associated with their designated area: Academic & Student Affairs, Business & Finance, Civil Rights, External Affairs, Human Resources, and Litigation.⁷³ Additionally, the Assistant Vice Chancellor and Chief of Staff oversees and manages three paralegals and all office staff.

⁷² The Associate Vice Chancellor & Deputy General Counsel works alongside the General Counsel to provide advice and counsel to the Board of Trustees, the Chancellor's leadership team, and leadership at all 23 universities; the Associate Vice Chancellor & Deputy General Counsel also assists with overall management and support of the OGC and all University Counsel.

⁷³ The OGC organizational chart is available here: <https://www.calstate.edu/csu-system/administration/general-counsel/Documents/OGC-Org-Chart.pdf> (last accessed May 17, 2023).

According to the CSU, legal services are purposefully centralized to ensure the provision of consistent advice to all campuses. Each of the 23 universities is assigned one OGC attorney (referred to as University Counsel)⁷⁴ to advise, manage and coordinate all campus legal matters, involving civil rights (e.g., Title IX and DHR), labor and employment (e.g., collective bargaining, leaves and benefits, wage/hour/FLSA/Fair Pay Act, whistleblower protections, and administrative personnel hearings), business and finance (e.g., capital planning and facilities management, construction, environmental law, real estate and land use, contracts and procurement, bonds and financing, auxiliaries, data security, and privacy), academic and student affairs (e.g., immigration and residency, student discipline, international activities, intellectual property, First Amendment, Proposition 209, and athletics compliance), external affairs (e.g., records access, government relations, advancement, legislation, and audit), and governance, as well as a host of other areas of the law. Each University Counsel manages and oversees all litigation for their respective campuses. In addition to the campus-specific role, each University Counsel is also assigned specific specialty areas for which they are expected to be a resource to the CSU system and to other OGC attorneys.⁷⁵

Within the last several years, the OGC has added two additional attorneys who do not have a campus assignment, but rather work with all 23 universities and the Chancellor's Office. One provides specialized legal advice, counsel and support to the systemwide Title IX and DHR Office and to campus administrators on Title IX, DHR and whistleblower matters. The primary purpose of this role is to support legal compliance and effective implementation of the Nondiscrimination Policy. This is a particularly vital function given the complexities of the issues, the many judgment calls and areas of discretion, and the need for consistent legal advice across the system on questions related to the interpretation of law and policy. The second non-campus specific attorney provides advice and counsel to systemwide Business and Finance and all 23 universities on real estate, land use, and environmental matters. The OGC also includes a team of five litigators who handle caseloads in federal and state courts, arbitrations, the State Personnel Board, and

⁷⁴ In addition to their other work load, four of the six Assistant Vice Chancellors/Chief Counsels each serve as University Counsel to a designated university, one serves as University Counsel for Chancellor's Office personnel matters, and one oversees all litigation systemwide.

⁷⁵ Campus assignments and specialties are designated here: <https://www.calstate.edu/csu-system/administration/general-counsel/find-an-attorney/Pages/default.aspx> (last accessed May 17, 2023)

other administrative hearing venues. As for legal support staff, one OGC staff member supports four or five legal professionals, in addition to other assigned administrative duties, and three paralegals and one student assistant support all attorneys in the office.

This level of legal staffing – one attorney per university, *plus* additional specialties and administrative/management duties – is woefully deficient in light of the complexity of the legal issues and is significantly below legal staffing levels at other major public university systems.⁷⁶ Even setting aside that the CSU does not have hospitals, medical centers, or health sciences campuses, the complexity and volume of the legal issues faced by the CSU universities, particularly those with the highest populations, cannot be met by the current level of staffing. In the Title IX/DHR arena alone, each university is expected to consult heavily with their assigned counsel on all Title IX and DHR matters, from intake to final resolution, and many systemwide Title IX and DHR administrators work closely with OGC civil rights and Title IX/DHR specialists on behalf of the CO and all 23 universities. For example, University Counsel should be providing legal advice in the review of threshold determinations, notices of allegations, investigative reports, evidentiary determinations, and outcome letters. At the CSU, these issues are further complicated by the complexities of the statutory and contractual processes for discipline and sanctioning.

We heard significant and consistent feedback from campus constituents about the role of General Counsel, primarily the misperception that OGC was solely focused on avoiding litigation and minimizing risk to the university. Many individuals we spoke with mistakenly believed that University Counsel are decision-makers, not advisors. In reality, OGC attorneys provide advice and guidance to administrators, but are not the operational decision-makers. They play a significant role in ensuring that the university has legally compliant practices, that the university follows its policies with fidelity and integrity, and that there is sufficient information and evidence gathered to support a legally defensible finding or an administrator’s action. With respect to Title IX and DHR cases, University Counsel do not serve as decision-makers, nor do they determine outcomes in any individual matters. Rather, their role is to provide

⁷⁶ For example, the University of Maryland, College Park, has 9 attorneys for a campus of approximately 40,000 students. See <https://ogc.umd.edu/legalstaff/>. In contrast, Fullerton, with a similar student body population, has 1 attorney. The University of Florida has 16 attorneys for approximately 60,000 students. See <https://generalcounsel.ufl.edu/attorneys-and-staff/attorneys/>. The University of New Mexico has 16 attorneys for four campus locations (plus a health sciences campus) with approximately 27,000 students. See <https://counsel.unm.edu/attorneys/index.html>. The Pennsylvania State University has more than 20 attorneys for approximately 90,000 students spread over 20 undergraduate campuses. In contrast, the CSU has approximately 460,000 students.

guidance and legal advice about legal issues, adherence to policy, and potential liability risks based on various courses of action, which campus administrators may accept or reject. While the OGC does represent the university in litigation, whether that litigation comes from a complainant or a respondent, responding to and defending civil lawsuits is only a small portion of a much broader, more proactive approach that seeks to ensure that the system and individual campuses have effective policies and practices that serve students, faculty and staff well. In short, effective University Counsel are necessarily informed, but not driven, by the potential for litigation that arises in connection with campus responses.

Many individuals shared their perception that OGC routinely engaged in separation agreements and favorable settlements with employees who had been found responsible for violating the Nondiscrimination Policy in lieu of pursuing termination or removal of tenure. As addressed below, in Section VII.E.1, this perception is tied to significant challenges faced by university administration in successfully upholding campus Title IX and DHR findings when the underlying evidence and the university's determination regarding sanctions are reviewed by outside arbitrators or the State Personnel Board as required under statutory or contractual processes for discipline of represented faculty or staff members. We learned of numerous examples where campus findings and discipline decisions were overturned or invalidated in the course of these post-finding processes. We also understand that in many instances, the decision to negotiate separation from the CSU with a respondent who violated the Nondiscrimination Policy was undertaken to give effect and finality to the underlying finding and recommended disciplinary consequence (e.g., voluntary resignation in lieu of termination, which provides for complete removal and separation from the university). The alternative, in many instances, risked having discipline completely undone or substantially reduced (e.g., short term suspension rather than termination) and the respondent ordered to return to campus as if there was no finding of responsibility (often with back pay and payment by CSU of the respondent's attorney's fees). This is a challenge and a subtlety that is not well understood across the system.

C. Data and Document Management

The ability to maintain, track and analyze data is a critical component of an effective program to prevent discrimination and harassment. It is also a required compliance element of Title IX and the Clery Act, both of which require records related to reports and institutional responses to be retained for 7 years.⁷⁷ Under the current Title IX regulations, educational institutions must maintain the following records for a period

⁷⁷ 34 C.F.R. § 106.45(b)(10).

of seven years: each sexual harassment investigation, including any determination regarding responsibility; any audio or audiovisual recording or transcript of the hearing; any disciplinary sanctions imposed on the respondent; any remedies provided to the complainant; any appeal and the result therefrom; any informal resolution and the result therefrom; records of any actions, including any supportive measures taken in response to a report or formal complaint of sexual harassment; the reasons why declining to provide supportive measures is not clearly unreasonable in light of the known circumstances; the basis for the university's conclusion that its response was not deliberately indifferent; and measures designed to restore or preserve equal access to the university's education program or activity.⁷⁸ OCR has also emphasized the importance of comprehensive, effective data systems in recent resolution agreements.⁷⁹ The U.S. Department of Education's Clery Compliance Group has also emphasized the importance of effective data systems to meet Clery Act requirements related to the disclosure of accurate, complete, and timely campus crime statistics.

Key demographics in Title IX and DHR records include, at a minimum: the nature of the reported conduct; the role of the complainant and respondent (student, faculty, staff, third party); the date of the incident; the location of the incident; the date of the report; and, personal characteristics of the parties (race, gender, age, and other information related to protected statuses). Process data includes: communications with the parties; supportive measures; emergency removal or administrative leave; manner of resolution, which may range from no response by a complainant to outreach, supportive measures only, informal resolution, formal resolutions (investigation); appeals; outcome, including sanction, and rationale for each; and remedies. Title IX/DHR data should also include documentation as to the rationale supporting

⁷⁸ *Id.*

⁷⁹ In resolving the 2018 directed investigation at the University of Southern California (USC), as part of the February 21, 2020 Resolution Agreement, OCR required USC to maintain "a data system that has the capacity to search for prior or concurrent complaints or reports involving the same respondents and/or complainants and the following minimum data categories: date of initial report/complaint receipt to a designated employee; date of initial report/complaint receipt to the Title IX office; closing date; manner of resolution and reason for closing/outcome of case; date of written notification to the complainant of conclusion of initial assessment; names of complainant and respondent; interim supportive and protective measures assessed/requested/provided; date of completion of investigation report; date of written notification to the complainant and respondent of the outcome, the sanction, and the rationale for each; date of notification of appeal to the parties at the evaluation and appeal stages; decision regarding appeal, sanction, and remedies; date of the resolution of the appeal; and, date of written notification to the complainant and respondent of the outcome of the appeal."

See <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09186901-b.pdf>.

decisions as to jurisdiction and scope (threshold determinations); the availability and reasonableness of supportive measures; determinations as to emergency removal or administrative leave; the determination whether informal resolution is appropriate; whether to move forward with an investigation without a complainant's participation; whether a timely warning should be issued; whether to consider evidence of pattern or course of conduct or consolidate cases; evidentiary determinations as to relevance; and more. In addition, tracking data, particularly demographic data, can help to understand prevalence; identify patterns and trends; and, inform the scope of individual and community remedies, including targeted training and educational programming or programmatic changes necessary to address identified concerns.

Tracking data as to the numbers of reports and manner of resolution is also critically important to support requests for additional financial and staffing resources. For example, in most Title IX/DHR programs – nationally and at the CSU – the majority of reports are resolved through the issuance of supportive measures or an alternative form of resolution that does not involve a formal investigation. The engagement at intake, outreach, and ongoing case management of supportive measures is a significant aspect of a Title IX/DHR program, yet it is not typically measured, quantified or used as a marker of program effectiveness. Using data to track how time is spent by campus professionals can help ensure that sufficient staffing and resources are allocated to carry out core functions, whether that be through the re-alignment of tasks, functions and process, or through expanded staffing. Maintaining contemporaneous and accurate data is also critically important to tracking and promoting responsiveness and timeliness. Effective systems include technological tools and practice aids to track incoming communications, timeframes for responses, and adherence to stated timeframes in policy and the regulations.

As discussed more fully in Section VII.A.2, below, there are a wide range of documentation practices within the Title IX/DHR programs across the 23 CSU campuses. The lack of uniformity in practices substantially hinders the ability to track data across the system in a meaningful way. This lack of uniformity is aggravated by the absence of any enterprise-level records management system at the Chancellor's Office that would allow for real-time access to data. Even allowing for disparate and varied systems across the 23 universities, there are no consistent governing standards across the system that provide guidance about how data should be maintained and who should have access to data. Instead, each university has customized its own fields, categories and dissemination practices for their chosen mode of tracking (ranging from shared drives and spreadsheets to electronic databases), which obscures institutional lines

of sight, compromises informed responses, and inhibits the ability to gather, track, or compare data across universities. This is a significant gap, and one for which a technological solution and effective practices currently exist.

As it relates to the collection and analysis of campus data, the Chancellor's Office requires the annual submission of data from each university. As described in the individual university reports, this process has not been without its flaws. Based on some ambiguity in the questions, disparate interpretations, and variations in the way that each university tracks and maintains documentation, the current process for collecting data does not result in consistent, reliable data across the system. Nor has the data collection incorporated all relevant categories of conduct. For example, for the 2020-2021 academic year, the Chancellor's Office initially only tracked data related to sexual assault, dating violence, domestic violence, and stalking (VAWA crimes). For academic year 2021-2022, it began to also track sexual harassment and sexual exploitation. To date, it has not tracked other forms of sex or gender-based harassment or discrimination or other forms of protected status discrimination and harassment, although that is anticipated to be requested for the 2022-2023 academic year. Our review of the annual reports released by each university reflected significant variations in the way in which each is documenting reports and related information.

Based on our evaluation of the data from the annual reports, it is apparent that the CSU system currently lacks sufficient tools, processes, and practices to support consistent and reliable data-gathering across the system. There is no systemwide mandate that requires the maintenance of data in specified formats, nor is there a framework for accountability to drive effective practices in data management. As currently structured, the data gathering process relied upon by the Chancellor's Office has significant challenges: it is reliant on self-reporting by Title IX/DHR staff at the university level based on the nature and manner in which each university keeps documentation; across the system, the universities do not use consistent documentation and recordkeeping systems or practices to maintain their data; the structure and questions posed by the Chancellor's Office to request data for the annual Title IX report have changed over time and not all universities use the same report structure; some data requests and questions may be unclear and therefore subject to interpretation; and the annual Title IX reports do not capture foundational data that would enable an informed comparison between institutions, such as number of students and employees and number of residential versus commuter students. As it relates to the numbers of cases that go to formal investigation, the way the data is currently requested and captured by the Chancellor's Office does not allow for an accurate indicator of the total number of investigations,

in part because of how the question is narrowly framed in the survey to capture investigations that were completed during the reporting period. In other words, it does not capture investigations that were opened during the relevant time period, but not yet resolved at the end of the reporting period; investigations that were substantially completed, but discontinued at the request of the complainant, because the case was otherwise resolved (informally); or because the matter was dismissed based on mandatory/discretionary grounds under Title IX and university policy.

Importantly, as noted above, the annual Title IX reports do not reflect the full breadth of work being performed by CSU's Title IX/DHR programs, which is most often concentrated in campus outreach, prevention and education programming and training; responding to reports, conducting intake meetings, overseeing supportive measures, and conducting initial assessments; overseeing informal resolutions; coordinating with campus partners; responding to information requests in a variety of capacities; ensuring accurate and contemporaneous documentation; and strategic leadership on Title IX issues more broadly. For the above reasons, under the current process for systemwide data gathering, it is difficult to draw precise conclusions about campus Title IX functions or make meaningful comparisons with other CSU institutions from the data alone.

The downsides of the gaps in documentation and records management systems are plentiful. Campuses do not have a sufficient understanding of the volume and need in order to accurately align and allocate sufficient resources. They are not positioned to respond to patterns or trends within a particular location, setting, or department/program, or in some instances, by a single respondent, or to track the effectiveness of supportive measures and other remedies to address harassment or discrimination. And they are not able to adjust prevention and educational programming to incorporate university-specific information that would inform content or lessons learned from the data related to questions of prevalence, potential bias, or system improvements.

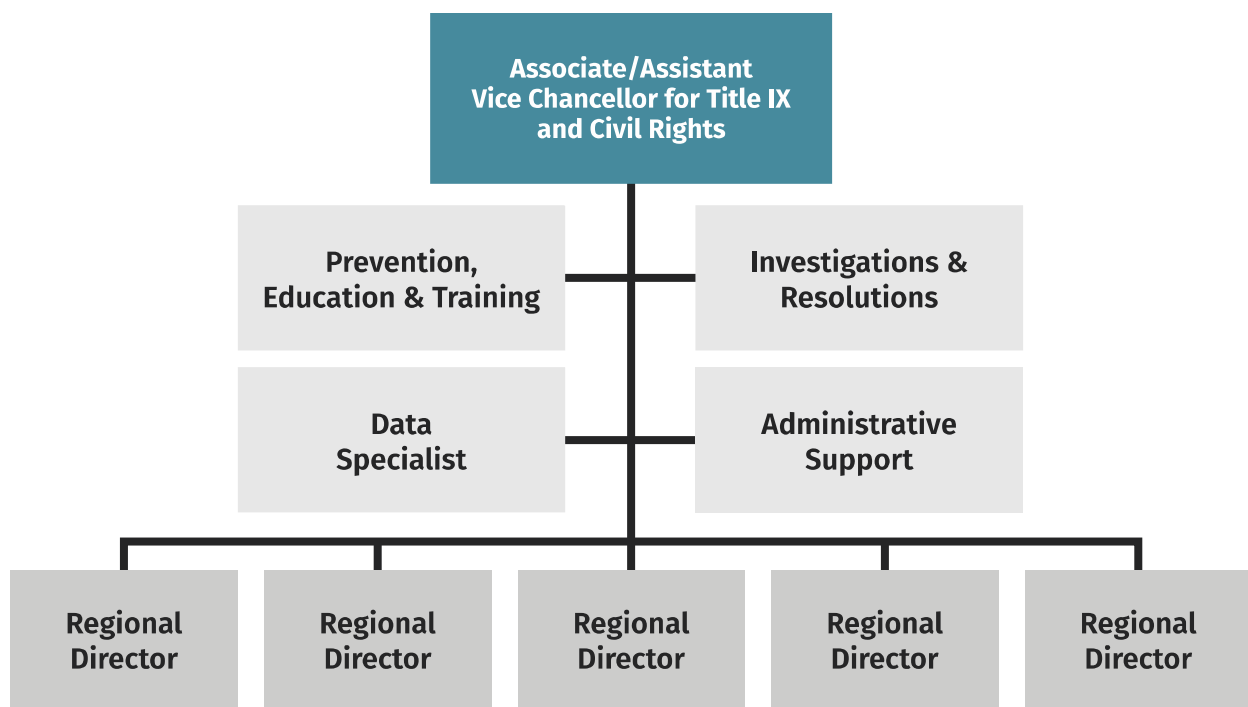
D. Chancellor's Office Infrastructure and Oversight: Recommendations

We provide the following recommendations to strengthen the oversight, support and guidance provided by the Chancellor's Office:

1. Restructure Systemwide Title IX and DHR Compliance Services (which are currently separate) to create a Systemwide Title IX and Civil Rights Division

- 1.1. Create an Associate/Assistant Vice Chancellor for Title IX and Civil Rights position to lead the Title IX/Civil Rights Division. This position should report to the Vice Chancellor for Human Resources or directly to the Chancellor
- 1.2. Assess and realign existing positions within Systemwide Title IX and DHR Compliance Services to position the newly created Title IX/Civil Rights Division to provide a tiered accountability structure that includes direct oversight and supervision of campus Title IX/DHR programs as well as the provision of systemwide functions and responsibilities
 - 1.2.1. Create a minimum of five positions to serve as regional directors, each of whom will have designated oversight of 4 to 5 individual campuses
 - 1.2.2. Create a Systemwide Prevention, Education, and Training Coordinator/Director position to oversee and coordinate strategic planning and compliance with federal and state legal requirements
 - 1.2.3. Create a Systemwide Investigations and Resolutions Coordinator/Director position to oversee the Center for Investigations and Resolutions and assist in setting systemwide standards for investigative protocols, templates, and timelines
 - 1.2.4. Create a Systemwide Data Specialist position to direct and oversee the implementation of an enterprise-level case management system at the Chancellor's Office and each university
 - 1.2.5. Ensure appropriate administrative support within the Title IX/Civil Rights Division

One potential staffing model is as follows:



This model focuses on the Title IX/DHR systemwide compliance and oversight functions. It does not incorporate existing functions, including the response to whistleblower reports, resolution of Title IX/DHR appeals, or other current responsibilities. Any new model must necessarily take these functions into account and identify the best structural model for realignment of functions. For example, the role of appellate authority could also be housed within the Title IX/Civil Rights Division, as long as the appellate authority had no prior involvement with the particular case. This could be a designated appellate authority, or the regional director could also oversee an appeal for a matter outside of their specific campuses. Similarly, the Title IX/Civil Rights Division can be responsible for responding to whistleblower complaints, with investigative assistance from the Center for Investigation and Resolution. The new model must be steeped in accountability and quality assurance practices that include routine reporting, metrics, and processes for continuous improvement. Finally, consistent clear communication to all CSU constituents is an essential pillar of effective practices.

2. Centralize Oversight and Accountability Processes for Campus Title IX/DHR Programs in the Title IX/Civil Rights Division
 - 2.1. Engage in and communicate a deliberate shift in the manner of engagement (from advisory to oversight) between the Chancellor’s Office and the individual universities related to areas of significant compliance-based responsibilities, including Title IX and DHR programs, as well as the Clery Act and related requirements
 - 2.2. Develop systemwide implementation expectations through policies, procedures, operating protocols, and standards for oversight, accountability, and partnership with each university to drive institutional consistency and accountability across the system
 - 2.3. Provide support and tiered accountability structures to strengthen coordination and internal procedures at each university
 - 2.3.1. Monitor and assure that process standards are met, including intake and outreach, initial assessment, provision of supportive measures, investigation, report-writing, hearings, outcomes, sanctions, appeals, informal resolution, documentation and record-keeping, and timing and communications about good cause delays
 - 2.3.2. Clearly articulate consequences for non-compliance with system-directed standards, procedures, and protocols
 - 2.3.3. Evaluate and remedy non-compliance through regular oversight and accountability standards including – where necessary due to continued non-compliance – placement of program in receivership

- 2.4. Develop and roll out process for rigorous screening and evaluation of the effectiveness of campus TIX/DHR functions, including periodic reviews for quality assurance in responsiveness, documentation, and adherence to the Nondiscrimination Policy
- 2.5. Assist in development of the campus level multidisciplinary teams (MDT)
 - 2.5.1. Develop standardized care compliance protocols for MDT process, including by providing initial, hands-on oversight; monthly check-ins with metrics; and, collecting and reviewing metrics on Title IX and DHR cases at the end of each semester for each university
 - 2.5.2. Include an annual metrics review with data analysis to inform areas for improvement and prevention efforts at each university
- 2.6. Develop protocols for Title IX/DHR and key campus partners that outline specific factors to document in each matter (include a requirement to document the absence of factors or information as well) to ensure the exercise of informed and consistent judgment and replace *ad hoc* process for decision-making (which can inform judgments across the CSU)
- 2.7. Develop a strategic plan to conduct a periodic review of each university's Title IX and DHR program to ensure that all 23 programs have an annual review on at least one aspect of the program (e.g. metrics, documentation systems, case response, prevention and education programming, website, etc.), with the expectation that all defined elements will be reviewed within a 3-year span
- 2.8. Produce annual systemwide and university-based reports outlining implementation milestones and metrics
- 2.9. Develop protocols to ensure that Regional Directors have routine engagement with Title IX/DHR programs to monitor effectiveness and implementation at the case level
- 2.10. Develop protocols and standards to review initial assessments, closures, investigation reports, written determinations, and as appropriate, incorporate legal review of these key stages in the process
- 2.11. Assist in recruiting, hiring, onboarding and evaluating campus Title IX/DHR professionals for consistent expectations and implementation fluency
- 2.12. Assist in helping campus Title IX/DHR programs develop transition plans to cover core functions during times of transition
- 2.13. Develop protocols and standards for oversight of prevention and education, investigations and resolutions

- 2.14. Create a protocol for after hours and emergent access to the AVC, regional directors, and others with commensurate training and experience
- 2.15. Create a system to document questions about the application of the Nondiscrimination Policy, answers and decisions for consistent application and share annual update of decisions, questions and answers
3. Create a Center for Investigation and Resolution (CSU-CIR), initially developed under the systemwide leadership of the Chancellor's office, but which we recommend be expanded to an independent entity
 - 3.1. The Systemwide Investigations and Resolutions Coordinator/Director will work to develop the proposal, funding model, budget requirements, staffing, and protocols for the CSU-CIR
 - 3.2. The CSU-CIR should provide trained, experienced, neutral, and impartial professionals, which are available to each university to serve as an investigator, a hearing officer, or a facilitator of informal resolution
 - 3.3. The CSU-CIR should contemplate future state expansion capacity for the provision of statewide investigations for other educational institutions, including community colleges, which would allow it to be revenue-generating
 - 3.4. The CSU-CIR may also be expanded to serve as a state of the art training facility and post-graduate certificate or degree program for Title IX and DHR professionals
4. Develop or procure an enterprise-level case management system to centralize data collection related to Title IX and DHR reports,⁸⁰ allow for real-time access and oversight, and conduct data analytics, with the following functionality:
 - 4.1. Track, monitor, integrate, and operationalize legal requirements and effective practices that prioritize consistent and equitable care for all constituents
 - 4.2. Model effective and consistent business processes that elevate care and compliance
 - 4.3. Track individuals and incidents that span multiple institutions within the system
 - 4.4. Extrapolate data to inform predictive analytics
5. Develop a robust web presence for the Title IX/Civil Rights Division that includes information about systemwide policies, resources, and programs; information about university-level programs; educational information about Title IX, DHR, the Clery Act, and California state law; a copy of this

⁸⁰ The enterprise-level case management system can also be used to track data related to conduct, *other conduct of concern*, protection of minors, and Clery Act responsibilities.

report, the state auditor's report, and information about the CSU response to the recommendations contained in each report

6. Expand staffing in Office of General Counsel to address critical understaffing and sufficiently support campus legal implementation needs in light of the complexity of the issues identified in this report
 - 6.1. In particular, we recommend reviewing and adjusting the number of University Counsel assigned to each university to ensure that the university has access to timely legal advice – a one attorney per university model is inadequate to address the varied and complex needs of each of the universities, which vary greatly in size, composition, and the volume of legal issues faced
7. Consider an internal project manager to drive the creation and time frames for implementation of these recommendations, to move the plan as efficiently as possible, and to share routine reporting updates with senior leadership, the Board, and the community

VII. Core Observations Across the System

As we synthesized and aggregated information learned at each of the 23 CSU universities, clear observations emerged that were common across most, if not, all of the universities. In this section, we outline these core observations:

- The infrastructure for effective Title IX and DHR implementation is insufficient, as designed, to carry out care and compliance responsibilities.
- On most campuses, there are significant gaps in the provision of prevention and education programming required by the Clery Act and state law, as well as a need for expanded training and professional development beyond the online modules required by state law and system policy.
- On every campus, there is no policy, process, or practice for consistently responding to *other conduct of concern* that may not rise to the level of a violation of the Nondiscrimination Policy (typically, where the conduct is not severe, persistent or pervasive) or that is not based on a protected status (for example, unprofessionalism, bullying, abusive conduct).
- We learned of significant trust gaps across the system, including amongst and between campus constituents based on their role as staff, administrator, faculty, and student.
- Given the issues identified in this assessment, we observed a significant need for accountability processes, both to hold campuses accountable in operating and carrying out an effective Title IX and DHR program, and to hold individuals accountable for conduct that violates policy.

A. Infrastructure Insufficient as Designed

Across the system, the infrastructure for effective Title IX and DHR implementation is insufficient *as designed* to carry out care and compliance responsibilities. In other words, the current organizational

structure on most campuses simply does not include enough positions to carry out the Title IX and DHR responsibilities, which include prevention and education, awareness events, and training; intake, initial assessment, and oversight of supportive measures; investigation, hearings, sanctioning, and informal resolution; record keeping and documentation; proactive efforts to address culture and climate concerns; remedial efforts to address patterns and trends; collaboration with campus partners; and, campus communications through web content, annual reporting, and ongoing outreach. These myriad responsibilities, the complexity of those responsibilities, the high-touch nature of tending to impacted individuals, and the complex environment of shared governance in higher education require dedicated, skilled, and experienced leadership and personnel, systems of check and balance, and robust document management systems. As described throughout this report, the gaps in infrastructure permeate every aspect of effective responses, from the provision of confidential survivor advocacy, to the delivery of robust prevention and education programming, to adjacent campus resources, like counseling, identity-based centers, and campus care teams. We hope that this report will serve to educate and spotlight with granularity the enormous, complex, intersecting and at times conflicting responsibilities and the reality of the economic challenges impeding effective implementation efforts.

1. Title IX/DHR Personnel

On 19 of the 23 CSU campuses, the Title IX and DHR functions are combined into one office. At Fresno State, Fullerton, Maritime, and SJSU, these functions are currently separate, although Fresno State has committed to combining the Title IX and DHR functions into one office. This combined approach is aligned with the current Nondiscrimination Policy, which addresses all forms of discrimination and harassment on the basis of all protected statuses, including sex discrimination and sexual harassment under Title IX, as well as retaliation related to a report of discrimination or harassment. The Nondiscrimination Policy applies to all students and employees. While there are procedural differences based on the nature of the conduct and the role of the respondent, the Nondiscrimination Policy governs the reporting, investigation, and resolution of reports of discrimination and harassment.

The following chart provides an overview of the current campus structures, reporting lines, and staffing based on the most recent information provided by the campuses:⁸¹

⁸¹ On some campuses, the staffing levels have been in flux. Our identification of staffing and vacancy levels was based on information provided by and verified with the campuses as of May 2023.

Systemwide Report
California State University

University	Office Name ⁸²	Reporting Line for Title IX & DHR ⁸³	Total Staff & Vacancies ⁸⁴	Responsibilities of Office	Confidential Advocates ⁸⁵	Respondent Supports
Bakersfield	Division of Equity, Inclusion and Compliance (EIC)	Chief Diversity Officer / Special Assistant to the President	2 (0)	TIX, DHR, ADA, Whistleblower	1	No dedicated personnel
Channel Islands	Title IX & Inclusion	AVP for Administrative Services and Human Resources	3 (1)	TIX, DHR, ADA, Clery	1	No dedicated personnel
Chico	Equal Opportunity and Dispute Resolution (EODR)	VP of Business and Finance	7 (1)	TIX, DHR, Labor Relations, Clery	2	Community Legal Clinic
Dominguez Hills	Office of Equity and Inclusion (OEI)	VP and Chief Diversity, Equity and Inclusion Officer	4 (1)*	TIX, DHR, Pregnancy, Prevention & Education	1	No dedicated personnel; can access Campus Advisors
East Bay	Title IX/DHR Office	President	4 (1)	TIX, DHR, Prevent. & Education	1	No dedicated personnel
Fresno	Title IX Office	VP of Administration and CFO	3.25 (0)	TIX, Clery	2	No dedicated personnel
	DHR Administrator		1+ (0)	DHR		
Fullerton	Title IX and Gender Equity Office	VP for Student Affairs	5 (0)	TIX	2	No dedicated personnel
	DHR Administrator	AVP for DE&I Programs	3* (1)	DHR		
Humboldt	Title IX & DHR Prevention	VP of Admin and Finance	3 (0)	TIX, DHR, Clery	Rotating team	No dedicated personnel
Long Beach	Office of Equity and Diversity (OED)	VP of Admin and Finance	7 (0)	TIX, DHR, Clery, Whistleblower, Prevent. & Education	2	Campus Advisor Program
Los Angeles	Office for Equity, Diversity and Inclusion (OEDI)	AVP of Human Resources; dotted line to President	2.5 (0)	TIX, DHR, ADA	1	No dedicated personnel
Maritime	Title IX/DHR ⁸⁶	VP for Cadet Leadership and Development	1* (0)	TIX, DHR	1	No dedicated personnel

⁸² Blue shading indicates that the university currently has separate Title IX and DHR offices. Fresno State has already publicly announced that they will be combining these functions.

⁸³ Green shading indicates that the Title IX Coordinator does not report to a Vice President or higher, as required in Attachment B to the Nondiscrimination Policy. On two of those campuses, however, the Title IX Coordinator has a dotted line to the President.

⁸⁴ This number includes all funded/dedicated positions, including those that are currently filled, vacant, or filled by internal or external interim/acting personnel. An asterisk indicates that one or more roles are currently filled by an external professional. The number in parentheses includes those positions that are vacant. It does not include positions where there is an interim/acting person in the role.

⁸⁵ This number includes individuals who also provide prevention and education, if that is part of the advocate's responsibilities.

⁸⁶ As of June 5, 2023, Cal Maritime has hired a Director of Title IX and Civil Rights Officer.

Systemwide Report
California State University

University	Office Name ⁸²	Reporting Line for Title IX & DHR ⁸³	Total Staff & Vacancies ⁸⁴	Responsibilities of Office	Confidential Advocates ⁸⁵	Respondent Supports
Monterey Bay	Title IX/DHR	VP for Student Affairs	2* (0)	TIX, DHR, Clery	1	Care Manager
Northridge	Office of Equity and Compliance (OEC)	Chief Diversity Officer; dotted line to President	6 (1)	TIX, DHR, ADA	2	No dedicated personnel
Pomona	Office of Equity and Compliance (OEC)	President	6 (1)	TIX, DHR	1	No dedicated personnel
Sacramento	Office for Equal Opportunity (OEO)	VP for Inclusive Excellence and University Diversity Officer	6 (0)	TIX, DHR	2	No dedicated personnel
San Bernardino	Institutional Equity and Compliance (IEC)	VP of Human Resources	6 (0)	TIX, DHR, Whistleblower	2	No dedicated personnel
San Diego	Center for Prevention of Harassment and Discrimination (CPHD)	AVP of Administration	6 (1)	TIX, DHR, ADA	1	No dedicated personnel
San Francisco	Office of Equity Programs and Compliance	VP of Student Affairs and Enrollment Management	6 (0)	TIX, DHR	0 ⁸⁷	No dedicated personnel; can access Campus Advisors
San José	Title IX and Gender Equity Office	VP Strategy & Institutional Affairs	6 (0)*	Title IX	1 ⁸⁸	1 designated support person (in addition to broader portfolio)
	Office of Equal Opportunity	Sr. Assoc. VP for University Personnel	4 (0)	DHR, Retention, ELR, Whistleblower		
San Luis Obispo	Civil Rights and Compliance Office (CRCO)	VP for University Personnel and Chief Human Resources Officer	8 (0)	TIX, DHR, Clery, Whistleblower, ADA, Open Records, Conflicts of Interest, Compliance Training, Employment Equity Facilitator	4	No dedicated personnel; can access Campus Advisors
San Marcos	Title IX/DHR Office	VP for Student Affairs	5 (2)	TIX, Student Development Services, Student Affairs	2	No dedicated personnel
Sonoma	Office for the Prevention of Harassment & Discrimination (OPHD)	Chief of Staff to the President and VP for Strategic Initiatives and Diversity	4 (1+)	TIX, DHR	2	No dedicated personnel

⁸⁷ While there is no advocate in place as of May 15, 2023, the position is posted and in recruitment.

⁸⁸ SJSU also contracts with the local [YWCA](#) for overload and after-hours support.

Systemwide Report
California State University

University	Office Name ⁸²	Reporting Line for Title IX & DHR ⁸³	Total Staff & Vacancies ⁸⁴	Responsibilities of Office	Confidential Advocates ⁸⁵	Respondent Supports
Stanislaus	Equity Programs and Compliance Office	President	2.25 (0)	TIX, DHR, ADA, Whistleblower, Clery (and, currently, HR)	1	No dedicated personnel

We observed great variation in campus reporting structures. According to the chart above, three Title IX Coordinators currently report directly to the President, five report to the VP for Student Affairs (or its equivalent), five report to the VP for Human Resources (or its equivalent), five report to the VP for Admin, Business, or Finance (or a similar role), four report to the Chief Diversity Officer or VP with diversity-related responsibilities, and one reports to the VP of Strategy & Institutional Affairs. Under [Attachment B](#) to the Nondiscrimination Policy, the designated Title IX Coordinator “should report directly to a vice-president or higher.” According to the chart above, five universities have Title IX Coordinators that do not currently report to a vice-president or higher (although two of the five have a dotted line to the President).

On some campuses, community members expressed concerns about programs that reported within a particular division, primarily student affairs or human resources, based on the perceived barrier that might exist by having the office sit within a perceived constituent silo. For example, students reported being less likely to use an office that sat within the division of human resources, and employees felt less comfortable using an office within student affairs. The most neutrally perceived reporting line was to the President or a vice president of finance, administration, or business. As it relates to reporting lines to the chief diversity officer, or within inclusive excellence, while this might initially seem to be aligned in function, we observed concerns that the focus on the institutional response to reports of discrimination and harassment – typically more reactive in nature – could detract from the effectiveness of proactive diversity, inclusion, equity, and belonging initiatives. As it relates to reporting lines at each university, we have shared specific observations in the campus reports, as needed.

Separate and apart from the roles of the individuals designated with oversight of the Title IX/DHR programs, we observed great variation in the subject matter expertise and competencies of individual supervisors. As a result, some campus programs benefit from close collaboration and consultation with their supervisor, while others operate with significantly less oversight. While it is critically important that the Title IX/DHR professionals have autonomy and independence in their work, it is also important to have oversight of the program to ensure timeliness, responsiveness, and attention to all required tasks. The challenge, given the disparate skillsets of Title IX Coordinators across the 23 universities, the high rate of

turnover and transition on many campuses, and the deficiencies in records management systems, is that it can be difficult to effectively supervise the Title IX/DHR program with less direct engagement. For example, during our review, we learned of at least four campuses in the past several years where an incoming Title IX Coordinator found dozens to hundreds of reports and emails without any record of an institutional response to the complainant or third party reporter. This is untenable. Such a gap should not occur if sufficient oversight, records management systems, and checks and balances were in place. Deficiencies of this magnitude speak to the need for greater training and education for supervisors, the articulation of specific goals and objectives in the supervisory relationship, and the development of checks and balances to be able to troubleshoot and identify concerns before they escalate.

Within the Title IX and DHR programs, whether separate or combined, the staffing levels on each of the campuses range significantly. While we address individual staffing levels in the campus reports, on nearly every campus, we heard a plea for more resources to be able to carry out the essential functions. This is in large part due to historic underfunding of the CSU, which directly impacts every aspect of the system's operations. The CSU is funded by the state general fund, which covers 55% of the CSU's operating costs, and student tuition and fees.⁸⁹ The CSU also relies upon income from auxiliaries and philanthropic support to generate additional revenue needed for essential services that supplement state-supported activities.

In our conversations across the system, Presidents, senior leaders, Title IX/DHR professionals, and administrators consistently identified resources as the most significant factor impacting effective practices. This is, in part, a CSU-specific problem given the funding gaps, but is also a direct result of the significantly expanded compliance requirements under federal and state law, particularly in Title IX. To complicate matters, funding for campus Title IX and DHR budgets on many campuses is not baseline, meaning that it is "one-time" funded each year and a new budget has to be submitted annually. This is a challenging funding model, which precludes stability and consistency within the offices.

Staff routinely shared their frustration resulting from limited resources, describing the practical impacts of limited time and personnel on their ability to be able to carry out their core responsibilities. Title IX Coordinators and DHR Administrators uniformly described an inability to do proactive, strategic work to address culture and climate because of the need to focus on responsiveness to incoming reports and

⁸⁹ <https://www.calstate.edu/csu-system/about-the-csu/facts-about-the-csu/csu-funding/Pages/default.aspx> (last accessed May 13, 2023).

management of ongoing tasks related to supportive measures, investigations, and case management.

Quotes from across the offices included:

- *Resources are a constant conflict – how do I maximize the funds and resources to put forward student success?*
- *We are flying by the seat of our pants.*
- *We don't have the capacity to respond to every report in an educational manner.*
- *Where we continue to need to improve – not from a lack of intent, but from capacity – is in ongoing communication with the parties throughout the process.*
- *What we do is remarkable based on where we start – we are very leanly staffed and not offering competitive salaries.*
- *We do not do the proactive functions. We just default to the compliance mandated programs. It is getting more and more difficult to move resources on the proactive side that we know are critical. We need to build the program.*
- *We are unable to do proactive, strategic work because we are putting out fires.*
- *We would all like to do the proactive work and not be needed anymore because we built the culture up, but we are so reactive, we have no choice but to spend most of our time on the reactive work.*
- *If we had more bodies, we would feel better about the ability to address the issues without being stretched thin.*
- *When you have critical infrastructure in departments that are under resourced, that is when the problems happen – we need to address operational gaps.*
- *We're playing defense and putting on Band-Aids as opposed to planning our work.*
- *I'm concerned about things slipping through the cracks because we are stretched thin.*
- *[My colleague] and I started recently and we haven't been able to get up to speed because [our other colleagues] are doing so much. We're following breadcrumbs as new hires. There are no resources for new hires.*
- *We have been in respond mode, not proactive mode.*
- *We don't have enough staff to do the work.*
- *We're not adequately supported by counsel or the system for our area.*

Given the overwhelming nature of the workload, we heard significant concerns about burnout and resulting turnover:

- *Morale is at an all-time low. People are stretched extremely thin because the workload has changed so much through the COVID-19 pandemic. There is very palpable decline in morale.*
- *The team is not given the tools they need to succeed – expectations are not aligned with what is allocated. We need to give them the tools to succeed and want to stay.*
- *It can be crippling for people to read every day what a horrible job they are doing when they are doing their best every day.*
- *This is a thankless role, with a lot of secondary trauma. We have to find a way to self-sustain.*
- *Folks are running on fumes right now.*
- *We need stability. It's a constant cycle of someone gets here and starts and then leaves. We haven't had permanent leadership in months and we need processes in place. It's a sink or swim environment, baptism by fire.*

- *Everyone cares so deeply about the work we do, but a huge challenge is when we have employment gaps, we are having to pick up parts we didn't even know we were responsible for. Like I got into Clery and I don't know Clery.*

On most campuses, we observed significant turnover in staffing. While a handful of campuses have had longstanding Title IX Coordinators, for example, Chico State, East Bay, Fullerton, Long Beach, and Sacramento State, most have experienced more frequent transition.⁹⁰ In some instances, as at San Diego State, the Title IX Coordinator was elevated into another role, but has retained oversight of the new Title IX Coordinator, providing significant stability. Similarly, at Cal State Los Angeles, the current Title IX Coordinator, in place for almost two years, previously served as a Title IX Investigator at the same university for 6 years. At other institutions, the transition has been more disruptive. For example, SJSU has had 5 Title IX Coordinators in 5 years and has had an external professional serving as the interim Title IX Coordinator for the past year. San Bernardino, Dominguez Hills, Maritime, Monterey Bay, East Bay, and San Francisco State are or recently have been in periods of significant transition. Other campuses have had relative stability in the role of the Title IX Coordinator/DHR Administrator (in place for 3 or more years), but have had significant turnover in staffing within the office. For example, San Marcos has not been fully staffed since July 2021. Northridge has also struggled with maintaining consistent staffing levels. The impacts of vacancies, turnover, and transition are high. While unquantifiable, they have a significant impact on the nature and quality of the work in the offices, impair effective functioning, and contribute to the trust gap. The impact of turnover has been exacerbated by gaps in records management systems and documentation practices, as well as a lack of routine protocols and practices for coordination with campus partners, which leads to a loss of institutional history. As new staff are hired, they must take the time to develop relationships with key campus partners. They may also never be privy to information that should have been documented by former administrators, which can inhibit the ability to identify patterns or trends in conduct.⁹¹

Administrators described the impacts of the turnover as follows:

- *It's constant change every 2 years. It's hard to retain people to do the work. We're learning ourselves so it's hard to teach others.*

⁹⁰ The Sacramento State Title IX Coordinator left for one year to serve as the Title IX Coordinator at SJSU in 2021-2022, but has since returned to Sacramento State.

⁹¹ As noted above, on several campuses, we learned of Title IX Coordinators assuming their new role only to find dozens to hundreds of prior reports and/or email correspondence with no record that any outreach or follow up had been conducted.

- *As critical positions are vacant for long periods of time, or as folks go through the revolving door, there is a loss of institutional knowledge.*
- *There are trust issues that are impacted by turnover. We are in a transitional space. Everybody is so stretched.*
- *The high rate of turnover within the office has led to inconsistency in staffing.*

In sum, on most campuses, the deficiencies in infrastructure have impacted the ability to carry out all of the required functions under the federal and state legal and regulatory framework. Those core functions include: prevention, education, awareness, and training of students and employees; intake, outreach, and oversight of supportive measures; informal resolution; investigation and formal resolution; sanctions and remedies; tracking of pattern and trends; communication of policies, procedures, rights, options, and resources; and, documentation. Additional functions that have been incorporated into already overstretched offices include responding to Public Records Act or regulatory requests; training and participating in search committees; Clery Act responsibilities; affirmative action and equal opportunity work; whistleblower reports; and, much more.

Given the overload accommodation described above, we observed and heard concerns about a lack of response or delays in responsiveness to reports and other communications; significant delays in completing investigations, with many investigations spanning more than a year; ineffective evaluation of cases upon intake and triage; ineffective escalation of issues for collaboration and application of proactive campus efforts; an inability to identify, track or monitor patterns; and, insufficient time and resources to devote to university wide prevention, education, and proactive, strategic work to drive culture change and growth because of the focus on individual cases. In short, the staffing gaps hinder campus professionals' ability to consistently demonstrate care and implement core functions. This further hinders effectiveness, and diminishes trust in the system, university, office, and administrators, which has the effect of increasing barriers to reporting and disengagement with process. As discussed in Sections VII.D and E, barriers caused by negative perception and experiences can impact the ability to promote accountability.

2. Documentation and Records Management Systems

In addition to the personnel challenges, we observed great variation in the quality and consistency of documentation and records management across the system. More than half of the combined Title IX/DHR programs across the system use Maxient as the records management system for Title IX reports involving students. Some campuses also use Maxient for reports involving employees, and some, but not all, also

use Maxient to track DHR reports. Another six campuses have either recently begun to use Maxient, or will begin to do so this summer. The remaining campuses use iSight, another electronic records management system, or rely upon a shared drive and a manually-created Excel spreadsheet to track data within the Title IX/DHR program.

Generally, document management systems regarding conduct were the strongest with respect to student records, both within Title IX and student conduct offices. As noted above, those offices most commonly relied upon Maxient, albeit for some, only relatively recently. Moreover, Title IX/DHR professionals expressed frustration with how data is stored in that they cannot query the data or run targeted searches to identify patterns or trends. This was less tied to Maxient's capabilities, and more tied to customization by individual users, which determines how data is entered into the database. In other words, the quality and the usefulness of the data is dependent on the personal preferences of the user (e.g., how they classify/charge the incident and whether they search by case created date or reported date). With turnover, the user's preferences change and the historical data becomes difficult to navigate (such as running targeted searches). Maxient also creates case records based on incidents, but is searchable by name. However, special privileges are required to search across databases, and on many campuses, Title IX Coordinators/DHR Administrators do not have access to conduct or housing records maintained in Maxient, which hinders the ability to search for pattern. This was true of universities who relied upon Maxient, as well as universities who maintained more rudimentary forms of documentation. An additional challenge, from a systemwide perspective, is that although all 23 universities are subject to the same systemwide policy, many of the universities have exercised the option to customize the Maxient data fields and categories in ways that make comparison of campus data more challenging.

We observed the greatest deficiencies regarding conduct with respect to employee records, and in particular, faculty records. Very few human resources divisions across the CSU use an electronic records management system. Instead, they rely upon shared drives, Excel spreadsheets, and paper files, which are not electronically organized, catalogued, or otherwise searchable. In some instances, incoming staff in human resources and faculty affairs departments encountered a disorganized, scattered set of files upon assuming new roles. The variations are even greater with respect to faculty records, which in many instances, are not centrally maintained. On many campuses, we learned that records related to conduct may be maintained by the department chair, the Dean, or faculty or academic affairs and are not centralized into one personnel file. Records were not consistently stored by respondent name, but were sometimes stored by complainant name, making it more difficult to search for pattern. We also

understand that in some instances, prior records were unable to be located, and that current university personnel were unaware of where former personnel may have stored records.

Notably, Article 11 of the collective bargaining agreement with the CFA governs faculty personnel files, referred to as a Personnel Action File (PAF).⁹² Under Article 11, the PAF is the “official personnel file for employment information and information that may be relevant to personnel recommendations or personnel actions regarding a faculty unit employee.” Under Article 18.7, a faculty member can request that a reprimand, and any rebuttal to that reprimand, be permanently removed from the PAF three years after the effective date of the reprimand. While there are exceptions to allow the reprimand to remain in the PAF for a longer period of time, such as a pending related investigation, or a subsequent written reprimand of a similar nature within the three years, removal of any Title IX-related records prior to the seven-year records retention period would run afoul of the Title IX and Clery Act regulations, which require that relevant records be maintained for seven years. Ostensibly, the Title IX/DHR program should still be maintaining these records within its own records management system for the requisite retention period, even if not maintained in the personnel file. The CSU should consider aligning this section of the collective bargaining agreement with the federally records retention requirements.

OCR has highlighted the importance of maintaining accurate and complete personnel records that allow a university to track and evaluate patterns.⁹³ OCR recently required another California institution to ensure that all Title IX final letters of findings were included in the employee’s personnel file.⁹⁴ Maintaining

⁹² See <https://www.calstate.edu/csu-system/faculty-staff/labor-and-employee-relations/Documents/unit3-cfa/article11.pdf>. The collective bargaining agreement with the CSUEU also governs the maintenance and content of personnel files. Article 11 requires that one official personnel file be maintained for each employee in the campus human resources office, that there be a log of access to any electronic personnel file, that the employee receive a copy of material which could lead to an adverse personnel action prior to its inclusion in the file, and that the employee can file a rebuttal statement or seek correction of the record by petitioning the president. See <https://www.calstate.edu/csu-system/faculty-staff/labor-and-employee-relations/Pages/unit2-5-7-9-csueu.aspx>.

⁹³ In resolving the 2018 directed investigation at the University of Southern California (USC), OCR noted in its February 27, 2020 Resolution Letter, “During the time period of OCR’s investigation, personnel records were kept in multiple places and not centralized, which impeded the University from recognizing repeat respondents and patterns of misconduct.” OCR found: “The University’s failure to implement an effective system of reporting and recordkeeping to identify and monitor all incidents of potential sexual harassment by its employees also contributed to this systemic failure.” See <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09186908-a.pdf>.

⁹⁴ As part of the February 21, 2020 Resolution Agreement, USC was required to ensure “[T]hat all final Title IX letters of finding against an employee are included in the employee’s personnel file and the Title IX data system.” See <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09186901-b.pdf>.

records of reports, as well as completed investigations and findings, is critical to be able to identify a potential pattern of harassment or discrimination. Given the reluctance of many complainants to move forward with a formal investigation – or the university’s inability to take action on conduct that might be based on a protected status, but not rise to the level of severe, persistent, or pervasive – tracking these earlier reports will be helpful to evaluate the nature of subsequent conduct and ultimately enable steps to eliminate repeated or persistent conduct.

At the CSU, maintaining accurate and complete student and personnel records takes on a heightened importance given the high rate of employee turnover. The combination of transition and deficient document management system has led to a lack of institutional history and accountability. As one employee noted, “There is so much information that is in people’s brains versus electronic files – the institutional knowledge that is in their heads is not documented.” And, because the CSU is not tracking data across campuses, an employee who engages in conduct of concern at one CSU university can often seek employment at another CSU without the new university being aware of the misconduct. Maintaining an enterprise level records management system will allow the CSU to ensure that employees who are found responsible for prohibited conduct are not permitted to move from one CSU campus to another without proper notice of the disciplinary history.

During our initial meetings with the campus Implementation Teams on April 18 and 28, 2023, we presented available data to provide context about the volume of reports and formal complaints, the various forms of resolution, and the number of investigations at each university. We gathered this data from the publicly available annual reports created by each university, as well as the data submitted to the Chancellor’s Office by each university. University stakeholders expressed concern about the aggregation of the data, raising concerns about its accuracy, despite the fact that the data was drawn from information provided by the Title IX/DHR programs. Prior to completing this Systemwide Report, we provided each university the opportunity to verify the accuracy and completeness of the data. The concerns about reliability, however, underscore and highlight the need for significant improvements in current document management systems and practices.

Even accepting the limits and unreliability of the current data, given questions about the data collection and interpretation, two core conclusions remain: Title IX/DHR functions are under-resourced at most of the CSU universities; and, only a very small percentage of cases proceed to formal investigation each year.

Our recommendations recognize the need for consistent, reliable, comparable data management systems and protocols that include a uniform approach across the 23 universities and Chancellor’s Office; are supported by additional personnel with sufficient time to enter, track, and analyze data; effectively capture all critical work being performed; track key metrics; and provide the ability to track patterns, trends, volume, timeliness, and responsiveness at the campus and system level.

3. Campus Resources for Complainants and Respondents

In 2015, in compliance with California state law, the CSU first issued a policy requiring that each campus designate at least one campus victim advocate (Advocate) to provide confidential advocacy for victims/survivors of sexual assault.⁹⁵ While not required by federal law, the role of the Advocate is critically important to supporting survivors and providing them with confidential resources for support and advocacy in all aspects of campus, law enforcement, and civil responses to sexual assault. An Advocate can play a pivotal role in connecting survivors, with their permission, to campus Title IX/DHR programs and helping to support them throughout campus processes. As part of our review, we met with the confidential Advocate on each campus to understand their perspectives and insights about institutional responses. Advocates spoke frankly with us about their concerns, sharing aggregate themes and observations in a manner that protected the confidentiality of the individual students, faculty, and staff they assisted.

[Attachment C](#) of the Nondiscrimination Policy currently requires that each campus have a confidential sexual assault victim’s Advocate who is a full-time employee of the campus or a recognized campus auxiliary or is appointed through a written agreement with a local community-based sexual violence service provider, such as a rape crisis center. The Advocate must be independent, certified, have sufficient experience, and be confidential under state law.⁹⁶ The Advocate may not report to the Title IX/DHR program, student conduct, or UPD.

⁹⁵ See [Executive Order 1095](#) (June 23, 2015).

⁹⁶ Under Evid. Cal.Evid.Code § 1035.2 and Cal.Evid.Code § 1035.4, sexual assault counselors are required to maintain as privileged the confidential communications between the sexual assault counselor and a victim, and may not disclose those communications without the consent of the victim or unless compelled by a court. Sexual assault counselors must meet specified standards for certification, including, at a minimum, completing a 40-hour training program in issues related to sexual assault counseling and advocacy.

The primary responsibility of the Advocate is to render advice and assistance to victims of sexual misconduct, although Attachment C provides that Advocates may also serve on campus-based task force committees and teams to provide general advice and consulting and to participate in prevention and awareness activities and programs. Attachment C provides that the Advocate “may play an active role in assisting, coordinating, and collaborating with the Title IX Coordinator in developing and providing campus-wide awareness and outreach activities, possibly including prevention activities,” but that the “Title IX Coordinator remains primarily responsible for all campus-based prevention and awareness activities.”

With the exception of Cal Poly San Luis Obispo, each of the 23 universities currently has 1 or 2 confidential Advocates. As of the date of this report, San Luis Obispo has 4 Advocates. Across the system, we learned that many campus Advocates, even those provided by external agencies, have responsibility for both direct advocacy and prevention programming, a balance many campuses have trouble maintaining. Almost uniformly, we heard that direct advocacy took priority over more proactive prevention efforts. We also heard that universities with only one Advocate felt overwhelmed by the range of responsibilities. For universities that relied on agreements with external agencies to provide advocacy services, we heard concerns about the high rate of turnover which impacted continuity of services to students, faculty and staff. At one university, we learned that when the new Advocate assumed their campus responsibilities, they were unaware that they also had responsibilities related to prevention and education programming until they were well into their tenure in the role, meaning that these responsibilities were not carried out for some time.

While we heard positive feedback about the cross-campus support provided by networking with other campus Advocates, as well as positive feedback about support provided in systemwide calls for all advocates led by the Chancellor’s Office, we also heard a clear articulation of the need for greater oversight. Campus Advocates also expressed the need for clinical supervision in order to seek advice about

As recently as September 2022, AB 1467 amended the Education Code to clarify that confidential sexual assault and domestic violence counselors must be independent from the Title IX office and must meet the qualifications defined in Sections 1035.2 and 1037.1 of the Evidence Code. AB 1467 also clarified that services provided by sexual assault and domestic violence counselors, including, but not limited to, securing alternative housing assignments and academic assistance alternatives, are not contingent on a victim’s decision to report to the Title IX office or law enforcement. Cal.Educ.Code § 67385; Stats.2022, c. 556 (A.B.1467), § 1.5, eff. Jan. 1, 2023.

particular matters in a manner that protected the confidentiality of the client. While most campus Advocates reported within student health services or counseling, Advocates identified a gap in meaningful supervision of their caseload or specific needs. We also heard a need for more consistent training and professional development opportunities for campus Advocates, particularly as it relates to understanding campus processes and supporting students, faculty and staff through a Title IX/DHR report, investigation and resolution. In addition, we observed the need for consistent tracking of data and functions by the campus Advocates, which would help provide insights into the appropriate allocation of personnel resources, how Advocates are being utilized on campuses, and whether the current level of staffing is sufficient. While the systemwide policy requires an annual report by the Advocate, there is no template or consistent data required to be provided by all universities. Recordkeeping of core metrics is therefore left to the individual Advocate, and there are great variations across the 23 universities.

We also had the opportunity to meet with individuals who provide support to respondents, albeit not in the same privileged manner that California permits for sexual assault and domestic violence Advocates. There is currently no parallel system policy requiring campuses to provide dedicated resources to respondents, nor does federal law require parity in this regard.⁹⁷ Most CSU universities do not provide any dedicated resources for student respondents, although represented employees often rely upon their union representatives to serve as their advocate or advisor. The gap in respondent resources is not inconsistent with practices nationally. In our experience, most colleges and universities do not have dedicated respondent resource positions; rather this role is filled by employees (faculty and staff) who volunteer to assist respondents.

Within the CSU, we observed a number of models for respondent support. At Chico, [the Community Legal Information Clinic](#) (CLIC), an undergraduate legal information clinic that is part of the legal studies program of the Political Science and Criminal Justice departments, is available to help students understand their rights and responsibilities regarding Title IX and other disciplinary processes. Through CLIC, students can request a [Student Legal Services & Juvenile Rights](#) intern to accompany them to Title IX meetings and proceedings. Chico also has a dedicated [webpage](#) for resources and information for respondents. SJSU

⁹⁷ The exception is for Title IX hearings, which require the university to provide an advisor, free of charge, to assist a complainant or respondent at the hearing and to conduct required cross-examination. The Chancellor's Office currently coordinates hearing advisors across the system through a volunteer model where university employees volunteer to serve as an advisor, typically for a party from another university within the system.

has designated an employee in Case Management within Student Affairs to serve as a Respondent Consultant; while the Respondent Consultant's portfolio includes other significant campus responsibilities, the Respondent Consultant is available to help access supportive measures and provide guidance and information about Title IX policies and procedures. Similarly, at Monterey Bay, the [Care Manager](#) who leads the Care Team is available to assist respondents. As another model, Cal State Long Beach has created a [Campus Advisor](#) program. Campus Advisors are trained, university-appointed employees who can serve as an advisor to a Respondent. Dominguez Hills, San Francisco State, and San Luis Obispo have similar programs. The remaining universities have no formal approach to providing respondents with access to an advisor/advocate in connection with a Title IX/DHR program.

4. Recommendations to Address Infrastructure Challenges

We offer the following recommendations to address infrastructure challenges at the system and individual campus level:

1. Assess and Allocate Sufficient Budget Resources
 - 1.1. Conduct an audit of existing budget lines allocated to campus Title IX/DHR programs, including fees for external investigators, hearing officers, and other Title IX/DHR related resources
 - 1.2. Conduct an audit of existing budget lines allocated to confidential campus advocates, prevention and education specialists, and respondent resources at each university
 - 1.3. Map functions within each campus Title IX/DHR programs to ensure sufficient personnel to cover all core functions, including: intake and outreach, case management, investigations and hearings, informal resolution, sanctions and remedies, prevention and education, training, data entry and analysis, administrative tasks, and additional resources to support legally-compliant, effective Title IX/DHR programs, as well as the essential care side of campus responses
 - 1.4. Develop consistent position descriptions and salary ranges per position to be applied consistently across the CSU (ranges could also address variations in the cost of living in the relevant geographic area)
 - 1.4.1. Benchmark position descriptions against comparable positions
 - 1.4.2. Benchmark salary ranges against comparable positions to attract and retain quality candidates
 - 1.5. Set minimum baseline staff and resourcing necessary to implement an effective Title IX and DHR response program per campus

- 1.6. Work with internal government relations personnel and partner with other state-funded systems to advocate for sufficient funding to meet federal and state requirements to serve students, faculty, and staff
 - 1.7. Advocate for a line-item budget request to secure permanent and reliable funding for Title IX Coordinators, DHR Administrators, and accompanying support services and personnel, rather than renewing budget requests annually
 - 1.7.1. The line-item should take into account the federal and state compliance requirements related to resources, care, support, advisory services, confidential advocate, prevention and education funding, and investigations and adjudications.
 - 1.8. Identify budget line funding for an enterprise-level case management system
2. Identify a model for supporting campus resources: confidential advocate and respondent support
 3. Expand staffing in Office of General Counsel to address critical understaffing and sufficiently support campus implementation needs
 4. On each campus, map where records are currently kept – HR, Faculty Affairs, Student Conduct, Res Life, UPD – and ensure: 1) integration with systems of record, and 2) ability to query by Respondent name and Complainant name, at a minimum

At the campus level, we recommend that each university:

1. Work with CO to develop project plans for addressing gaps and implementing recommendations
2. Identify recurring baseline funding for Title IX/DHR program
3. For the campuses that still maintain separate Title IX and DHR programs, consolidate the programs into a centralized office
4. Commit to implementing an enterprise-level case management system to align with the Chancellor's Office oversight
5. Ensure an adequate supervisory model that includes routine cadence of supervisory meetings, guidance about how to ensure effective oversight, appropriate level of detail for review, integration into decision-making frameworks, and balancing Title IX/DHR professionals' independence and autonomy with need to identify and elevate critical issues and concerns about safety/risk
6. Commit to additional campus-specific recommendations in our written report tailored to address unique challenges at each university

B. Prevention, Education, Professional Development, Training and Awareness

In this section, we address a broad range of system and campus-based programming, including legally-required training and prevention programming, as well as professional development and other outreach and awareness programming. We observed significant opportunity, on most university campuses within the CSU, to strengthen and expand their prevention and education programming, professional development, training and awareness initiatives. While each university requires completion of online modules by students and employees, these modules, while necessary to establish baseline foundational understanding – and which are used to document and track relatively high completion rates – are not effective modalities to set expectations about campus values, introduce policies and university-specific resources, and shift culture and climate. Beyond these online modules, on most universities, there were significant gaps in primary prevention and awareness programming required by federal and state law. There is tremendous opportunity and need to engage in coordinated, strategic, and intentional campus programming designed to prevent sexual and gender-based violence, including sexual assault, dating violence, domestic violence, and stalking. We observed similar opportunities to expand professional development and training for all employees to ensure that managers, leads, department chairs and other administrators are prepared for their roles related to the oversight of employees, the response to conflict and interpersonal concerns, and their obligations under the Nondiscrimination Policy.

This section outlines the legal framework, the requirements of the system policy, the current practices at the system level, the common observations across the 23 universities and our system and university-level recommendations.

1. Legal Framework re: Prevention and Education

Federal and state laws have prescriptive training and education requirements and/or expectations related to the prevention of discrimination and harassment based on protected statuses, including sex or gender under Title IX, and Clery Act crimes of sexual assault, dating violence, domestic violence, and stalking. The legal framework sets forth training requirements for students, staff and faculty. Those requirements are most prescriptive in the area of sexual and gender-based harassment and violence, including sexual assault, dating violence, domestic violence, and stalking. In addition to the compliance requirements under federal and state law, effective implementation requires the development of an integrated, strategic and comprehensive plan for prevention, education, professional development, training and awareness.

The following list highlights federal and state requirements related to discrimination and harassment, including sexual and gender-based harassment and violence, sexual assault, dating violence, domestic violence, and stalking, for students and employees:

Title IX

- Requires the educational institution to notify all students and employees of the name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator; that the educational institution does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX and the implementing regulations not to discriminate in such a manner; that the requirement not to discriminate in the education program or activity extends to admission and employment; that inquiries about the application of Title IX and the implementing regulations may be referred to the Title IX Coordinator, to the Assistant Secretary for Civil Rights, or both; notice of the grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the educational institution will respond.⁹⁸

Clery Act (as amended by VAWA)

- Requires primary prevention and awareness programs for all *incoming* students (including risk reduction and bystander intervention).⁹⁹

⁹⁸ See, generally, 34 C.F.R. § 106 or 34 C.F.R. Part 106. Under the current regulations, Title IX does not explicitly articulate training requirements for students, staff, and faculty; rather, they are framed as notice requirements.

Under the NPRM, the new Title IX regulations would require that all employees be trained on the recipient's obligation to address sex discrimination in its education program or activity, the scope of conduct that constitutes sex discrimination, including the proposed definition of "sex-based harassment," and all applicable notification and information requirements under proposed §§ 106.40(b)(2) and 106.44. [Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance , 87 Fed. Reg. 41,390 \(July 12, 2022\).](#)

⁹⁹ The Clery Act uses the following definitions under 34 CFR § 668.46(j)(2):

(i) *Awareness programs* means community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration.

(ii) *Bystander intervention* means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.

(iii) *Ongoing prevention and awareness campaigns* means programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies

- Requires ongoing prevention and awareness campaigns for students.¹⁰⁰
- Requires primary prevention and awareness programs for all *new* employees (including risk reduction and bystander intervention).
- Requires ongoing prevention and awareness campaigns for faculty.¹⁰¹

California Equity in Higher Education Act

- Shall implement comprehensive prevention and outreach programs addressing sexual violence, domestic violence, dating violence, and stalking, which shall include a range of prevention strategies, including, but not limited to, empowerment programming for victim prevention, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction.¹⁰²
- Outreach programs shall be provided to make students aware of the institution's policy on sexual assault, domestic violence, dating violence, and stalking.¹⁰³ Outreach programming shall be included as part of every incoming student's orientation, including undergraduate, graduate, transfer, and international students, with a special consideration of their different needs, interactions, and engagements with their campuses.
- Must provide training to all employees on identification of sexual harassment, including the person to whom it should be reported, and must notify employees of their obligation to report harassment to appropriate school officials.

with audiences throughout the institution and including information described in paragraph (j)(l)(i)(A) through (F) of this section.

(iv) *Primary prevention programs* means programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.

(v) *Risk reduction* means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.

¹⁰⁰ 34 CFR § 668.46(j).

¹⁰¹ *Id.*

¹⁰² Cal.Educ.Code § 67386.

¹⁰³ Outreach programs are designed to make students aware of the institution's policy on sexual assault, domestic violence, dating violence, and stalking. At a minimum, an outreach program is required to include a process for contacting and informing the student body, campus organizations, athletic programs, and student groups about the institution's overall sexual assault policy, the practical implications of an affirmative consent standard, and the rights and responsibilities of students under the policy. Outreach programming should also include the warning signs of intimate partner and dating violence; campus policies and resources relating to intimate partner and dating violence; off-campus resources and centers relating to intimate partner and dating violence; and, a focus on prevention and bystander intervention training as it relates to intimate partner and dating violence. Cal.Educ.Code § 67386.

CA Government Code 12950.1¹⁰⁴

- Must provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to *all supervisory employees* every two years and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to *all nonsupervisory employees* in California within six months of their assumption of a position (and repeated every two years).¹⁰⁵ Training must include a component on preventing “abusive conduct.”¹⁰⁶

As it relates to university employees or external professionals who perform various functions as part of the response, investigation or resolution of reports (often referred to as implementers), there are specific training requirements:

Title IX¹⁰⁷

- Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must receive training on the definition of sexual harassment, the scope of the institutions’ education program or activity, how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, and how

¹⁰⁴ Also commonly known as AB 1825 (2005), as amended by AB 2053 (2015) and Senate Bill 778 (2019). This is the full history of Cal.Gov.Code § 12950.1 - - Stats.2004, c. 933 (A.B.1825), § 1. Amended by Stats.2006, c. 737 (A.B.2095), § 1; Stats.2012, c. 46 (S.B.1038), § 41, eff. June 27, 2012, operative Jan. 1, 2013; Stats.2014, c. 306 (A.B.2053), § 1, eff. Jan. 1, 2015; Stats.2017, c. 858 (S.B.396), § 2, eff. Jan. 1, 2018; Stats.2018, c. 956 (S.B.1343), § 2, eff. Jan. 1, 2019; Stats.2019, c. 497 (A.B.991), § 138, eff. Jan. 1, 2020; Stats.2019, c. 215 (S.B.778), § 1, eff. Aug. 30, 2019; Stats.2019, c. 722 (S.B.530), § 1, eff. Jan. 1, 2020; Stats.2020, c. 370 (S.B.1371), § 140, eff. Jan. 1, 2021; Stats.2020, c. 227 (A.B.3369), § 1, eff. Sept. 28, 2020.).

¹⁰⁵ The training and education must include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation. An employer shall also provide training inclusive of harassment based on gender identity, gender expression, and sexual orientation, including practical examples inclusive of harassment based on gender identity, gender expression, and sexual orientation. AB 2053 (2015). Stats.2014, c. 306 (A.B.2053), § 1, eff. Jan. 1, 2015.

¹⁰⁶ Under the amendment, "abusive conduct" means "conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious." AB 2053 (2015). Stats.2014, c. 306 (A.B.2053), § 1, eff. Jan. 1, 2015

¹⁰⁷ 34 CFR § 106.45 (b)(1)(iii).

to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

- Decision-makers must also receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
- Investigators must also receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Clery Act (as amended by VAWA)¹⁰⁸

- Requires annual training for officials who conduct disciplinary proceedings on issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.¹⁰⁹

California Equity in Higher Education Act

- Must provide trauma-informed training to campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence, and stalking.¹¹⁰
- Must provide annual training for residential life student and non-student staff for the trauma-informed handling of reports regarding incidents of sexual harassment or violence at an institution with on-campus housing.¹¹¹

Beginning September 1, 2024, the CSU, along with community colleges, independent institutions of higher education that receive state financial assistance, and private postsecondary educational institutions receiving California state financial assistance, must also provide annual student training¹¹² regarding common facts and myths about the causes of sexual assault and harassment, what constitutes sexual

¹⁰⁸ The Clery Act also requires that post-secondary institutions identify and notify campus security authorities (CSA) of their obligations to report Clery Act crimes.

¹⁰⁹ 34 CFR § 668.46(k)(2)(ii).

¹¹⁰ Content should include (i) trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process, (ii) best practices for assessment of a sexual harassment or sexual violence complaint, (iii) best practices for questioning of the complainant, respondent, and witnesses, and (iv) implicit bias and racial inequities, both broadly and in school disciplinary processes. Materials approved by the institution for this training shall include statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity. Cal.Educ.Code § 67386.

¹¹¹ *Id.*

¹¹² Cal.Educ.Code § 67385.7.

violence and harassment, information about how to report to campus and law enforcement, the availability of community resources, methods to encourage peer support and imposition of sanctions, and information regarding campus, criminal, and civil consequences for sexual violence or harassment.¹¹³ Trainings must also include contact information for the institution's Title IX Coordinator.¹¹⁴

2. Nondiscrimination Policy, Attachment G

[Attachment G](#) of the Nondiscrimination Policy sets forth the CSU requirements for training, prevention and education for students and employees.

a. Employees

Consistent with the requirements under California state law, CSU policy requires all CSU employees to complete two online training modules: one annually and one every two years:

- First, all employees must complete the online *CSU Sexual Misconduct Prevention Program Training*, also known as *Gender Equity and Title IX*, on an annual basis (for at least 60 minutes). This training is mandatory for all employees within six months of their initial hiring, and on an annual basis thereafter. The *Gender Equity and Title IX* training includes the following content: what constitutes discrimination, harassment, retaliation, sexual misconduct/sexual assault, dating and domestic violence, sexual exploitation and stalking under applicable law; the rights and responsibilities of each Employee relating to discrimination, harassment, retaliation, sexual misconduct/sexual assault, dating and domestic violence, sexual exploitation and stalking including the duty to report and exceptions; the prohibition of retaliation against individuals who report discrimination, harassment, retaliation, sexual misconduct, dating and domestic violence, sexual exploitation and stalking; the procedures provided under the CSU Nondiscrimination Policy for filing, investigating and resolving a complaint; and the option and method for filing complaints with external government agencies such as the California Civil Rights Department (formerly the Department of Fair Employment and Housing or DFEH) and the Equal Employment Opportunity Commission (EEOC).
- Second, in addition to the annual requirement for all CSU employees to complete the *Gender Equity and Title IX* training, supervisors and non-supervisors are required to participate in the CSU's *Discrimination Harassment Prevention Program* within six months of hire (or being assigned to a supervisor position) and repeated every two years (for at least 120 minutes).

Attachment G also requires annual training for all employees consistent with their role in responding to and reporting incidents, although the length, content, and specific implementers in need of training are

¹¹³ This information must also be posted to the website of each campus. Cal.Educ.Code § 67385.7.

¹¹⁴ *Id.*

not delineated in the Nondiscrimination Policy. Per the Nondiscrimination Policy, and consistent with the guidance provided by the National Collegiate Athletic Association (NCAA), coaches must also receive annual training.¹¹⁵

Consistent with the requirements of VAWA, Attachment G incorporates requirements for campus-specific primary prevention programs for all new employees, as well as ongoing prevention programs to all employees during their time at the institution. Per the Nondiscrimination Policy, campus-specific programs to prevent dating violence, domestic violence, sexual misconduct/sexual assault, sexual exploitation, and stalking must include specified content, including: a prohibition against dating violence, domestic violence, sexual misconduct/sexual assault, sexual exploitation, and stalking; the definitions of those forms of prohibited conduct under CSU policy and California law; the definition of consent under CSU policy and California law; common facts and myths about causes of sexual misconduct/sexual assault; options for bystander intervention; information on risk reduction; campus, criminal and civil consequences for committing prohibited conduct; and information about reporting, adjudication and disciplinary procedures. Attachment G details additional content that must be included in campus-specific programming to comply with the VAWA provisions of the Clery Act.

¹¹⁵ Under the NCAA's Board of Governors Policy on Campus Sexual Violence (August 8, 2017), each university chancellor or president, director of athletics, and Title IX Coordinator must attest annually that the athletics department is fully knowledgeable about, integrated in, and compliant with institutional policies and processes regarding sexual violence prevention and proper adjudication and resolution of acts of sexual violence; the institutional policies and processes regarding sexual violence prevention and adjudication, and the name and contact information for the campus Title IX Coordinator are readily available within the department of athletics, and are provided to student-athletes; and, all student-athletes, coaches, and staff have been educated on sexual violence prevention, intervention, and response to the extent allowable by state law and collective bargaining agreements. See *NCAA Board of Governors Policy on Campus Sexual Violence*, accessible at <https://www.ncaa.org/sports/2017/8/17/ncaa-board-of-governors-policy-on-campus-sexual-violence.aspx>. The Policy on Campus Sexual Violence allows the educational institution "to determine the types and manner of education provided," although "there is an expectation that all education will meet the requirements of local, state and federal law." Further, "All coaches including part-time and assistant coaches, as well as athletics administrators, full-time and temporary, and participating student-athletes are expected to complete the education." See *NCAA Board of Governors Policy on Campus Sexual Violence Administrator FAQ* (updated May 22, 2023), accessible at <https://www.ncaa.org/sports/2021/7/21/ncaa-board-of-governors-policy-on-campus-sexual-violence-administrator-faq.aspx>.

b. Students

The Nondiscrimination Policy also requires that every incoming student, as well as returning students, participate in annual training. Under the Nondiscrimination Policy, students include incoming transfer, graduate, online, and extended education students.

In addition, under Attachment G, campus programs must include primary prevention and awareness training (described above in the employee section) as follows:

- For all *new* students, no later than the first few weeks of the semester;
- Refresher programs at least annually for all students;
- Twice a year for all students who serve as advisors in residence halls;
- Annually for all student members of fraternities and sororities; and,
- Annually for all student athletes.

Further, under Attachment G, each campus “must assess which student organizations participate in activities that may place Students at risk and ensure that they receive annual supplemental training focused on situations any given group’s members may encounter.”

Each university is also directed to mandate training as follows: “To ensure that all students receive the necessary information and training enumerated above on dating violence, domestic violence, sexual misconduct/sexual assault, sexual exploitation, and stalking, campuses should impose consequences such as registration holds on those Students who do not participate in and complete such mandatory training.”

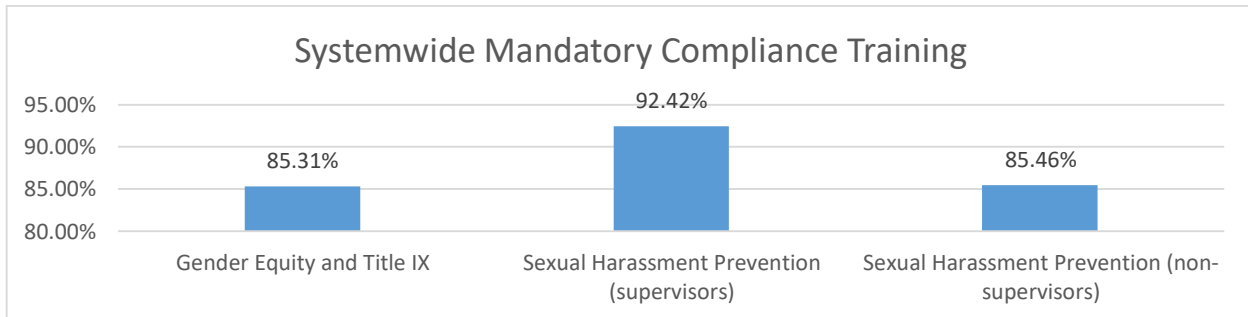
3. Systemwide Observations

a. Online Modules

We credit the CSU for developing and consistently providing foundational or baseline training for all employees. The systemwide Learning and Development Office in the Chancellor’s Office has negotiated centralized contracts with external vendors to procure online modules that are available for employees to each CSU campus. The Learning and Development Office also reviews evolving legal requirements and ensures that training content in the online modules is updated to incorporate required content.

For employees, the Learning and Development Office hosts *Sexual Misconduct Prevention Program Training (Gender Equity and Title IX)* (for all employees) and *Discrimination Harassment Prevention Program* (for supervisors), and *Discrimination Harassment Prevention Program* (for non-supervisors) on its systemwide employee learning management system. The use of the learning management system

allows the Learning and Development Office to track employee completion of these required programs. The Learning and Development Office works with each campus to ensure the data is accurate and verified. We have included the completion rates for the three employee modules for each campus in each university report. As reflected in that data, the CSU has consistently high rates of completion at most universities in the system. When averaged across the system, the completion rate for all CSU employees is as follows:



We heard generally positive feedback about the employee modules, although there was nearly universal agreement that the program was repetitive to watch each year and that it did little beyond providing foundational information. Online modules were generally perceived as “check the box” or performative compliance obligations, rather than a meaningful opportunity to engage in learning or growth. In the employee module, which is provided by an external vendor, the CSU has the ability to tailor the content and reviews the content several times a year, but the feedback we received is that the examples tend to remain constant from year to year. Nonetheless, the online modules do play an important role in establishing a baseline for understanding the general concepts, and basic information about reporting. As one stakeholder shared, “We understand that the course cannot change someone’s mind, but it can create awareness and set expectations about what the CSU is and what our values are – but if anyone thinks we can change the culture in one hour . . .”

In contrast to the employee training, the online student training has generally not been positively received. The 23 CSU universities each use an online module, typically procured from an external vendor (a different vendor than the employee module).¹¹⁶ The universities contract independently with their vendor of choice, although the system has negotiated a memorandum of understanding with a vendor to drive efficiency and cost savings for universities who choose to use the vendor. The most common

¹¹⁶ For example, Fullerton recently created its own customized student module.

module, which is used at many colleges and universities across the country, was uniformly panned by CSU students who participated in the assessment, either during in person meetings or through the systemwide survey. Additional details about student perspective are captured in the responses to the Cozen O'Connor survey. The student module also offers less ability to customize the content than the employee module.

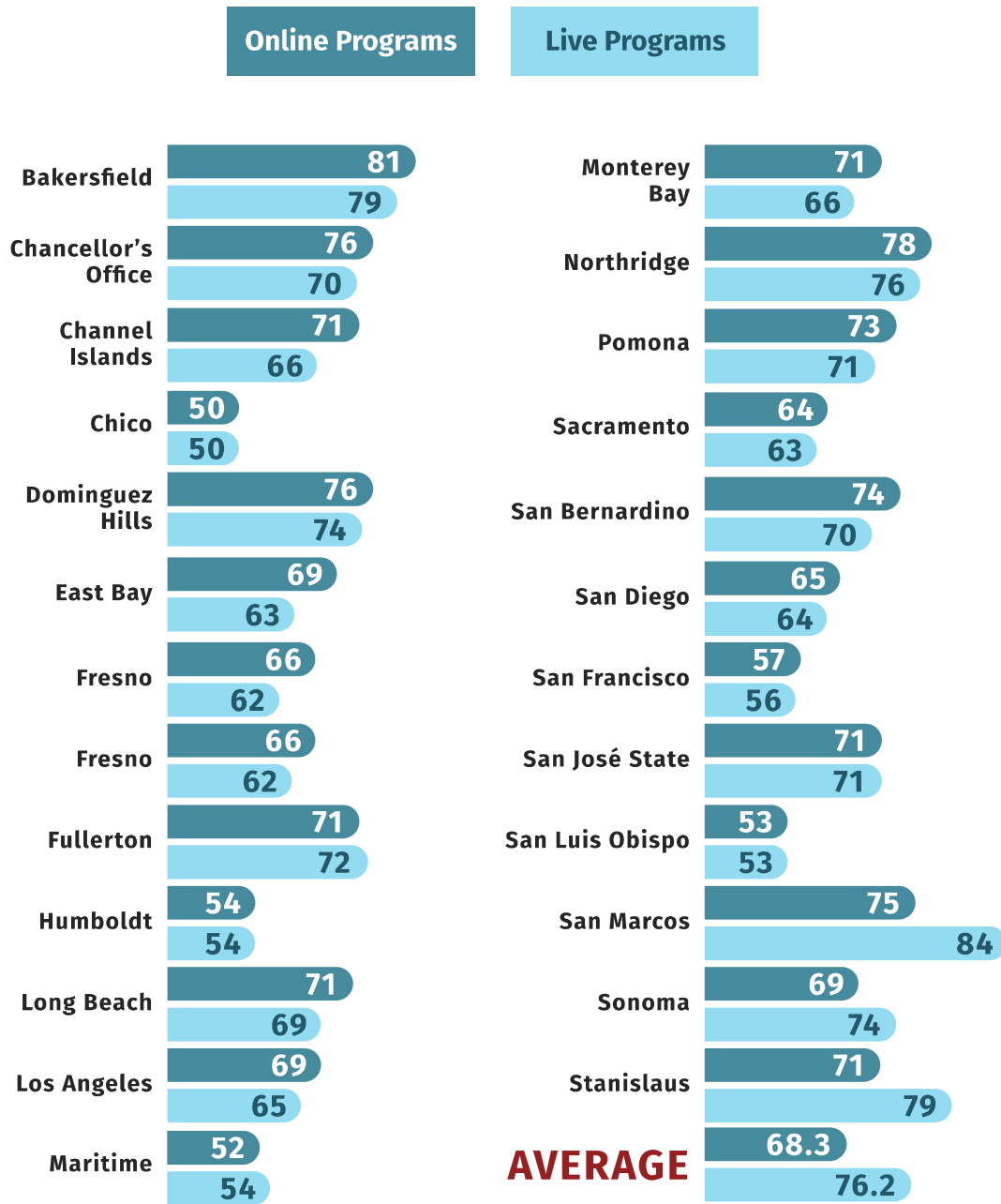
The technology infrastructure is also challenging for the student modules. Currently, most of the 23 universities do not have an online learning management system for student use, although the Learning and Development Office has been working to develop and pilot a learning management system, CSU Learn for Students, accessible to each university at an extremely affordable rate. Twelve universities currently have some version of CSU Learn for Students. As an example, Chico State has fully implemented CSU Learn. The Learning and Development Office is continuing to seek full participation by all 23 universities, which is a big initiative. The universities, however, are not required to implement CSU Learn, and some have declined to participate, citing financial constraints as a barrier.¹¹⁷

The lack of a learning management system leads to a number of challenges: 1) students must log into the vendor's website to complete the training, which reportedly has had a number of technological challenges; and, 2) the Chancellor's Office does not track completion rates for students, either by individual campuses, or in the aggregate across the system.

As part of the systemwide survey, we asked respondents to assess the effectiveness and relevance of Title IX or DHR prevention and education programming and training for any pre-recorded (also known as asynchronous) online program, as well as for any in-person or "live" Zoom program they attended on a

¹¹⁷ At \$10,000, the fee for participation is reasonable.

scale from 0 (Not Effective) to 100 (Very Effective). The numbers below reflect, essentially, a “grade” as to the effectiveness of the programming. The aggregate results are below:



b. Campus and Chancellor’s Office Professional Development

In light of the severe resource constraints across most CSU campuses, there is an unevenness in the range of resources that are available through each university’s learning and development program.¹¹⁸ Some campuses have invested in these functions and have strong professional development programs for staff and faculty. For example, Cal State Long Beach has a Faculty Center that focuses on providing support and resources for faculty, including coordinating professional development opportunities that seek to “address issues of equity, access, and inclusivity in teaching, mentoring, and advising” and “build and support a compassionate community, characterized by a strong sense of belonging.”¹¹⁹ As another example, Cal Poly Pomona has a dedicated Strategic Learning and Organizational Excellence Initiatives section of its Employee and Organizational Development and Advancement/Human Resources (EODA) which provides robust course offerings for staff and faculty, including the opportunity to earn badges and participate in professional development opportunities through a broad set of offerings detailed in an online course catalog.¹²⁰ Many of the EODA programs focus on leadership, communication, and conflict resolution. Sonoma State has a Center for Teaching & Educational Technology, which “supports faculty in their professional development as teachers, scholars of education, and innovators in practice.”¹²¹ The Center “promotes an inclusive campus-wide community” and provides guidance about pedagogical approaches, including inclusive pedagogy, equity and inclusion, and trauma-responsive teaching.¹²² Similarly, San Diego State’s Center for Inclusive Excellence provides resources for managing challenging conversations related to diversity, equity, race, privilege, or any number of other controversial topics.¹²³

¹¹⁸ As detailed below, the Chancellor’s Office also provides leadership and professional development programming, which may currently be underutilized.

¹¹⁹ See Beach Faculty Center, <https://www.csulb.edu/faculty-center>. See also *Faculty Center Annual Report (2020-21)*, https://www.csulb.edu/sites/default/files/document/ay_2020-2021_faculty_center_annual_report.pdf, at p. 5.

¹²⁰ See, for example, CPP Badges, <https://www.cpp.edu/od/badges/index.shtml> and Course Catalog, <https://www.cpp.edu/od/course-catalog.shtml>.

¹²¹ See Center for Teaching & Educational Technology, Sonoma State, <https://ctet.sonoma.edu/>.

¹²² *Id.*

¹²³ See Center for Inclusive Excellence, San Diego State University, <https://sacd.sdsu.edu/cie/cie-resources/managing-challenging-conversations>.

In contrast, on many campuses, not only is there no organized structure for professional development, but we also learned that there is limited or no in-person training or professional development for employees beyond new employee orientation. On those campuses, there is little opportunity to engage in professional development in a setting conducive to skill building and developing core competencies.

As it relates to Title IX and DHR specifically, we observed routine participation by Title IX/DHR administrators in staff orientation, but on several campuses, no participation in faculty orientation. Outside of this limited orientation, for many new employees, the only connection to the Title IX/DHR program comes through the online module, which is not customized to campus resources, or written policy. Online modules are also not an effective tool for setting expectations or driving culture change. For many employees, their only information about campus Title IX/DHR programs comes from personal experience, web content, and word of mouth perceptions. Often those perceptions are based on dated information and there is no current framework to routinely engage with faculty and staff about current resources and staffing. This is, in part, because the programming is not offered by the particular university, but in larger part, because of reticence by union leadership to agree to additional training requirements for staff and faculty because of concerns about time and workload. We encourage the university and the unions to come together on this issue. Education must be a priority shared by the unions to be successful.

Given the trust issues that were reported across the system, these gaps in programming present a missed opportunity to orient new faculty and staff to – and to continue to educate all faculty and staff about – the many resources available through the campus Title IX/DHR programs or related campus resources, including the confidential Advocate. It also misses an opportunity to directly answer questions that are common among new faculty, including about their responsible employee obligations, suggested syllabus language, and guidance for how to respond to a disclosure. Generally, the faculty and staff we met with were aware that their university had an office or personnel to respond to concerns about harassment or discrimination, but unless they had used or worked with the office, many were unfamiliar with the name of the program, or the names of the Title IX Coordinator and DHR Administrator. In addition, although confidential Advocates serve faculty and staff in addition to students, many faculty and staff across the system were unaware of this valuable resource.

On many campuses, we also observed gaps and inconsistencies in employee understanding of reporting responsibilities under federal and state law, including Title IX and California law (responsible employee framework), the Clery Act (campus security authority), and the Child Abuse and Neglect Reporting Act

(CANRA) (mandatory reporter). While the Title IX approach to responsible employee reporting has shifted over the years, the Nondiscrimination Policy requires most employees who know or have reason to know of incidents that may violate the Nondiscrimination Policy to promptly report to the Title IX Coordinator/DHR Administrator, all information available, including the names of the parties involved.¹²⁴ In our discussions on many campuses, faculty and staff expressed confusion about their reporting responsibilities, raised questions about the legal and policy justifications behind the requirement, and expressed reluctance to follow through with required reporting. In our work with colleges and universities across the country, we have found in-person discussion and engagement to be the best format to bridge gaps in knowledge and promote greater compliance with required reporting, particularly given longstanding concerns by some faculty and victim advocates that required reporting is a form of institutional betrayal.¹²⁵

More broadly, we heard significant feedback about the role of managers, supervisors, department chairs, leads, deans and other managers on the majority of campuses. Campus community members identified gaps in the skill sets needed to identify issues, report concerns, or problem solve to resolve conflicts. The feedback that we heard across all 23 universities is that many campus administrators do not feel sufficiently resourced or prepared to respond to issues that arise in the workplace, particularly when those issues impact culture and climate. We also heard a common perspective that the default response to address culture and climate issues was to refer to the campus Title IX/DHR program, even though

¹²⁴ Under Cal.Educ.Code § 66281.8, certain employees are designated as responsible employees, defined as an employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate school official who has that authority. Responsible employees include the Title IX Coordinator; residential advisors, housing directors, coordinators, or deans; student life directors, coordinators, or deans; athletic directors, coordinators, or deans; coaches of any student athletic or academic team or activity; faculty and associate faculty, teachers, instructors, or lecturers; graduate student instructors; laboratory directors, coordinators, or principal investigators; internship or externship directors or coordinators; and, study abroad program directors or coordinators. Under the Nondiscrimination Policy, employees who generally have the ability to hold information as privileged or confidential, such as medical and mental health professionals and rape crisis counselors, are not required to report conduct to the Title IX Coordinator/DHR Administrator. Union representatives who receive information in a confidential setting by a union member seeking advice about a possible violation or representation in a matter within the scope of representation are also not required to report conduct.

¹²⁵ Responsible employee reporting frameworks recognize the cultural commitment to centralized reporting and recordkeeping, connecting complainants and other impacted parties to supportive measures and information about procedural options, creating the opportunity to identify persistent, pervasive or pattern behavior, and ensuring that all individuals have equal access to policy, process, and resources.

workplace issues that arise between co-workers typically fall outside of the program's jurisdiction. In many instances, the issues that arise are best addressed with strong leadership skilled in navigating interpersonal conflict and managing employee conduct. These issues are addressed in greater depth in Section VII.C, below.

The Chancellor's Office has developed or is developing a number of professional development programs for campus leadership, including deans, managers, supervisors, department chairs, and leads. The Learning and Development Office has the ability to create synchronous and asynchronous programming for employees. The goal is to ensure that each of the 23 universities has access to the same foundational programs, without regard to the availability of campus-specific programs or resources at each university. According to information provided by the Chancellor's Office, these programs include:

- **Principles of Supervision** – This professional development program and workbook provide CSU supervisors with the knowledge and skills they need to lead and manage their teams effectively. The program covers various topics, including communication, motivation, recognizing implicit bias, team culture, and performance management. Managers, supervisors, and leads build their leadership skills and gain a deeper understanding of best practices in supervision, following a systemwide management standard across all campuses. Campuses can join systemwide classes or certify to facilitate the course individually. According to the Learning and Development Office, over 2500 managers have participated in this program to date.
- **Leading for Chairs** – This course is designed to support new and existing department chairs across the CSU. It offers chairs the necessary skills and knowledge to effectively lead their department in achieving strategic goals related to student success and academic excellence. Topics covered include the unique rewards and challenges of the chair role, power, influence, and collaboration, developing effective communication skills to motivate and engage, understanding and managing conflict, and creating a positive and collegial department culture.
- **CSU Leadership Academy (CLA)** – This six-month program is designed for AVP/Dean/Director-level leaders at the CSU. It blends research-based leadership best practices with CSU priorities and goals. The Leadership Academy fosters an inclusive, collaborative learning culture where leaders engage in reflective practices and tangible actions to develop intellectually, personally, and professionally. The program includes 12 bi-weekly workshops, including topics on power and authority, inclusive excellence, and student success. Participants complete reading assignments

and benefit from personalized coaching. A final team-based project encourages active reflection and practical application of key concepts from the program in solving a real-world CSU problem. According to the Learning and Development Office, during the 2022-2023 academic year, 256 participants from 21 CSU universities participated in the program.

- **MPP 101:** Currently, a working group of seven campuses (Bakersfield, East Bay, Long Beach, Pomona, Sacramento, San Francisco, San Luis Obispo) and the Chancellor's Office are developing standardized training shells to help new managers navigate legal, ethical, and contractual obligations when managing employees in the CSU. The working group reviewed existing campus-based resources and consulted with campus Learning & Development practitioners to identify training topics such as payroll, labor laws, FMLA, equitable work environment, managing in a unionized environment, performance evaluations, classifications and position descriptions, onboarding, off-boarding, and knowledge management. These modules will cover standardized, systemwide HR policies and regulations while allowing campuses to customize the content for their specific needs. The training will be modular, giving campuses the flexibility to determine the delivery format and to customize it for various employee groups. The first round of five modules, which includes Payroll, Labor Laws & FMLA; Managing in a Unionized Environment; Equitable Work Environment; Onboarding; Performance Evaluations, is scheduled for release in July 2023.

These programs are a critical start to ensure that campus leaders develop competencies in preventing and responding to conduct that may be disruptive to individuals or to department/unit practices and culture/climate. By developing programming through the Chancellor's Office, the system can help to create synergies and leverage work across many campuses to elevate functioning for all universities.

c. Prevention and Education Programming

We observed significant variation across the 23 universities regarding the provision of primary prevention and awareness programs required under the VAWA amendments to the Clery Act. While a handful of campuses have engaged in significant programming, most have struggled to provide consistent, strategic programming beyond the online modules. We recognize that current gaps in programming are tied, on many campuses, to the impacts of the COVID-19 pandemic, to staffing vacancies, and to high turnover in responsible positions. For example, following the COVID-19 pandemic, many universities displayed a marked decrease in the provision of in-person (or Zoom) interactive campus programming. Universally,

we heard agreement that post-COVID, all 23 universities needed to reprioritize and revitalize campus prevention and education programming.

We view these challenges as secondary to a more significant structural concern that plagues prevention and education programming nationally: the need for dedicated infrastructure, policy, personnel resources, and cross-campus collaboration to facilitate successful prevention and education programs.¹²⁶ Consistent with the infrastructure challenges in university Title IX/DHR programs, the infrastructure for providing prevention and education programming on most of the CSU campuses is insufficient to effectively carry out prevention and education programming mandates under federal and state law. Across the CSU, prevention and education programming is primarily led by confidential victim Advocates, sexual violence educators who also serve as Advocates, and health promotion educators. Most of these roles sit within student health services. Advocates from numerous campuses shared with us that both the volume and the crisis nature of direct advocacy work often took priority over their responsibilities related to prevention and education. In addition, Advocates uniformly described the same accommodation overload as Title IX/DHR professionals, which hindered their ability to accomplish all of the responsibilities within their portfolio.

On some campuses, such as Long Beach, prevention and education functions are grant-funded. *Not Alone @ the Beach* (NATB) has received funding since 2015 from the California Governor's Office of Emergency Services.¹²⁷ NATB provides both confidential advocacy and support, as well as gender and power-based violence prevention education, engagement and outreach. Sonoma State also has a grant funded program; the Prevention Specialist, within the Office for the Prevention of Harassment & Discrimination (OPHD), is a .75 FTE position which is entirely grant funded. As another example, at Dominguez Hills, the Center for Advocacy, Prevention & Empowerment (CAPE) provides prevention programming through a U.S. Department of Justice Office on Violence Against Women (OVW) grant.¹²⁸ Bakersfield has also had an OVW grant for prevention work since 2018.

¹²⁶ See, Dills J, Fowler D, Payne G. *Sexual Violence on Campus: Strategies for Prevention*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 2016. <https://www.cdc.gov/violenceprevention/pdf/campusvprevention.pdf>.

¹²⁷ See, *Not Alone at the Beach*, CSU Long Beach, <https://cla.csulb.edu/natb/>.

¹²⁸ See, Center for Advocacy, Prevention & Empowerment, Dominguez Hills, <https://www.csudh.edu/cape/>.

On many campuses, the Title IX/DHR professionals also engage in training and programming. For example, Title IX/DHR professionals often provide programming to students, staff and faculty about forms of prohibited conduct, campus and community resources, policy and procedural options, and employee reporting options. Between June 2022 and May 2023, SJSU's Title IX and Gender Equity Office delivered more than 150 training sessions, all of which are documented in a detailed spreadsheet. At Long Beach, the Office of Equity and Diversity offers 50 in-person customized trainings for faculty, staff and students, including Resident Assistants, fraternity and sorority members and leadership, club sports officers, registered student organization leaders, peer educators, peer advisors, and ASI student employees and officers, student employees, and athletics staff and student athletes. Long Beach also trains all students during orientation, as well as other student cohorts such as international students, and certain degree-programs. In some instances, such as at Fullerton, the Title IX and Gender Equity Office created its own online training for students in place of the online module used by most campuses. At Cal State Los Angeles, the Office for Equity, Diversity and Inclusion (OEDI) provides the following supplemental training, sometimes multiple times per year: ASI leadership, athletics, resident assistants, social organizations, graduate student orientation, international student orientation, nursing orientation, summer students, summer bridge students, summer youth employment program, and early entrance program. In addition, OEDI provides 90 minute sexual assault prevention training multiple times per year for the entire community. These are just a few examples highlighted in the Systemwide Report; the University Reports provide more detail about each university's programming.

While these trainings are critically important, they are not generally considered to be primary prevention, which, in the context of sexual and interpersonal violence, is generally defined as stopping the violence before it occurs.¹²⁹ That entails identifying root causes, risk factors (that put people at risk), and protective factors (that protect from violence).¹³⁰ VAWA defines primary prevention programming as “programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and

¹²⁹ See National Sexual Violence Resource Center, <https://www.nsvrc.org/prevention>. See also Centers for Disease Control and Prevention. *Sexual Violence Prevention: Beginning the Dialogue*. Atlanta, GA: Centers for Disease Control and Prevention; 2004. <https://www.cdc.gov/violenceprevention/pdf/svprevention-a.pdf>.

¹³⁰ See Centers for Disease Control and Prevention. *Preventing Sexual Violence Fact Sheet, 2022*. https://www.cdc.gov/violenceprevention/pdf/sv/SV-factsheet_2022.pdf.

sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.”¹³¹

Primary prevention programming is more typically provided by confidential advocates, sexual violence prevention educators, and health educators, including peer advocates for universities that have peer education programs. Across the system, other campus partners also participate in developing and delivering campus programming, including student affairs, athletics, fraternity and sorority life, and identity-based affinity centers. The challenge, on most campuses, is that the programming is not typically coordinated, organized, or part of a broader intentional, strategic prevention plan. Instead, we observed on many campuses that the prevention and education efforts were more *ad hoc*, diffuse, not strategically coordinated, and not communicated to the campus community in a manner that reflected holistic integration of concepts of wellness, violence prevention, mental health, and safety. The resulting inference is often that the university does not prioritize or value prevention.

It was difficult to identify, on any CSU campus, a single individual dedicated solely to developing, coordinating, and delivering campus prevention and education programming from a pan-institutional perspective.¹³² No campus had an overarching strategic plan or university-wide planning calendar.¹³³ Instead, efforts existed in pockets, as passionate and committed campus professionals developed and implemented programming in a more siloed manner. A few campuses have longstanding sexual violence prevention committees, such as Cal Poly Humboldt’s Sexual Assault Prevention Committee (SAPC), that coordinate campus efforts.¹³⁴ Similarly, SJSU has a Prevention Planning Committee that meets every two weeks to discuss prevention education efforts and develop campus-wide programming. The group includes the PRIDE Center, Wellness, Title IX and Gender Equity, Student Involvement, Student Conduct, BIT, and the Confidential Survivor Advocate. San Diego State also maintains a Student Health Advisory Committee (and a year round campus wellness calendar). Some have recently created prevention

¹³¹ 34 CFR § 668.46(j)(2)(iv).

¹³² As noted above, Dominguez Hill’s Center for Advocacy and Prevention has a .75 FTE Prevention Specialist. Cal Poly San Luis Obispo’s confidential advocate, SAFER, also employs a dedicated prevention specialist, who provides extensive prevention education. See <https://safer.calpoly.edu/>.

¹³³ Some campuses, like San Marcos, have engaged in introspective review of their current programming by collaborating with external resources. Recently, San Marcos participated in the Culture of Respect’s two-year Collective to assess current programming and target goals for organizational change. <https://cultureofrespect.org/programs-and-tools/the-collective/>.

¹³⁴ See Sexual Assault Prevention Committee, <https://supportingsurvivors.humboldt.edu/>.

committees. As an example, this spring, Cal State East Bay formed a Title IX Education and Training Coordinating Committee.

There are also innovative and creative programs across the CSU, including Humboldt's Check It, a student-led movement that seeks to create a more consent-centered culture and empower students to take action through bystander intervention and specialty workshops.¹³⁵ San Diego State also has a highly evolved Wellbeing and Health Promotion division within Student Affairs that includes a number of initiatives related to prevention work, including peer health educator programs like SISSTER (Sororities Interested in Survivor Support, Training, and Ending Rape Culture) and FratMANERs (to raise awareness about rape, potential rape situations, and sexually coercive behavior within fraternities). Similarly, San Diego State's Athletics Department requires all first year student-athletes to enroll in the Aztecs Going Pro seminar, which includes education and training about relationship and sexual violence provided by a local rape crisis center. The Athletics Department also partners with the Office of Well-Being and Health Promotions to provide a two-week program called ATHLETiquette, which addresses sexual violence, consent, alcohol and other drugs, and bystander intervention. The challenge to the sustainability of these programs is that they are tied to the professionals who are committed to leading them, and if the program is not integrated into the organizational framework and structure, the programs often dissolve when there is transition in staffing. This is a common dynamic we see across the country – the use and efficacy of particular programs, particularly bystander intervention programs, waxes and wanes depending on whether the program has a champion or strong advocate to promote the continued use of the program.

More broadly, given the requirements of the Clery Act, California state law, and system policy, we observed a need to coordinate the diverse programming, which should be occurring in at least the following contexts:

- Onboarding and new student, employee and faculty orientation programs
- Athletics (students and employees)
- Fraternity and sorority life
- Residence hall programming
- Registered student organizations and student leaders
- Graduate and professional students engaged in teaching, advising, and mentoring
- Tailored programming for marginalized or diverse students (e.g., multicultural or LGBTQIA+)
- Specific training in programs or departments based on patterns or trends identified through reports, data analysis, or campus climate surveys

¹³⁵ See Check It, <https://checkit.humboldt.edu/about-us>.

- Tabling, postering, and other visible outreach
- Campus awareness events (Take Back the Night, Denim Day, awareness months for domestic violence, stalking and sexual assault)
- External speakers and speaker series
- MPP, lead, department chair and Dean onboarding and leadership training
- Syllabi statements
- Web content
- Social media campaigns

This programming should be coordinated, integrated, tracked, and communicated through a strategic plan that is shared and updated as needed. Campus web resources should detail the available offerings on an ongoing basis.

4. Recommendations re: Prevention, Education, Training and Awareness

We offer the following recommendations to promote legal compliance with the federal and state law, including the VAWA provisions of the Clery Act, and consistent attention to prevention and education programming across all 23 campuses:

1. Within the Chancellor's Office, create at least one full-time position dedicated to the oversight, development and coordination of prevention and education programming related to discrimination and harassment, including sexual and gender-based harassment, sexual assault, dating violence, domestic violence, stalking and retaliation. The portfolio for this role should include:
 - 1.1. Develop the structure for a Title IX/DHR prevention plan, and work with Systemwide partners to integrate this plan into a holistic, collaborative framework that integrates wellness, violence prevention, safety and mental health
 - 1.2. Develop a strategic plan to guide prevention work across the CSU system
 - 1.3. Build on current matrix maintained by the Chancellor's Office to ensure inclusion of all federal and state training requirements
 - 1.4. Track progress towards accomplishing these requirements
 - 1.5. Ensure that the matrix is comprehensive and updated regularly
 - 1.6. Help each university develop a strategic plan and training calendar of compliance and educational programs.
 - 1.7. Help identify grant opportunities and resources to assist universities in building their capacity to provide comprehensive programming.

- 1.8. Create and catalogue a library of written, video, and other resources for use by campuses (fact sheets, blog posts, podcasts, basic presentations, statistics, etc)
 - 1.9. Build and maintain a network of prevention and education specialists within the system, including developing a culture of resource sharing across the campuses
 - 1.10. Develop systemwide social norm campaigns and provide guidance on campus specific social norm campaigns
 - 1.11. Chair a systemwide prevention advisory committee, which should include representation from each of the 23 universities
 - 1.12. Coordinate quarterly meetings with all campus professionals tasked with prevention and education responsibilities
 - 1.13. Host an annual systemwide symposium focused on prevention and education
 - 1.14. Build content to align with federal and state legal requirements, as well as effective, evidence-based practices in prevention and education
 - 1.15. Work with campus prevention, education, and response staff to identify trends each year that can be addressed in subsequent years' programming efforts
 - 1.16. Identify opportunities to develop promising practices, including conducting an annual environmental scan of programs and practices at other schools/peer institutions
 - 1.17. Identify opportunities to develop programming to address problematic behaviors in individuals who have been found responsible for policy violations
 - 1.18. Seek and obtain cooperation of the unions to support education/training of the employees they represent, along with union commitment to support the university when it seeks compliance with these programs
2. In collaboration with Learning and Development Services, this new role should develop additional education and programming for all university-level senior leaders, deans, department chairs, and managers on Title IX and DHR; respectful and inclusive environments; the care-compliance continuum; conflict resolution; bystander intervention strategies; effective leadership and supervision; Reporting responsibilities under Title IX, the Clery Act, CANRA, and any other related state, federal, or local reporting requirements
 3. Require all campuses to adopt a common learning management system for students and employees, which will allow for launch and rollout of consistent content, tracking of consistent data, provide uniform access to all constituencies, and connections to accountability measures
 4. Inform culture, DEI efforts, and future communications by sharing information and working collaboratively with systemwide and campus-based DEI professionals

5. In collaboration with Marketing and Strategic Communications, this new role should develop a comprehensive and systemwide strategic communication strategy that includes awareness campaign materials, social norm campaigns, web resources, and toolkits capable of customization by campus

We offer the following recommendations at the campus level:

6. Allot sufficient budget lines to ensure consistent, baseline funding for personnel, programming, and technology/learning management systems
7. Designate one individual with specific oversight of all campus prevention and education planning and programming, preferably a full-time role without other job responsibilities
8. Convene a campus-wide prevention advisory committee to coordinate and align programming across campus
9. With assistance from the Chancellor's Office, develop a strategic plan for campus programming that identifies all Title IX and DHR-related training requirements under federal and state law and CSU policy, all constituencies and constituent groups in need of training, and all potential campus partners that can collaborate to deliver content
 - 9.1. Constituent groups should include students (undergraduate and graduate); targeted student populations (athletes, fraternity and sorority life, residential students, residence life student staff, international students, student leaders); senior leadership; faculty (deans, department chairs, leads, lecturers); staff (managers, supervisors); campus partners who assist in the implementation of Title IX/DHR
 - 9.2. Identify all campus partners who provide Title IX and DHR-related programming, including affinity and identity-based centers and student affairs personnel
 - 9.3. Identify opportunities for virtual and in person engagement
 - 9.4. Develop core principles and standards for content development
 - 9.5. Build a campus calendar that includes online modules, social norm campaigns, orientation for students and employees, recurring opportunities for programming, and awareness events
10. Facilitate consistent communication plan each semester that includes dissemination of the policy, notice of non-discrimination, reporting options and resources
11. Ensure that programming is coordinated, tracked, and communicated
12. Develop a campus website dedicated to Title IX and DHR-related prevention and campus programming that is kept current and facilitates distribution of prevention and education materials

13. Identify social media platforms and other vehicles for distributing programming information on a regular basis
14. In conjunction with the Chancellor's Office, expand professional development and training for faculty and staff, including senior leadership, deans, department chairs, managers and leads on Title IX and DHR; respectful and inclusive environments; conflict resolution; bystander intervention strategies; effective leadership and supervision; and, reporting responsibilities under Title IX, the Clery Act, and CANRA
 - 14.1. Ensure the training includes information about prohibited consensual relationships given the significant overlap of prohibited consensual relationships with Title IX, DHR and *other conduct of concern*
15. Create routine training, education, and professional development opportunities to cultivate competencies in navigating difficult conversations, bridging differences, and modeling respect and civility
16. Evaluate the potential opportunities for curricular or course-based programming and syllabi statements
17. Conduct awareness campaign for Title IX/DHR Office
 - 17.1. Utilize marketing and communications professionals
 - 17.2. Invest in branding, social media use, and campaigns
18. Commit to providing programming regarding bystander engagement
19. Participate in national conferences, listservs, networking events
20. Engage students in the development and delivery of programming through peer educator/peer advocate programs
21. Identify student leaders who can serve as ambassadors/promoters of this work
22. Develop consistent on-campus opportunities to be visible and present in the community

C. Other Conduct of Concern (Unprofessional Conduct, Bias Incidents, Microaggressions, Acts of Intolerance, Bullying and Abusive Conduct)

At each of the 23 universities, we heard significant concerns from students, staff and faculty about the institutional response to forms of conduct that may fall outside of the Nondiscrimination Policy, but are nonetheless disruptive to the fabric of the living, learning, and working environment. While there is no

universal term to capture the wide range of behaviors that may fall within this category, we have adopted the phrase “*other conduct of concern*” to reflect conduct in the following categories:

- Conduct on the basis of protected status that does not rise to the threshold of a potential policy violation because it is not severe, persistent, or pervasive
- Conduct not based on protected status, but that may implicate other policies (e.g., professionalism)
- Conduct that may not be subject to discipline because of free speech or academic freedom principles

Examples of conduct that may fall within *other conduct of concern* include identity-based harm, microaggressions, bias incidents, acts of intolerance, unprofessional conduct, abusive conduct, bullying, and harassment.

We recognize that the phrase *other conduct of concern* is imperfect, as it refers to a wide range of conduct, only some of which may violate the law and/or current university policies. It is not proffered here as a formal definition of prohibited conduct, but rather to provide a construct for discussion. The phrase may also imply to some that the conduct is not serious or harmful – it should not be construed as such. To the contrary, we heard universally that *other conduct of concern* can be deeply impactful, both to individuals and to the campus climate and culture more broadly. To this end, we observed a great need to acknowledge the prevalence of this conduct, to set expectations about forms of conduct that are disruptive to campus culture and climate, and to develop specific processes for reporting, responding to, and tracking *other conduct of concern*. During our review, we identified issues related to *other conduct of concern* as a significant driver of culture and climate, particularly when coupled with gaps in training and professional development described in Section VII.B, above.

1. Process Gaps

On nearly every campus, we learned that there is no articulable or formal process for responding to reports of *other conduct of concern*, but that as a default, much of this conduct, if reported at all, is reported to campus Title IX/DHR programs as the first recourse. Other potential reporting pathways include human resources, faculty affairs, or student conduct if a disciplinary response is sought, or for support or resources, perhaps student affairs, including students of concern or threat assessment, inclusive excellence or the chief diversity officer, or a direct supervisor. Individuals may also choose to share their concerns with an ombudsperson for those campuses that have this role, confidentially with student counseling or an employee assistance program, or for represented employees, with a union

representative. In short, students, faculty and staff tend to report conduct of concern to the individuals or offices with whom they are most familiar or that they trust. Recognizing that a report can be received by any employee, it increases the importance of consistent education about reporting responsibilities and institutional policy expectations to ensure that reports are referred to the appropriate departments.

When *other conduct of concern* is reported to the Title IX/DHR program, in many instances, the nature of the conduct, even if proven as reported, would fall outside or would not meet the threshold for a violation of the Nondiscrimination Policy and as a result, may not fall within the scope or jurisdiction of the Title IX/DHR program. This conduct is often then referred to another university office, typically human resources, faculty affairs, student conduct, or to the chief diversity officer/inclusive excellence for any further response. On most campuses, there is no consistent, coordinated, documented process for addressing the hand-off. We learned that there are varying levels of awareness of and confidence in the resulting responses from these other departments – some very positive and some critical. A common refrain at many universities was, “We have a campus of individual problem solvers, but no process for solving problems.” While we saw some individual administrators go above and beyond to address concerns, even if outside the jurisdiction of Title IX/DHR, the responses were generally *ad hoc* in nature, with no written policy or established practice to follow for consistency and documentation.

We repeatedly heard the perception that “nothing happens” when a report is made, that the bar is too high for an individual to bring a complaint, and that the university “doesn’t care.” As described above, when individuals report *other conduct of concern* to the Title IX/DHR program, which does not provide a substantive response, those individuals often develop a negative perception of the effectiveness of the Title IX/DHR program in general, even with respect to how the program would respond to reports of conduct that would potentially violate the Nondiscrimination Policy. These reporting experiences connected to *other conduct of concern* shape the broader community perception of the utility of reporting discrimination and harassment.

We heard the following perspectives about gaps in institutional responses to reports of *other conduct of concern*. These are just a handful of representative comments, which we heard at every university, both during our in-person or Zoom interviews and through anonymous submissions to the online surveys on each campus:

- *Each school/department has a different culture, which divides the campus among staff, faculty, and MPPs. This can be observed by students and staff that interact with the various*

schools/departments. There is no general culture of inclusion and respect, quite the opposite. Also, some schools/departments have very hostile and bullying cultures toward new or different individuals that don't meet their culture. Turnover is rampant due to these unresolved hostilities that are not adequately dealt with through the channels. Things are swept under the rug, and many quit when nothing is done to the perpetrators. The issue isn't sexual, but bullying and hostile work environments that lead to discrimination and disrespect.

- *Have reports of gender harassment result in disciplinary action and/or making it more clear how many minor harassments one has to do before it becomes bad enough for action to be taken, because when the first, second, third, etc. reports don't result in visible action, it leads people to believe that an infinite number of transgressions will be tolerated. Provide reports on how many reports resulted in disciplinary action. Provide as much transparency as is legally possible.*
- *We don't have a middle ground for resolving conflict – it's all or nothing.*
- *I have a direct supervisor who is subtle with her disrespect (I think they're called microaggressions), but it still makes my stomach hurt. Pointed jokes. A sharper tone with me than with other members of my team. And I'm completely confused as to why I'm being singled out. I really have nobody to go to about this. The ombudsman simply teaches you how to cope with something you can't change. I'd rather see it changed.*
- *I submitted complaints about harassment and workplace bullying conducted by two administrators on campus. I was told that nothing could be done because I was not a protected class (which, in hindsight was actually an inaccurate statement, due to a disability). It became clear that HR was only focused on legal obligations rather than encouraging an overall atmosphere of respect.*
- *When our only option is – deal with the matter itself or go to Title IX, 0 to 100, no space to deal with concerns, manage it yourself or go through the process of reporting – it is inhumane and untenable – trying to navigate with no resources.*
- *My sense is that the policies do not address microaggressions and general unprofessional conduct. There is no mechanism for registering or recording unprofessional conduct.*
- *Being untenured means being vulnerable. You have to make sure everybody likes you and doesn't think you're "trouble." I was harassed by a senior member of my dept who had direct power over tenure. I managed it by myself because the stakes of losing my job and healthcare and being ineligible for another position in the entire 23 campus was too great.*
- *I witnessed belittling/bullying by a professor of another student until they cried and the professor then mocked them for it. I do not know if bias motivated the incident. It is clear to me that they were unaware what a huge impact they had and can have speaking from their position of authority. Additional teaching for higher ups (the professor's position of power in the university has grown) of the impact they have on students when speaking from a position of power is needed. I was willing to go with the victim to report their incident to the Dean, but the victim decided they were not comfortable doing so out of fear of retaliation.*
- *Bullying at all levels not addressed/ignored, gaslighting happens on the regular and no place for anyone to complain and no hope for change*
- *A faculty member habitually made gender based (and sometimes racial based) discriminatory comments to students and other faculty. Students, faculty, and administrators all know this and yet these faculty are allowed to continue teaching. These types of actions are not perceived by university administration / Faculty Affairs to be "bad enough" to take any action even though they*

are negatively affecting female students every semester. There is a sense that the university cannot take any more action than Title IX does, but I think it's ridiculous that everyone can know there is a problem and yet no one can do anything about it. Instead the university expects for students to report incidents to Title IX, which is rare given the power imbalance between faculty and students for anything to happen, and even then, the instructor was not terminated. Fortunately, they have recently retired.

2. Ability to Discipline

Depending on the nature of the conduct, there may be little recourse for the impacted party and the university may be limited in its ability to take disciplinary action. For example, in some instances, the conduct may involve protected free speech or academic freedom considerations, which typically cannot be the subject of discipline. In other instances, the conduct, while impactful, may not implicate university policy, or may not be sufficiently severe, persistent or pervasive such that it would meet the definition of prohibited conduct under the Nondiscrimination Policy. In those instances, the only available responses may be individual supportive measures or community remedies, such as proactive dialogue or communication. Engaging in conflict resolution processes may also help to remedy the concerns if both parties to the interpersonal conflict are amenable. In some instances, however, there may be greater opportunity to take disciplinary action than is currently the norm or standard of practice within the CSU. Below, we discuss some potential frameworks for defining *other conduct of concern* and developing disciplinary practices.

We recognize that responding to *other conduct of concern* is a fraught area in some respects, particularly given considerations of free speech and academic freedom. We fully embrace and support free speech and academic freedom protections, and under no circumstances do we advocate for disciplinary action for protected speech. We learned that prior efforts on individual campuses and at the system level to respond to *other conduct of concern* have been stymied or stalled by the belief that the conduct was too difficult to define with sufficient clarity, or that the issues tied to free speech were too fraught to reconcile with expectations about civility and respect.¹³⁶ These issues are not unique to the CSU, but rather, are endemic on college and university campuses across the country. For example, in the student context, we are aware of recent case law regarding bias incident response teams in the Fifth and Sixth Circuit that held

¹³⁶ For example, we learned of a systemwide workgroup on workplace environment that was exploring an anti-bullying policy. The workgroup was formed following advocacy by the CSUEU and included representatives from all sectors of the system.

that having a formal process for reporting concerns about bias incidents could potentially chill free speech.¹³⁷ At the same time, the Seventh Circuit and federal district courts in the Fourth and Eleventh Circuits have held the opposite, supporting the continued use of bias response teams.¹³⁸

3. Factors Inhibiting Effective Responses

Identifying an effective solution requires a careful balancing of multiple considerations. We heard concerns in each of the following areas:

- There is no written policy or formal communication that would help to set expectations about conduct, particularly in the context of free speech and academic freedom.
- There is insufficient training and professional development to prepare managers, department chairs, associate deans, and deans to provide early intervention and resolution.
- There are limited options on most campuses for conflict resolution or other informal responses to concerns, such as through an ombuds, employee relations function, or adaptive dispute resolutions professional.
- Traditional employee relations functions and skills have atrophied given the shift in their role to management of grievances rather than counseling, resource constraints, and understaffing.

¹³⁷ See *Speech First, Inc. v. Schlissel*, 939 F.3d 756 (6th Cir. 2019). Speech First sued the University of Michigan, asserting that Michigan’s definitions for harassment, bullying, and bias incident were unconstitutionally overbroad and vague and that the University’s Bias Incident Response Team, an “informal resource to support students who feel they have experienced bias in the University community, to refer them to other campus resources as appropriate, and to educate the University community with respect to issues related to bias,” chilled free speech. The Court found that, “Both the referral power and the invitation to meet with students objectively chill speech.”

Following this holding, the University of Michigan disbanded its Bias Response Team and created Campus Climate Support (CCS), a group of campus professionals that focus on addressing concerns that may create harm to members of the University community based on their identity. Michigan defines a *campus climate concern* as “actions that discriminate, stereotype, exclude, harasses or harm anyone in our community based on their identity (such as race, color, ethnicity, national origin, sex, gender identity or expression, sexual orientation, disability, age, or religion). Concerns may stem from fear, misunderstanding, hatred or stereotypes. Behaviors may be intentional or unintentional.” See <https://deanofstudents.umich.edu/campus-climate-support>.

See also *Speech First, Inc. v. Fenves*, 979 F.3d 319 (5th Cir. 2020), as revised (Oct. 30, 2020) (finding standing to challenge the University of Texas’s bias response team).

¹³⁸ See *Speech First, Inc. v. Killeen*, 968 F.3d 628 (7th Cir. 2020), as amended on denial of reh’g and reh’g en banc (Sept. 4, 2020) (distinguishing *Schlissel* because being reported to the University of Illinois’ bias-response team had no disciplinary authority, meetings with the team were optional and the majority of students declined to meet with the team, there were no consequences to being reported, and complaints to the team were not published or disclosed as part of a student’s record). See *Speech First, Inc. v. Sands*, 2021 U.S. Dist. LEXIS 181057 (W.D. Va. Sep. 21, 2021); *Speech First v. Cartwright*, 2021 U.S. Dist. LEXIS 146466 (M.D. Fla. July 29, 2021).

As a result of these factors, many of the 23 CSU universities lack the suite of conflict resolution services, core competencies and skills, fluency in effective responses and other resources to respond in a timely and effective manner to emergent issues. This is aggravated, as with all other issues identified in this report, by staffing and infrastructure challenges in student affairs, human resources, and faculty affairs. As a result, even with the best intentions, responding to *other conduct of concern*, often thought of as less serious in nature, is not prioritized and is lost in the overload accommodation as campus administrators prioritize responses to conduct that more squarely raises a potential violation of the Nondiscrimination Policy.

The lack of articulable process, training and education, sufficient resources and staffing all limit the ability to engage in consistent, informed, and coordinated responses. These deficiencies also limit the ability to track and identify repeated or escalated patterns of conduct and hinder the opportunities to address conduct before there is escalation. For example, a “one-off comment” based on race or gender may not rise to the level of a policy violation, but it cannot be ignored as the cumulative effect of repeated comments based on protected status may rise to the level of a hostile environment. In order to evaluate and understand the full context, tracking of reported conduct is essential to evaluate subsequent reports. In the absence of formal process, there is no ability to document reports and track institutional responses, including educational conversations, supportive measures, training, progressive discipline, or patterns of conduct.¹³⁹ The gap in process also impacts opportunities to educate about and address academic freedom and free speech considerations that must be factored into institutional responses. Ultimately, ineffective responses can create the perception that these behaviors are tolerated, which can negatively impact morale and decrease effectiveness.

4. Working towards Solutions

A handful of the 23 universities have taken steps to address the existing gaps in policy and process. For example, Dominguez Hill’s Academic Affairs Division piloted a Conflict Resolution Protocol during 2018-2019 academic year, which was intended to assist faculty and staff in resolving conflict.¹⁴⁰ The Conflict

¹³⁹ As noted elsewhere, there is also no ability to track the investment of time and personnel resources involved in responding to *other conduct of concern*, which impedes the ability to ensure sufficient allocation of staff and resources.

¹⁴⁰ The program was piloted within one academic department. Further development was hindered by the impacts of the COVID-19 pandemic.

Resolution Protocol, which was developed with the assistance of an external consulting group, is based on conflict transformation and restorative justice practices, focusing on relationships using a high accountability model. The protocol includes escalating actions for participants to take to resolve the conflict and contains templates that participants can use for each step, including, for example, a template for setting up an initial meeting to discuss the conflict, with a sample phone call script and a sample email message.

As another example, in the spring of 2022, the President of Cal Poly Pomona launched a joint Academic Senate and Administration Working Group on conflict resolution to evaluate models for a university resource that would support faculty seeking to manage conflict in their immediate workplaces and, more broadly, to develop the skills and infrastructure to systematically and comprehensively support conflict management and resolution. The Working Group found: “Our main takeaway is that there should be many types of processes and options available and that a significant focus of the office should be on training and coaching in order to teach campus members how to manage day-to-day conflict and improve the culture and morale on campus.”¹⁴¹ In March 2023, the President and the Provost charged an administrative working group with representatives from Human Resources, Learning and Development, Student Affairs, the Office of Equity and Compliance, Faculty Affairs, Employee and Labor Relations, and Inclusive Excellence to develop an operational model that would serve the larger community, including staff and students in addition to faculty.¹⁴² The proposed model is a Conflict Resolution Services & Ombuds, which will serve as an accessible entry point for all students, staff, and faculty and provide impartial, informal conflict resolution services, problem solving support, referrals to campus resources and tools, proactive training and professional development, and guidance about university structure, policies, procedures and practices. The Conflict Resolution Services & Ombuds will be guided by a pending *Principles of Community* statement and led by a Director/Ombuds, who will report to the President as part of a newly created People, Culture, and Institutional Affairs unit.

As another example, San Diego State has established the Inclusive SDSU Communication System based in the Division of Diversity and Innovation in collaboration with the Division of Student Affairs. The purpose of the system is to document instances that promote SDSU’S campus commitment, as well as those that

¹⁴¹ Conflict Management/Dispute Resolution/Mediation Final Report & Recommendations (December 2022), Cal Poly Pomona.

¹⁴² *Report and Recommendations, Working Group: Conflict Resolution Services & Ombuds* (April 21, 2023).

fall short. The Division of Diversity and Innovation uses these submissions to identify patterns, to recognize and celebrate extraordinary acts of inclusion, and to develop strategies for community improvement where needed. The process includes referrals to proper offices for policy violations, but also focuses on opportunities for education and effective conflict resolution led by diversity professionals and provides access to Educational Opportunity Programs, Outreach and Success and the Office for Restorative Practices.

Most recently, we understand that Bakersfield is planning to hire a Professional Responsibility Coordinator who will report to the AVP for Faculty Affairs. Faculty Affairs has established a new process for handling *other conduct of concern*, which will involve the new Professional Responsibility Coordinator, as well as other units in the University.¹⁴³ The Chancellor’s Office Human Resources and members of the Office of General Counsel have also been exploring potential policy models for responding to *other conduct of concern*. Campus VPs and AVPs for Human Resources and Academic/Faculty Affairs have also met to identify challenges and chart solutions.

While the above examples are useful, they are not a panacea. Programs like these, developed to fill gaps in systemwide policy and approach – or in legal frameworks – must be part of an institutional commitment to address *other conduct of concern* that impacts culture and climate head on.

Nationally, traditional employee relations practices are evolving and transforming through the lens of integrated responses to discrimination, harassment, and *other conduct of concern* that recognize that effective responses balance multiple (sometimes competing) considerations and require coordinated information-sharing and decision-making. Because of the often overlapping considerations, Title IX/DHR professionals must partner directly with student affairs, human resources, faculty affairs, and inclusive

¹⁴³ The process is documented in this [conduct guidance](#), and is as follows: the AVP for Faculty Affairs will receive complaints that do not meet the threshold for the Nondiscrimination Policy. The AVP for Faculty Affairs will conduct a preliminary review of each complaint, and then route the complaints to one of two categories for handling the complaint, Category A or Category B. If the complaint is sent to Category A, it will be processed by one of the following four units: HR, Faculty Ombuds, the Committee for Professional Responsibility, or the School Deans/AVPs/Associate Deans. If the complaint is routed to Category B, the new Professional Responsibility Coordinator will apply their process to conduct an investigation and internal inquiry, resulting in either a finding, or no finding. If the investigation results in a finding, then the Professional Responsibility Coordinator will work with the individual in an intervention, if there is not a finding, then a report will follow.

excellence to ensure that there is common understanding and fluency related to issues of jurisdiction, scope, and how each department will coordinate, share information, and respond.

As the CSU evaluates how best to address *other conduct of concern*, especially given the need to incorporate balanced attention to free speech and academic freedom, it will be important to establish a written framework for reporting, triaging, and responding in a coordinated, integrated manner. California law provides some limited direction to begin the framework. In 2015, Assembly Bill 2053 created the following definition of abusive conduct:

[C]onduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.¹⁴⁴

AB 2053 required that prevention of abusive conduct be a part of all training curricula in the employment setting, but did not require educational institutions to incorporate abusive conduct as a specific form of prohibited conduct under university policy. For CSU employees, abusive conduct is addressed in the *Discrimination Harassment Prevention Program* online module which employees are required to complete every two years.

The University of California (UC) system has responded to AB 2053 in two ways. First, on July 26, 2016, then-President Janet Napolitano issued *Guidance on Abusive Conduct and Bullying in the Workplace* that clearly communicated to campus community members that the UC system does not tolerate abusive conduct or bullying, and that such behaviors should be addressed directly and comprehensively, with accountability for individuals found to have engaged in abusive conduct. Second, on December 15, 2022, the UC adopted a policy on *Abusive Conduct in the Workplace*.¹⁴⁵ UC's *Abusive Conduct Policy* provides an explicit framework for reporting, investigating, and responding to abusive conduct and retaliation. The *Abusive Conduct Policy* also incorporates reporting requirements for managers, supervisors, chairs and

¹⁴⁴ Stats.2014, c. 306 (A.B.2053), § 1, eff. Jan. 1, 2015.

¹⁴⁵ See University of California – *Abusive Conduct Policy*, <https://policy.ucop.edu/doc/4000701/AbusiveConduct>.

deans; provides frameworks for resolution; and, directs each university to develop “implementing procedures that include the identification of responsible offices for reporting and investigation, details of resolution options, tracking of reports, training, and communication,” noting that the specific procedures for investigation and resolution depend on the respondent’s position in or relationship to the University.”¹⁴⁶

This approach would serve the CSU well. Another applicable framework for employee discipline is Education Code § 89535, which provides that: “Any permanent or probationary employee may be dismissed, demoted, or suspended for the following causes: (a) Immoral conduct. (b) Unprofessional conduct. (c) Dishonesty. (d) Incompetency. (e) Addiction to the use of controlled substances. (f) Failure or refusal to perform the normal and reasonable duties of the position. (g) Conviction of a felony or conviction of any misdemeanor involving moral turpitude. (h) Fraud in securing appointment. (i) Drunkenness on duty.”¹⁴⁷ For most employees, when formal disciplinary action is taken, it is based on section 89535, and typically includes subsection (b) “unprofessional conduct.” The “unprofessional conduct” category, is not defined in the Education Code, and should be utilized across the system as a means of addressing conduct that may not violate the Nondiscrimination Policy, but is nonetheless appropriate for employee discipline.

For students, expectations are set forth in Title 5 of the California Code of Regulations, under Section 41301 - Standards for Student Conduct as “Campus Community Values:”

The University is committed to maintaining a safe and healthy living and learning environment for students, faculty, and staff. Each member of the campus community should choose behaviors that contribute toward this end. Students are expected to be good citizens and to engage in responsible behaviors that reflect well upon their university, to be civil to one another and to others in the campus community, and contribute positively to student and university life.¹⁴⁸

¹⁴⁶ Id.

¹⁴⁷ Cal.Educ.Code .§ 89535.

¹⁴⁸ Cal. Code Regs. tit. 5, § 41301.

While this is a statement of aspiration, not a basis for discipline if not followed, it is helpful to clearly articulate expectations. California state law and CSU policy provisions provide the framework for creating workable definitions and statements of behavioral expectations.

As set forth in the recommendations below, the CSU must also create frameworks for responding to, investigating, resolving and documenting reports of *other conduct of concern*. Because *other conduct of concern* encompasses many diverse categories of conduct, there are multiple potential avenues for effective programs that address concerns related to both students and employees. Below are promising or effective programs from peer institutions:

- University of Michigan Campus Climate Support¹⁴⁹
- University of Wisconsin-Madison Staff Hostile and Intimidating Behavior¹⁵⁰
- Harvard University Anti-Bullying Policy¹⁵¹
- Columbia University Anti-Bullying Initiative¹⁵²

5. Recommendations re: Other Conduct of Concerns

We offer the following recommendations to develop policy, infrastructure, systems, and training to address *other conduct of concern* at the system and individual campus level:

1. Develop a written policy, document, or statement by senior leadership to establish expectations, guidelines, and/or definitions of conduct
 - 1.1. The written framework should address unprofessional conduct, abusive conduct, microaggressions, acts of intolerance, and other disruptive behavior in the living, learning and working environment
 - 1.2. The written framework must also address intersections with free speech and academic freedom, including the explicit recognition that the CSU cannot discipline for pure speech

¹⁴⁹ <https://deanofstudents.umich.edu/campus-climate-support>.

¹⁵⁰ <https://policy.wisc.edu/library/UW-5041>

¹⁵¹ [https://provost.harvard.edu/files/provost/files/non-discrimination_and_anti-bullying_policies.pdf?utm_source=SilverpopMailing&utm_medium=email&utm_campaign=AMG%20ADAB%20policies%203.22.23%20\(1\)](https://provost.harvard.edu/files/provost/files/non-discrimination_and_anti-bullying_policies.pdf?utm_source=SilverpopMailing&utm_medium=email&utm_campaign=AMG%20ADAB%20policies%203.22.23%20(1))

¹⁵² <https://provost.columbia.edu/content/columbia-anti-bullying-initiative>

- 1.3. Consider hosting a symposium that involves systemwide implementers, representatives from collective bargaining units, and legal experts on free speech and academic freedom to discuss collaborative approaches to achieving shared goals around addressing workplace and campus conduct that may not rise to the level of a violation of the Nondiscrimination Policy but is otherwise disruptive to the living, learning, and working environment
2. Reinforce CSU values and expectations about respect, tolerance, and professionalism through programming and opportunities for in-person engagement
3. Strengthen and expand available campus competencies regarding conflict resolution, navigating interpersonal conflict, restorative justice, and other forms of remedial responses:
 - 3.1. Strengthen traditional employee relations functions within human resources to assist in responding to concerns involving faculty and staff
 - 3.2. Strengthen competencies of managers, supervisors, department chairs, and leads by providing expanded training and professional development
 - 3.3. Consider the need for additional personnel, such as an ombudsperson or a conflict resolution professional, including those with expertise in restorative justice and mediation
 - 3.4. Develop communications competencies to embrace the tension of difficult issues including the intersections of speech in the contexts of politically and socially charged events and issues
 - 3.5. Communicate new and available conflict resolution suite of resources through web content, annual training, and awareness campaigns
4. Create a centralized reporting mechanism at the campus level that includes the option for online and anonymous reporting
5. Build a triage model/review process to ensure that all reports are assessed by core campus implementers and evaluate potential avenues for resolution that include the following
 - 5.1. Identify potential policy violation and investigative response, if any
 - 5.2. Refer to the appropriate administrator/department to coordinate/lead the response
 - 5.3. Identify reasonably available individual supportive measures, if any
 - 5.4. Identify appropriate community remedies, if any
6. Develop a review/triage team, which includes, at a minimum, representatives from Student Affairs, Faculty/Academic Affairs, Human Resources, UPD, Inclusive Excellence and/or Chief Diversity Officer, Title IX Coordinator, DHR Administrator, and University Counsel

7. The reporting and resolution processes must ensure sufficient documentation system to track responsiveness, patterns and trends
8. This information should be tracked and analyzed to inform the need for remedial actions regarding culture and climate, targeted prevention programming, and ongoing issues of concern at both the campus and system-level
9. To aid in building these competencies, systems, and structures on campus, the Chancellor's Office should be tasked with:
 - 9.1. Providing support and guidance
 - 9.2. Developing the report and triage structure
 - 9.3. Creating templates and process flows
 - 9.4. Procuring or developing the records management system that should be used consistently on all campuses

D. Trust Gap

1. Evidence Base

We had the opportunity to engage with or hear from approximately 20,000 campus constituents across the system, including students, faculty, staff, administrators, and senior leaders. As noted above, through the systemwide survey, we heard from more than 11,000 undergraduate and graduate students, more than 4,400 staff and administrators, and more than 2,700 faculty members. We also had the opportunity to interact directly with students, faculty, staff, and administrators during our campus visits, follow up Zoom meetings, and through submissions to the CalStateReview@cozen.com email address. We committed to gathering individual experiences, insights, and perspectives that would inform our understanding of the unique issues within the CSU generally, and at each university specifically, but to do so in a manner that protected individual privacy. In this report, and in the individual campus reports, we share aggregated information that reflects common themes. Gathering information in a manner that allowed for anonymity helped to ensure that individuals who spoke with us or shared information via the survey could do so freely.

Distrust is the most common concern we heard across all constituents, including distrust of the Chancellor's Office, distrust of senior leadership, and distrust of other university constituent groups. While it is not uncommon to hear about trust gaps at colleges and universities across the country, despite our work at hundreds of institutions of higher education (often in the aftermath of Title IX or Clery Act

challenges), our familiarity with the siloed structures that can reinforce divisions, and our awareness of the perceived staff versus faculty divides that exist on many campuses, we were struck by the breadth and depth of distrust we observed across the CSU and the potential disruptive impacts of that trust gap to the effectiveness of campus Title IX/DHR programs.

We recognize that there are multiple complex cultural, organizational, and structural factors underlying trust considerations on each campus, many of which are unrelated to Title IX/DHR. The issues that are the subject of our review necessarily sit within each university's broader ecosystem, which has been impacted by many factors unrelated to the identities or the roles of the individuals involved – for example, as outlined in Section IV above, the COVID-19 pandemic, financial constraints that impact salary and staffing, and the general nature of discourse around the country, which has become more entrenched and polarized.

2. Aggregate Themes

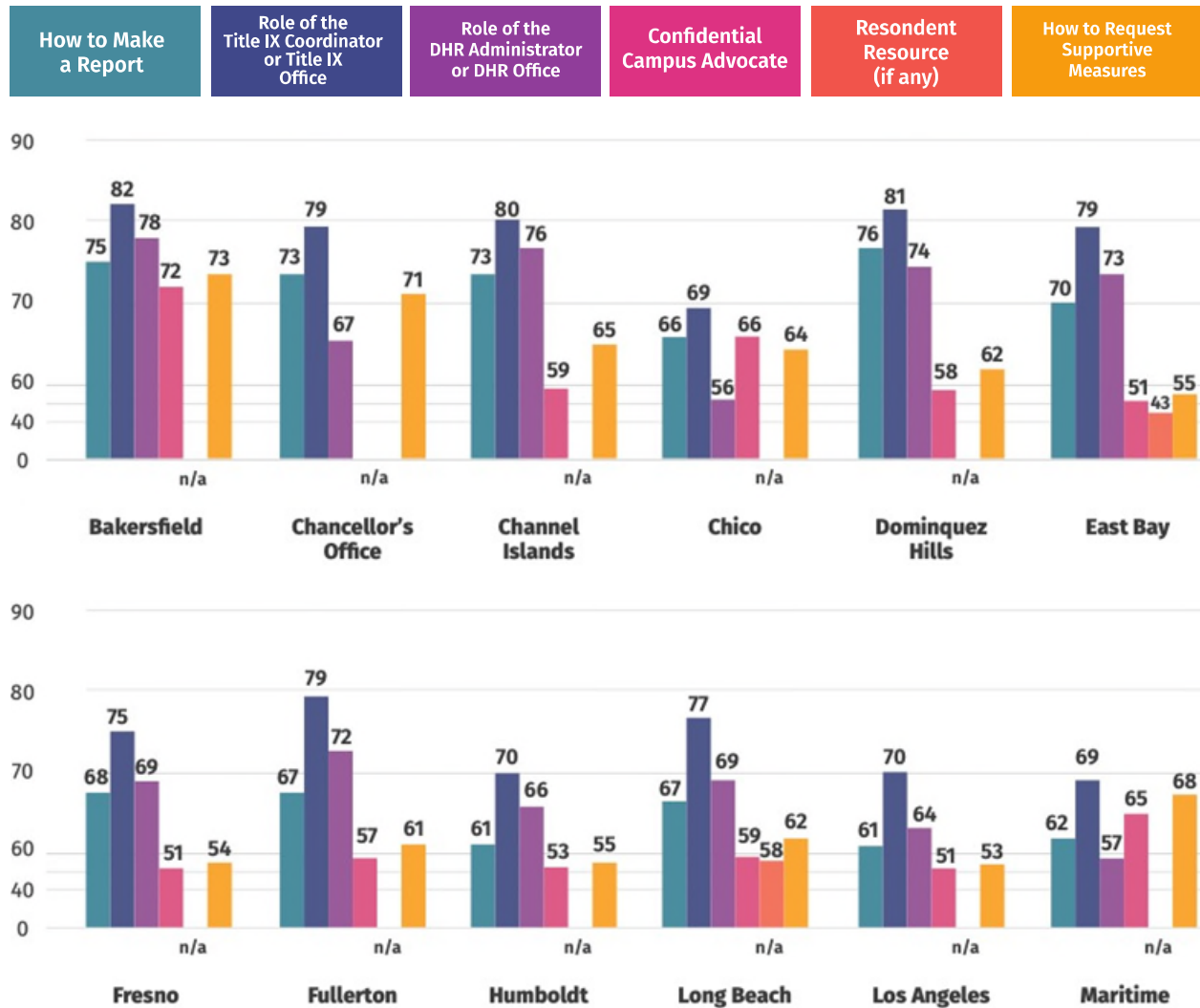
We recognize that the trust issues are particularly acute at this moment in time, given the high-profile concerns that arose following a number of serious incidents both at the Chancellor's Office and at individual CSU universities. Those incidents are outlined in Section IV.D, above. We received a significant number of survey and interview responses from university constituents that referenced distrust following these public accounts and the resulting impacts on perceptions of people, processes, and systems. The following quote is representative of feedback we heard more universally:

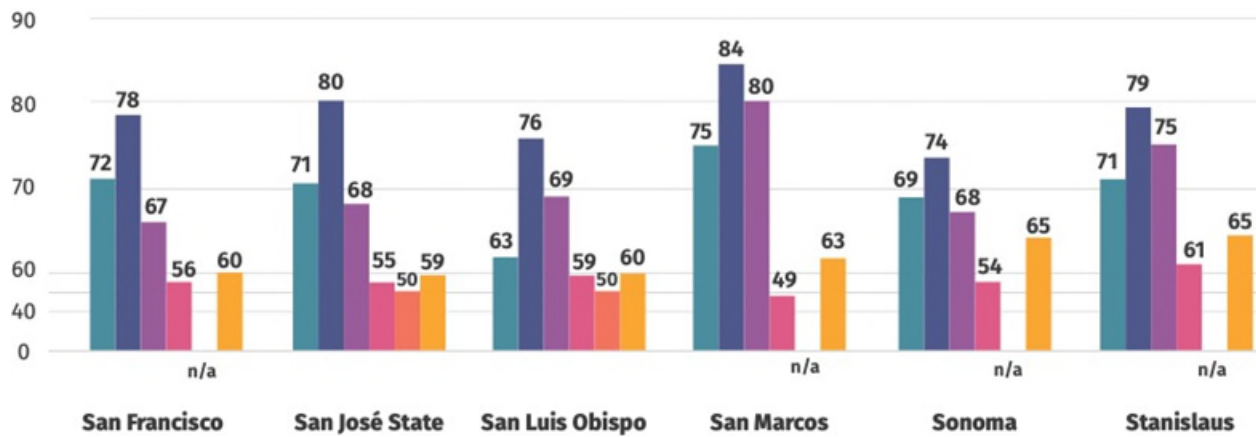
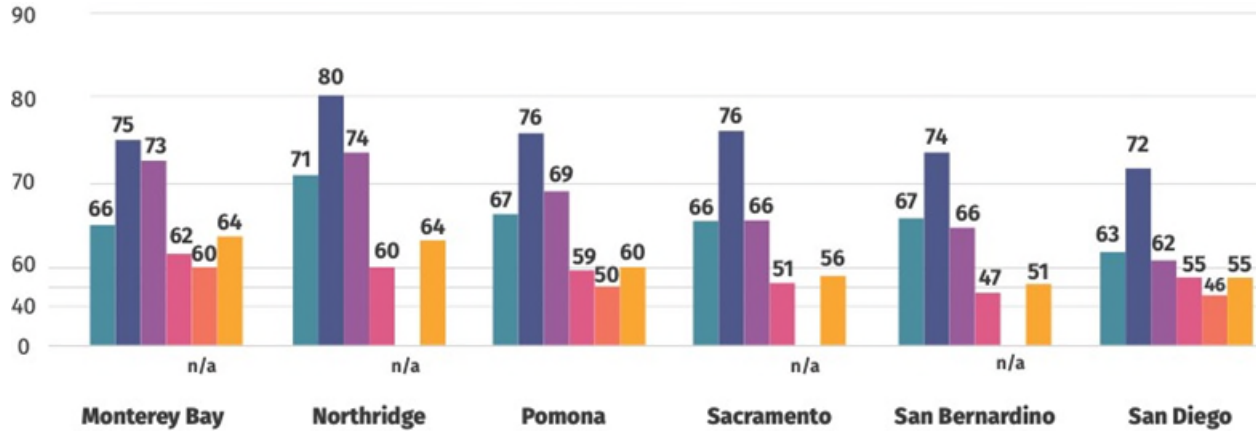
The very public mishandling by [the former Chancellor] has destroyed my trust in the CSU's ability to address sexual misconduct, discrimination, harassment, and retaliation. The scandal demonstrates very clearly to me that despite the CSU's written anti-harassment policies, those in power won't face severe consequences . . . I don't feel I have any advocacy for me in the CSU system if I were to ever face sexual harassment from one of my superiors.

We heard similar concerns about other individuals in a position of power. One individual shared, "I have some distrust in the system, based on the fact that high ranking people have gotten away with things before due to their connections."

At the most basic level, some of the trust issues arise simply from lack of awareness of campus policies, resources, and the requirements of federal and state law, including the privacy safeguards that restrict

sharing of personally identifying information. For example, students uniformly shared a lack of awareness of the specific campus resources available, both within Title IX/DHR programs and for confidential resources. In the systemwide survey, we asked respondents to rate their awareness and knowledge of Title IX, DHR, and campus resources on a scale from 0 (Not Aware or Knowledgeable) to 100 (Very Aware and Knowledgeable). Each number below should be viewed, essentially, as a “grade” on the level of awareness and knowledge. The aggregate results are below:





This relatively low visibility of the Title IX/DHR programs at many CSU universities arises, in part, from the limited programming and outreach beyond the online modules (which provide only limited information about specific campus resources). Students routinely expressed not knowing who the Title IX Coordinator was or what resources were available through the Title IX/DHR program, even, in some instances, students

in leadership positions.¹⁵³ The limited awareness of available resources contributes to and perpetuates perceptions of distrust, in some instances based only on the perception of institutional bias, as discussed in Section IV, and in some instances, based on negative perceptions or experiences of peers. Students uniformly expressed the misperception that the sole purpose of Title IX/DHR programs is investigative or adjudicative only, with far less awareness of the availability of supportive measures and other campus resources. We repeatedly heard the concern that Title IX/DHR programs are “hyper legalistic.”

At institutions across the CSU – and at schools across the country – a common perception is one of institutional bias, that individual campus administrators act to protect the interests of the institution instead of protecting individuals experiencing harm. That perception was palpable across the CSU, and in some instances, grounded in the high-profile incidents discussed earlier. Some individuals expressed significant skepticism that the system or individual campuses would hold people in positions of power or authority accountable. Others shared their perspective that the system adopts an overly conservative and risk adverse approach driven by a fear of litigation. At the same time, much of the perception stems from factors that may not be tied to the integrity of institutional responses, but rather, the impacts of protracted processes required by law and delays in responsiveness and time frames caused by insufficient staffing and resources. We observed how insufficient attention to care and communication creates a gap that gets filled with negative inference. Those issues are particularly acute at some universities, given the unevenness of staffing, resourcing, and training and experience levels across campuses. Because many of the cases resolved through formal Title IX/DHR processes involve the assessment of credibility, campus processes must be implemented with rigorous attention to communication, care, balance, neutrality, and integrity, as they will typically become the focus of subsequent challenges to outcomes.

We heard the following representative feedback about trust of Title IX/DHR programs or Title IX/DHR process:

- *If we don't know what Title IX is or does, how can we trust them?*
- *The university is so afraid of being sued by anybody that they refuse to do anything. The default position is make it go away.*
- *Personally, I don't have a lot of trust in the campus resources because I've heard nothing gets done or more harm was done than good.*

¹⁵³ These issues were exacerbated on campuses with a high level of transition in staffing. The turnover in the Title IX Coordinator or DHR Administrator role inhibited the ability to develop awareness or interpersonal relationships that would support trust.

- *We the students do not trust the University. Our information and experiences have been mishandled. The University almost always does nothing. The University's definition of conduct do not support survivors or complainants. Reporting has never solved anything for myself or my peers.*
- *I do not trust Title IX and DHR Administrator based on their past failures that have caused other faculty to quit their jobs.*
- *From a complainant's standpoint, the role of the Title IX coordinator is to defend the university from litigation. As a result, the default is to produce some legalese meant to deter complainants from pursuing their claims or to drag on the investigation for so long that the case no longer applies because the respondent has left or the Title IX coordinator has left.*

We heard specific concerns about the responsiveness of Title IX/DHR professionals and the impacts of lengthy processes required under federal law:

- *Our Title IX office is so understaffed, I cannot see how they could possibly, honestly meet the needs of our students. I have heard more than one student complain about feeling silenced and re-traumatized by their experience reporting sexual violence to our Title IX office. I would never go to them . . . as they have already broken trust and they seem so much more concerned with fulfilling federal and state obligations than they do with the well-being of our student body.*
- *Investigations take months and months – it's burdensome and not worth it.*
- *Students have dropped out because the process took too long . . . or our concerns were not addressed.*
- *I have no faith in the process here. I've seen a student tormented for months while cases dragged out, and a junior faculty member held in limbo for nearly an entire academic year. It may be that there was no way to avoid that, given federal guidelines. I do know that if I report something, or if I encourage someone else to report or file a complaint, I am pushing things in a direction that will likely make the next few months of that person's life miserable, and will not acknowledge damage to the broader community around them.*
- *I made a report over a year ago and have had no resolution.*
- *Response was slow, defensive, and ineffective.*
- *I reported the situation and never heard back.*
- *The fact that I never heard back regarding my incident makes me believe the university does not care about the incident I experienced. Many others have said the same thing.*
- *Why do I have to chase TIX and DHR for a response? We are left twisting in the wind too often.*
- *The run of the mill discrimination happens over and over – it's part of the everyday experience – so many people have spun the hamster wheel.*
- *We don't trust the TIX Office because of its history. We always help our students but there are times we have not reported things to TIX because we know they'll do more harm than good.*
- *Because of the legal framework of TIX and DHR, those functions are seen as ineffective. When you have seen that nothing happens year after year, nobody ever comes forward.*

We also heard extensive concerns that centered around the perceived unfairness of university processes and sanctions. The issues of distrust in this arena were often related to an individual's role on campus, sometimes based on a monolithic view of a particular constituency. The default perception was that the

responses to reports, including outcomes and sanctions, depended on one's status or title rather than a neutral application of policy and process. On many campuses across the country, we have long observed divisions between staff and faculty, based on how each constituency perceives the other. At the CSU, we observed a third distinct constituency – managers or administrators, who were often viewed through a jaundiced lens by other campus constituents. We heard from many individuals deeply held views – individuals were quick to judge one another's intentions, often presuming bad intent, rather than good faith. This entrenched thinking led to striations and divisions based on role of the individual, rather than consensus built on engaging in dialogue with an earnest intent to understand. We urge the members of the CSU community to resist this default to distrust, and to instead be open to other explanations that may account for negative experiences and outcomes, explanations that may not be tied to intent, but tied to infrastructure, resources, competence, and legal frameworks.

Many staff and faculty shared the perception that the conduct of administrators is not subject to the same level of review and scrutiny as conduct of staff members. We heard the perspective that individuals in a position of power and authority receive "hand slaps" whereas staff without commensurate power receive more stringent discipline.¹⁵⁴ These perceptions were not always supported by specific examples, in part because personnel actions are often private and outcomes are not widely known. In addition, even if an outcome is shared, the specific facts at issue are generally known only to the parties and a small handful of individuals. This allows disparate narratives to be disseminated on campus by each party, with no ability for non-party campus constituents to test the integrity or reliability of the investigation or resolution.

On the issue of trust, campus constituents shared the following perspectives:

- *Even when it's been clear that misconduct, discrimination, harassment, or retaliation has occurred, not enough discipline happens. There have been professors and staff that have been allowed to keep working or be put on administrative paid leave for over a year.*
- *It's well known the CSU protects its perpetrators more than their victims or employees of lower status. I've seen it happen to other members in different departments and how the individuals of power hierarchy have treated or reacted to the situation. Most times, the victims or employees of lower status take the brunt of the actions caused by the perpetrators or those in higher positions and nothing is done to support the victims. The staff employees are the backbone of the university, but we're not being treated well. And it's sad.*
- *On our campus, the term "MPP" is jokingly referred to as the "Management Protection Program."*

¹⁵⁴ Ironically, because MPPs are at will employees, not represented by a union, the disciplinary processes are far more streamlined.

Campus community members expressed concerns about levels of status and power within the faculty, including the perception that tenured faculty were “untouchable.” Campus constituents across the 23 universities described a hierarchy between tenured faculty, non-tenured faculty, and staff, which left non-tenured faculty and staff feeling as though they were subject to mistreatment. Junior and non-tenured faculty members described feeling vulnerable making reports, and believed their reports were not taken as seriously as reports by tenured faculty members. Even within the faculty body, we heard concerns about accountability issues, with some faculty expressing the belief that their colleagues routinely “got away with” inappropriate conduct. The issues are particularly acute when it relates to disciplinary processes under collective bargaining agreements or state law, which mandate external review by arbitrators and administrative law judges, who often dismiss or substantially reduce university issued disciplinary sanctions. In addition, many faculty members described the positive aspects of the California Faculty Association (CFA), but also expressed the perspective that the CFA needs to do better at “policing its own” and “not defending the indefensible.” At many universities, we heard vociferous concerns from faculty members that the CFA’s representation of accused faculty members took precedent over its representation and support of faculty members who were complainants in the same matters.

Campus constituents shared the following perspectives:

- *Filing a report against a tenured faculty member or department chair could be career-ending given the power differentials.*
- *While improvements are being made in terms of racial and gender equity, senior full professor faculty can at times (on committees and in departments) browbeat, cajole, bully, manipulate, and guilt trip junior faculty to a degree that in any other profession would be grounds for termination. There is an arrogance and aggressiveness to seniority that is often combative and that in and of itself is a hindrance to recruitment and retention of skilled junior faculty of any racial, socio-economic, gender, etc. background.*

In addition to distrust caused by perceptions of the process itself, we also learned of pervasive concerns about the potential for retaliation by peers, colleagues, or the university:¹⁵⁵

- *Retaliation is a perceived problem on this campus and people did not trust the process/outcome.*
- *If we make a report, we are seen as the enemy of the university.*
- *The retaliation protections are not proactive which is scary; they only serve you once something has already happened.*
- *Whistle blower protections are insufficient. Retaliation can be subtle and bureaucratically invisible.*

¹⁵⁵ We note that not all conduct that is perceived as retaliatory in nature will meet the elements of the retaliation definition, and that the perception of retaliation may loom larger than the actual incidence.

- *I worry about complaining about the offensive things my professors have done because I fear retaliation or lack of follow up on the university's part.*
- *The overarching compliance focus of [Executive Orders] 1095 and 1096 coupled with the density of policy language as well as the explicit exclusion of confidential ombuds services to help survivors contextualize, navigate policy and elevate issues on their own terms create an impression that reporting may result in retaliation.*
- *Stop the retaliation against staff, that is rampant when a person files a complaint.*
- *Retaliation happens. The university does nothing. Their main interest is in avoiding a lawsuit against the university.*
- *I will not provide additional details but I continue to experience retaliation, years after filing a complaint. I will never be totally safe on campus until I can retire.*

We did not parse each of the thousands of individual perceptions for accuracy. Although we reviewed Title IX and DHR case files and investigative reports at each university, we did not seek to correlate the feedback with individual cases to evaluate whether a particular perspective was supported by the record. We did find evidence in our file review to support many of the individual perspectives related to responsiveness, timeliness, and the disruptive impacts of the lengthy, federally required Title IX process and CSU's concurrent understaffing. In some cases, we also observed concerns about the quality of the investigation. We also learned about specific campuses where the trust gap was driven by interactions with specific campus administrators, including Title IX/DHR professionals. In some instances, feedback from current Title IX/DHR professionals corroborated concerns about the competencies or effectiveness of former staff. As discussed in Section IV.D.3, we also saw an evidentiary foundation that supported the perceived difficulty in disciplining faculty given the protracted nature of the statutory and contractual disciplinary processes that follow a finding of responsibility. These are just a handful of examples of how the perceptions of campus community members and conclusions of distrust can be tied to specific policy, process, or infrastructure gaps.

3. Impacts of the Trust Gap

Even without this correlation and demonstrated evidentiary foundation, negative perceptions are a powerful deterrent to reporting and participating in university processes. In this way, the trust gap directly impacts the CSU's ability to respond to conduct that may violate the Nondiscrimination Policy. As noted above, where there is a gap in communication, that gap is often filled with negative inference. By not effectively resourcing and conducting outreach to build awareness about Title IX and DHR programs on campus, those programs are left vulnerable to negative campus narratives and perceptions. Those negative perceptions increase barriers to reporting and enhance fears about actual or perceived retaliation. As reflected in survey responses, students, faculty and staff state that they are choosing not

to report conduct for a myriad of reasons. Respondents shared the following reasons in the campus surveys (data aggregated across all universities):

Did any of the following reasons impact your decision not to report to the University? Please check all that apply:	Title IX	DHR
Not sure how to report	25.45%	21.16%
Afraid of getting in trouble for violating a University policy (e.g. underage drinking or misuse of technology)	7.50%	7.92%
Self-blame, embarrassment or shame	14.36%	12.29%
Worried about others' reaction (being blamed, not being believed, being treated differently by others)	20.29%	29.24%
Did not want to get the other person in trouble	9.53%	9.12%
Fear of retaliation	25.56%	48.02%
Afraid that family or partner would find out	5.20%	1.74%
Did not think the incident was serious enough to report	13.17%	19.10%
Did not think reporting would solve anything	27.43%	53.16%
Not comfortable discussing the details of the incident	9.96%	8.31%
Wanted to forget about it	11.52%	10.77%
Not sure if what happened fit the University's definition of the conduct	10.35%	16.78%
Concerned about privacy	18.39%	19.66%
Did not know enough about the University's process	11.73%	11.17%
Did not want to go through the University's process	11.46%	16.36%
Did not trust the University process	24.07%	41.72%
Did not think the University would do anything	24.90%	45.26%
The person it happened to <u>did</u> not want me to report it	14.50%	11.80%
Other:	32.27%	

While barriers to reporting sexual and gender-based harassment and violence exist across the nation, it is incumbent on the CSU to identify and remove barriers that may be CSU-specific – including, for example, lack of awareness of resources, responsiveness, and the timeliness of resolution processes. Even after a report is received, the complicated, protracted and overly legalistic nature of processes also dissuades individuals from continuing an investigation once started. We learned of many examples where investigations were not completed because the complainant elected to not continue the investigation, or worse, to leave the CSU. Based on the data reflected in the individual university reports, a disproportionately low number of cases proceeded to formal resolution. These barriers to reporting and participation lead to unaddressed conduct (or misconduct) on campuses, which negatively impacts morale, undermines confidence in the institution, and impacts the institution’s core educational mission. Fundamentally, barriers to reporting or participating may mean that the CSU is unable to retain students and employees because the unaddressed conduct impacts their continued enrollment or employment.

We recommend that the CSU, and individual campuses, take action to close the trust gap through informed, consistent, and frequent communication. In some instances, as identified throughout this report, that requires addressing process gaps and strengthening campus responses to shift campus perception. In other instances, that requires sharing more information to inform campus perceptions. The reality is that not every individual will be satisfied with the institutional response – and individuals are not guaranteed any particular outcome. They are, however, guaranteed a fair, prompt, equitable, thorough, and impartial process, access to reasonably availability supportive measures, and informed, evidence-based outcomes reached by trained, competent, and impartial investigators and decision-makers. These goals are reinforced through good communication and structures that ensure accountability.

4. Recommendations to Address the Trust Gap

We offer the following recommendations to address the trust gap at the system level:

1. Senior leadership must clearly communicate priorities, commitment, and values
2. As noted elsewhere, develop robust, accessible web presence for the Title IX/Civil Rights Division
3. Create a system-level advisory committee that includes faculty, staff and student representation
4. Develop clear and plain language communications that are responsive to the needs of the community
5. Create systemwide annual report
6. Track and share data/metrics
7. Conduct routine systemwide and university climate surveys

8. Create anonymous reporting options at the system and campus level that have the ability for communication with the reporting party
9. Create a standardized annual report structure for all campuses, which includes not just information about reports but also includes other critical work being performed by Title IX/DHR program, including metrics on the provision of supportive measures, prevention, education, and training

We offer the following recommendations to address the trust gap at the campus level:

10. Identify opportunities for routine, scheduled interactions between and among implementers and all constituents that create the space for conversation and communicate care
11. Increase visibility and awareness of Title IX/DHR functions and resources through an awareness campaign and outreach programming
12. Prioritize in-person interactive engagement with students, faculty and staff
13. Provide a written statement of concern at the conclusion of the initial assessment to ensure that the complainant (and as appropriate, the respondent) have a clear understanding of the nature of the report and the proposed resolution path
14. Create a feedback loop to acknowledge responsible employee reports and confirm receipt of the report and next steps
15. Develop an expanded annual report with meaningful information/data
16. Collect post-process feedback of parties and all impacted individuals

E. Accountability Frameworks

Across the system, we observed a need for greater accountability, both for individual actors who violate university policy, and for university administrators charged with the further development and maintenance of legally compliant, effective Title IX/DHR programs. The issues we have outlined in this Systemwide Report all contribute to accountability gaps. This section will address challenges in achieving accountability for individual actors, as well as the need for increased structures for accountability for campus programs. As detailed in Section VII.A on infrastructure, Section VII.B on prevention and education, and Section VI.D on the trust gap, there are structural, organizational, and cultural factors that impede accountability. The factors in each of these areas, combined with accountability challenges, contribute to increased reluctance to reporting, decreased participation in campus processes, and limited ability for the universities to take action to hold individuals accountable who violate university policy. This lack of accountability allows potential misconduct to continue unabated – or to escalate – and the unaddressed conduct directly and negatively impacts culture. A foundational goal of this assessment was

to identify opportunities to transform culture and climate: moving towards increased accountability is an important aspect of that work.

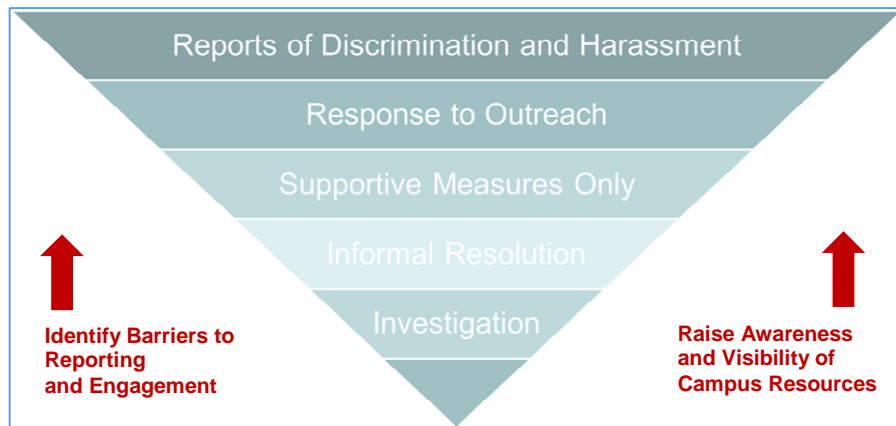
1. Individual Accountability

A number of factors impact the ability to seek accountability for individual actors, including, among others: underreporting; threshold determinations based on incomplete information; complainants choosing not to respond, engage, or participate (or continue to participate) after the initial report, during intake, or during an investigation; protracted and challenged investigative processes; and protracted disciplinary processes that impact the ability to pursue and impose appropriate discipline.

As it relates to underreporting, each individual university report includes publicly available data provided by the campus to the Chancellor's Office. That data reflects relatively low reporting rates across most, but not all, CSU campuses. Importantly, there are a wide range of university sizes, types, and compositions across the system. Because of those differences, reporting rates at each university should not be directly compared, as such a comparison would not account for the size and composition of the student body, the number of undergraduate versus graduate students, whether a campus is residential or more commuter-based, and whether a campus has fraternity or sorority life, an athletics program or other factors that might impact social climate, incidence rates, or rates of reporting. Each University Report includes a demographic overview to allow for more precise and contextualized analysis of the individualized reporting.

We have discussed barriers to reporting in various sections of this report. Barriers to reporting at the CSU – and nationally – are myriad, and many are outside the control of the CSU to effectively address. Barriers that may be more prevalent or specific to the CSU, however, include the lack of awareness and visibility of campus resources; the negative perceptions of campus Title IX/DHR programs identified above; general distrust of administrative or enforcement authorities, which may be more pronounced in some communities, such as undocumented students or those who have had negative experiences with external authorities; concerns about potential retaliation; concerns about the protracted and overly legalistic nature of the current policies and procedures; and, as we heard pervasively, the fear that nothing will happen. Data from the systemwide survey about barriers to reporting is included above in Section V.E.

Nationally, we have observed a pattern within Title IX/DHR programs that holds true across most campuses, including at the CSU. The following graphic provides a visual depiction of the pattern:



As the image of the funnel portrays, only a small percentage of reports proceed to a formal investigation, with many reports being addressed prior to the initiation of an investigation.¹⁵⁶ Common resolutions include: the complainant does not respond to outreach from the Title IX/DHR program, whether it was a direct or third party (e.g., responsible employee) report; the complainant is seeking supportive measures only, and does not want to pursue an investigation; the complainant and respondent agree to an informal resolution; or, the report does not meet the threshold requirement for a potential policy violation (e.g., accepting all reported facts as true, the conduct reported would not constitute a violation of the Nondiscrimination Policy). Some reports also involve unknown respondents or respondents who are not affiliated with the CSU. Under the current Title IX framework, as well as the requirements for a live hearing under California law in certain circumstances, it is difficult, if not impossible, to proceed to a formal investigation without a complainant being willing to participate in a complex process. The majority of reports of sexual harassment, sexual assault, dating violence, domestic violence, and stalking involve no eyewitnesses, little to no forensic evidence that would be dispositive, and delays in reporting. Because these reports often require the decision-maker to analyze divergent accounts and versions of the facts, and because the current legal framework requires cross-examination at a live hearing, the ongoing

¹⁵⁶ In each of the individual campus reports, we include publicly available data provided to the Chancellor's Office by the campuses. As noted in Section VI.C, there are challenges in the accuracy and reliability of the data, and the way it is stored and gathered makes it difficult to conduct a comparative analysis of the data from campus to campus. That said, the data does have sufficient reliability to reflect that a very small percentage of reports proceed to a completed formal investigation.

participation of the complainant is required by law and necessary to proceed to an outcome that will be sustainable.

While respecting individual agency and autonomy is crucial, the burden should not solely rest on the complainant to seek accountability. In fact, the Title IX regulations are clear in this regard: the university must “ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient [of federal funds] and not on the parties.”¹⁵⁷ While low numbers of formal complaints are somewhat common nationally, it is incumbent on the CSU to better understand and evaluate the barriers to reporting, engagement, and participation, and the CSU must take steps internally to review every aspect of its process to ensure it is understandable and accessible.¹⁵⁸ This entails looking at reporting options, the tone and nature of interactions and engagement with the Title IX/DHR program, reducing timeframes between report and resolution, enhancing communications, and understanding the experience of those who intersect with the Title

¹⁵⁷ 34 C.F.R. § 106.45(b)(5)(i).

¹⁵⁸ Notably, this is a potential element of the NPRM: “The Department proposes adding a requirement at § 106.44(b) that a recipient must require its Title IX Coordinator to monitor barriers in the recipient’s education program or activity to reporting information about conduct that may constitute sex discrimination under Title IX, and then the recipient must take steps reasonably calculated to address barriers that have been identified.” In the preamble, OCR explained its rationale: “During the June 2021 Title IX Public Hearing, OCR received feedback from some stakeholders noting that a majority of students (one stakeholder stated that it was 90 percent of students) who had experienced sex-based harassment did not report it to their school. Stakeholders pointed to a variety of reasons for this substantial underreporting, including inadequacies in a recipient’s response to reports, such as a failure to communicate promptly, to investigate as required, to address violations of restrictions on contact, or to respond effectively to retaliation. In addition, some stakeholders stated that students were deterred from reporting sex-based harassment because they feared being disciplined for violating the recipient’s code of conduct related to personal alcohol or drug use or consensual sexual activity. . . . Although stakeholders generally expressed that supportive measures encouraged reporting, some also explained that the lack of particular supportive measures, such as academic adjustments in the aftermath of sex-based harassment or trauma-informed counseling to provide confidential support, disincentivized reporting. Finally, stakeholders shared concerns about the role of the Title IX Coordinator, particularly in elementary schools and secondary schools, including that students and employees may not know who the Title IX Coordinator is or what the Title IX Coordinator’s responsibilities are, and that the Title IX Coordinator may not have sufficient experience or training to respond effectively to reports of sex discrimination.” [Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance , 87 Fed. Reg. 41,390 \(July 12, 2022\).](#)

IX/DHR program.¹⁵⁹ It also entails raising the visibility and awareness of campus resources and taking steps to restore and build trust through expanded communications and programming.

As an example, the CSU currently provides a template for an online reporting form as part of the Nondiscrimination Policy.¹⁶⁰ While the 2020 Title IX regulations require a formal complaint, neither they nor the CSU system require any particular form, including the template. At the same time, many campuses are heavily reliant on the online complaint forms, even requesting that the complainant complete the form *after* a report or intake meeting. While well-intended, the form is highly detailed and written in language that some may find intimidating. It has many required sections which a complainant or witness must complete before the form can be submitted. If a complainant does not know or is uncertain about some of the answers to any of the required questions, they may be deterred or prevented from completing the form. The information in many of the sections is information that will ultimately be gathered through an effective intake meeting or subsequent investigation. As written, the form places a high burden on a complainant, when the opposite should be the goal – to lower the barriers to entry into the process. The form also has strong certification/attestation language, which may also deter an individual from continuing to engage. For example, the template form states,

False allegations are prohibited. A complainant shall proceed with a Complaint in good faith. A Complainant who knowingly and intentionally files a false Complaint or any individual who is determined to have provided false statements or information during the investigation process shall be subject to discipline. Such disciplinary action shall not be deemed to be Retaliation.

The form also requires the complainant or person submitting the form to attest as follows: “I certify that the information given in this complaint is true and correct to the best of my knowledge or belief.” Such a

¹⁵⁹ In the preamble to the NPRM, OCR identified “various strategies to identify barriers, such as conducting regular campus climate surveys, seeking targeted feedback from students and employees who have reported or made complaints about sex discrimination, participating in public awareness events for purposes of receiving feedback from student and employee attendees, or regularly publicizing and monitoring an email address designated for receiving anonymous feedback about barriers to reporting sex discrimination.” [Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 Fed. Reg. 41,390 \(July 12, 2022\)](#).

¹⁶⁰ See [Attachment F](#), Complaint Form (Revised 2021).

certification is not only not required, but it may increase a barrier to reporting for an individual who makes a good faith report, but fears the consequences of not being believed. Including these statements at this juncture, before there is any in-person engagement with the Title IX/DHR professionals may deter individuals from ever coming forward at all. The language also reinforces the perspective that the process is highly legalistic.¹⁶¹

As another example, consistent with our observations of the Nondiscrimination Policy, we observed that many template communications, including outreach letters, notices of allegations, and other correspondence, are also written in overly legalistic language that may pose barriers to understanding. In addition, there are limited visual or practice aids to assist individuals in understanding extremely complex processes. We also observed that on some campuses, there is a significant length of time between a request for an investigation and the actual initiation of the investigation through a notice of allegations. As addressed in the university reports, we identified a number of opportunities to streamline timing and internal processes to ensure that investigations move as efficiently as possible. In the section below, we discuss additional considerations related to intake, initial assessment, and response to a report or formal complaint that may help support the continued participation of complainants in lengthy investigative and resolution processes.

Finally, concerns about accountability are particularly pronounced in employee sanctioning. Under both statutory and contractual requirements, the disciplinary processes for employees are protracted and involve a practical rehashing of underlying investigative findings, which detracts from the legality, finality, credibility, and integrity of campus Title IX/DHR processes. With respect to Title IX and the Clery Act in

¹⁶¹ Interestingly, in the preamble to the NPRM, OCR has recognized that the formal complaint process has proven to be challenging to complainants: “OCR received feedback from stakeholders during the June 2021 Title IX Public Hearing, listening sessions, and the meetings held in 2022 under Executive Order 12866 that expressed concerns that the 2020 amendments created an onerous and cumbersome process for a complainant seeking to request that the recipient initiate its grievance procedures and requesting that the Department streamline the complaint process. Although the current regulations permit a complainant to file a formal complaint by email and using a digital signature, *see* 85 FR 30133, several stakeholders stated that the signature and writing requirements generally discouraged individuals from making complaints. Based on the feedback received from stakeholders and the current distinction between a complaint of sex discrimination and a formal complaint of sexual harassment, the Department is concerned that the current regulations may have created a barrier for potential complainants to effectively assert their rights under Title IX.” [Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance , 87 Fed. Reg. 41,390 \(July 12, 2022\).](#)

particular, the post-finding disciplinary processes, as implemented, are not aligned with federal requirements. We understand, given the timing and the complexity of negotiating collective bargaining agreements, that the challenge to conform certain disciplinary processes to the ever-evolving Title IX legal landscape is ongoing – when the state law and federal regulations change, the terms of the collective bargaining agreement may be impacted and must be aligned to the extent that federal and state law are in conflict. Nonetheless, the current processes must be addressed to ensure that the CSU is able to meet the prompt and equitable requirements, as well as the training and notice requirements, for responding to sexual harassment, sexual assault, dating violence, domestic violence, and stalking under Title IX and the Clery Act.

As an example, Article 19 of the collective bargaining agreement between the CSU and the CFA addresses the disciplinary action procedures applicable to unit 3 employees, which include faculty, counselors, and coaches, with some exceptions.¹⁶² These disciplinary action procedures are initiated only once the Title IX/DHR investigation under the Nondiscrimination Policy is completed. They serve as the vehicle to mete discipline for any findings made under that TIX/DHR process. Permissible sanctions under the collective bargaining agreement include dismissal, demotion, or suspension without pay.¹⁶³ Under Article 19, the President, or President’s designee, initiates the disciplinary action by providing written notice of the pending disciplinary action.¹⁶⁴ The respondent may accept the pending disciplinary action or may seek review of the pending disciplinary action through what is colloquially known as a “Skelly Review.”¹⁶⁵ During this review, the respondent and a CFA representative may meet with the reviewing officer, who will then provide a written report to the President.¹⁶⁶ The President may then rescind, modify, or affirm

¹⁶² See Collective Bargaining Agreement between the Board of Trustees of the California State University and the California Faculty Association, <https://www.calstate.edu/csu-system/faculty-staff/labor-and-employee-relations/Pages/unit3-cfa.aspx>.

¹⁶³ Article 19.1. Denial of appointment, reappointment, probation, tenure, promotion, reassignment, transfer, layoff, reprimand, or temporary suspension with pay are not considered disciplinary actions for the purposes of Article 19 and do not require the application of the Article 19 principles. Article 19.2.

¹⁶⁴ Article 19.4.

¹⁶⁵ Article 19.6-19.8.

¹⁶⁶ *Id.*

the pending disciplinary action.¹⁶⁷ Upon notice of the President’s determination, the respondent may appeal the pending disciplinary action through one of three mechanisms: 1) seek review under the Disciplinary Action Arbitration Procedure; 2) seek a hearing by the State Personnel Board under Section 89539 of the California Education Code; or 3) seek a hearing by a Faculty Hearing Committee selected from a Faculty Review Panel.¹⁶⁸

Under each of these options, the adjudicator has the option to revisit the underlying factual determination reached by the Title IX/DHR process – their role is not limited to evaluating the appropriateness of the sanction/discipline. Under the Disciplinary Action Arbitration Procedure, “It shall be the function of the arbitrator *to determine whether cause for disciplinary action existed* and to affirm, modify, or deny the sanction or pending sanction.”¹⁶⁹ The same standard applies with Faculty Hearing Committees: “In making its decision regarding whether to sustain, modify, or void the sanction or pending sanction, it shall also be the function of the Faculty Hearing Committee *to determine whether cause for the disciplinary action existed.*”¹⁷⁰ Article 19 also reflects that the decision of the Faculty Hearing Committee or the arbitrator’s award shall be based solely on the evidence and arguments presented by the parties in the hearing and upon any post-hearing briefs.¹⁷¹ Alternatively, under section 89539 of the California Education Code, any employee dismissed, suspended, or demoted for cause may request a hearing by the State Personnel Board on the following grounds: the required procedure was not followed; there is no ground for dismissal, suspension, or demotion; the penalty is excessive, unreasonable, or discriminatory; *the employee did not do the acts or omissions alleged as the events or transactions upon which the causes are*

¹⁶⁷ Article 19.9.

¹⁶⁸ Article 19.10. Following the decision of the Faculty Hearing Committee, the President may agree or disagree with the Committee’s decision. The respondent may elect to appeal to arbitration any portion of the decision where the President does not agree with the Committee’s decision. Article 19.10.e.5.

¹⁶⁹ Article 19.16. (emphasis added).

¹⁷⁰ Article 19.10.e.1.

¹⁷¹ Article 19.10.e.3.; Article 19.21.

based; or, the acts or omissions alleged as the events or transactions upon which the causes are based were justified.¹⁷²

In essence, each of these hearing processes allow for a *de novo* review of the facts – without all of the procedural safeguards established in the underlying Title IX processes as required by law. Notably, the various hearing processes do not explicitly incorporate the complainant in the hearing, although the evidentiary limitations make it clear that the primary evidence relied upon in the disciplinary action is the evidence presented during the post-Title IX hearing, rather than accepting the underlying finding, reached through a robust Title IX investigation and adjudication process with trained investigators and decision-makers, as established for the purposes of determining appropriate discipline. Because the determination is not limited to the question of the appropriateness of the sanction, the university must essentially reestablish the basis for its determination without the deference to the underlying decision that is typically afforded in a post-finding Title IX-regulated review process, requiring the complainant and witnesses to participate in another hearing after the already completed Title IX adjudication, and sometimes well more than a year after the initial report. In addition, the Title IX Coordinator/DHR Administrator, who are tasked with oversight of the prompt and equitable nature of the process are frequently not involved in these post-finding sanction processes. We heard uniformly across the system that the processes are protracted, complicated, and burdensome for the parties. For example, for faculty, the collective bargaining agreement mandates that a dismissal or suspension for more than 30 days will be held in abeyance, until a decision on the discipline is rendered, up to 135 days. We have also heard significant concerns about the training and approach of arbitrators and administrative law judges as it relates to required training under Title IX, the Clery Act, and California law. We learned that arbitrators and administrative law judges may not have received the required decision-maker training.¹⁷³ We heard many credible and detailed accounts of campus findings that were overturned, where the recommended campus discipline was not only not carried out, but in many instances, the respondent was ordered back to campus with their position reinstated and back pay awarded. This is a debilitating pattern that completely undermines the integrity and outcome of the extensive investigative Title IX process and is

¹⁷² Cal.Educ. Code § 89539. (emphasis added).

¹⁷³ Under the Title IX regulations, this training must be posted publicly on the university's website.

simply untenable for all who invested months (in some cases years) and resources in a thorough and legal Title IX process.

While there are important procedural protections built into the processes under state law and the collective bargaining agreement, they do not align with the Title IX and/or Clery Act requirements in at least the following ways:

- The decision-makers, whether arbitrators, administrative law judges, or faculty members do not have sufficient training to serve in the role as decision-maker under Title IX, the Clery Act, and California state law, all of which require specific and regular training;¹⁷⁴
- The processes do not provide for equitable participation of both parties at all stages;¹⁷⁵
- The processes do not provide both the complainant and the respondent with equal and timely access to all information that will be used;¹⁷⁶
- The processes are not prompt and do not comply with the timing expectations set forth in the Title IX regulations;¹⁷⁷
- The processes allow for changes to the outcome before final, in some instances without sufficient notice to the complainant who is entitled to written notice of the outcome, the sanction, and the rationale for each (in cases of sexual assault, dating violence, domestic violence, and stalking).

In application, the protracted processes ultimately serve neither complainants, nor respondents, (nor ultimately the CSU), if for no other reason than the significant length of time involved to get to resolution.

¹⁷⁴ 34 C.F.R. § 106.45(b)(1)(iii); 34 C.F.R. § 668.46(k)(2)(ii); Cal.Educ.Code § 67386.

¹⁷⁵ The Title IX regulations require, “Any provisions, rules, or practices other than those required by this section that a recipient adopts as part of its grievance process for handling formal complaints of sexual harassment as defined in § 106.30, must apply equally to both parties.” 34 C.F.R. § 106.45(b). The Clery Act requires

¹⁷⁶ This is a requirement under both Title IX and the Clery Act. 34 C.F.R. § 668.46(k)(i)(B)(3).

¹⁷⁷ For example, the Title IX regulations contemplate a written determination regarding responsibility following the live hearing, which includes, among other required elements, “a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, *any disciplinary sanctions the recipient imposes on the respondent*, and whether remedies designed to restore or preserve equal access to the recipient’s education program or activity will be provided by the recipient to the complainant.” 34 C.F.R. § 106.45(b)(7)(ii)(E). The Title IX regulations do not anticipate a delay of months to more than a year between the finding of responsibility and the imposition of sanction. To the contrary, they specifically require “reasonably prompt time frames for conclusion of the grievance process.” 34 C.F.R. § 106.45(b)(1)(v). Similarly, the Clery Act states that “[a] prompt, fair, and impartial proceeding includes a proceeding that is . . . [c]ompleted within reasonably prompt timeframes designated by an institution’s policy.” 34 C.F.R. § 668.46(k)(3)(i) and 668.46(k)(3)(i)(A).

Given founded concerns about a finding being overturned and a respondent faculty member being ordered back to campus, in lieu of proceeding to post-finding review after a finding of responsibility involving faculty members, many cases have been subsequently resolved by negotiated outcomes and settlements agreed to by the Chancellor's Office and campus leadership to ensure that the integrity of the underlying finding is upheld. While well-intended in this regard – campus leaders and counsel are seeking to navigate a flawed and conflicting set of laws to give meaning to a finding of responsibility and the President's recommended sanction – the use of negotiated settlements contributes to the perception of institutional bias and to the perception that the system is risk averse as it relates to litigation, especially where those settlements involve a disciplinary outcome that is less than a recommended dismissal.¹⁷⁸ Ironically, campus community members often criticize senior leadership and the Chancellor's Office for sanctions that appear to be less severe than warranted, when in reality, those final sanctions are often driven by external decision-makers, not the CSU. While the number of cases involving faculty respondents may be relatively small across the system, the qualitative message of perceived leniency or failures in addressing these matters has an outsized impact on the perceived fairness and integrity of the process.

2. Structures for Accountability

At every level, we observed the need for checks and balances, quality control, quality assurance, and other structures for accountability to ensure administrative capability and accountability. In this section, we address current practices and discuss effective practices in the following areas: coordination of information and personnel; intake, outreach, and initial assessment; investigations and hearings; and documentation. As detailed in Section VII.A.1, we observed gaps in the effectiveness of the supervisory structure for some Title IX/DHR programs. Also as detailed in Section VI, there are no formal standards or processes for implementing the systemwide Nondiscrimination Policy, and no standardized quality control or quality assurance mechanisms in place.

Key elements of an effective institutional response include:

- Adherence to coordinated, internally consistent, and accessible policies and procedures;

¹⁷⁸ We also recognize that settlement terms that have involved retreat rights, and that letters of recommendation have raised concerns. As noted in Section IV.D.2, the Chancellor's Office has implemented new policies to govern the use of retreat rights and recommendations.

- An autonomous and fully empowered Title IX Coordinator/DHR Administrator with sufficient authority and resources to effectively navigate oversight and compliance responsibilities;
- A coordinated multidisciplinary team to provide support and resources, share information, and facilitate informed decision-making and consistent documentation;
- A centralized reporting, response, investigation, and resolution process to ensure consistent application of policies and procedures;
- Clear communication about the difference between confidential resources where individuals can seek confidential assistance (with legally protected and privileged communications, like counseling and health services), and reporting options (which trigger an institution's Title IX obligations, like campus Title IX offices, campus police, and responsible employees);
- Coordination of employee reporting obligations under Title IX, Clery, mandatory child abuse reporting, and other federal and state provisions to assure that all individuals are aware of how and where information that is shared with an employee will be disclosed;
- An initial assessment of each report designed to evaluate known facts and circumstances, take interim steps to protect the complainant and the campus community, balance complainant autonomy and agency and risk to campus safety, facilitate compliance with Title IX and Clery responsibilities, and evaluate the appropriate institutional response;
- Protocols for the identification, implementation, enforcement and documentation of supportive measures;
- Separation of roles related to support and advocacy functions from roles related to impartial investigative and adjudicative processes (while both functions can exist within the same office, the same individual should not both conduct intake and support functions and conduct the investigation);
- Reliable, impartial, objective, and thorough grievance processes for investigations and hearings, conducted by neutral, experienced, and trained investigators and decision-makers, that incorporate the procedural requirements of notice and an opportunity to be heard;

- Regular communication with the parties and transparency about processes to build and maintain the trust of individual stakeholders and the community;
- Evidence-based, mandatory, and ongoing training, education and prevention programs;
- Centralized record keeping and documentation for reported incidents to allow for tracking and monitoring of patterns and assessing campus climate; and,
- Periodic assessment to evaluate the effectiveness of campus policies and procedures and ensure sustainability.

In the CSU, system level oversight is essential to meaningfully implement the key elements of informed and effective Title IX and DHR programs. Accountability is essential – currently there are insufficient mechanisms to promote and assure accountability. Because of the complexity of federal and state laws and the significance of these issues to campus constituents and the integrity of the institution, developing accountability systems at the system level must be a priority for the system.

a. Coordination of Information and Personnel

As noted earlier in this report, CSU Title IX/DHR professionals generally interact with campus partners in an informal, *ad hoc*, and merely relational manner. While there are formal processes on most campuses for threat assessment or students of concern, there is typically no formal process for shared fluency, coordination of information, personnel and institutional response related to Title IX/DHR reports (or *other conduct of concern*). There are also no shared recordkeeping practices, meaning that information exists in silos and is not readily accessible across units. This means that generally, Title IX/DHR professionals (if trained and provided the time and resources needed) are engaging in multiple touchpoints with campus partners to gather information about potential pattern, risk, or other conduct considerations. Similarly, Title IX/DHR professionals may engage in multiple touchpoints to discuss and evaluate the potential for various forms of supportive measures. In other instances, we learned that additional efforts to gather information as part of an initial assessment may be less robust than needed. When implemented consistently, these outreach efforts take time, both to conduct and to document. Currently the CSU has immature structures to ensure consistent and informed decision-making without extensive, repetitive engagement. Shifting from this relational model will require more formal protocols for coordination, information sharing, and documentation.

At each university, we recommend the creation of an initial assessment/multidisciplinary team (MDT) to strengthen collaboration and coordination between Title IX/DHR professionals and campus partners. The MDT should meet routinely, preferably once or twice a week depending on the volume of reports, to review all new reports of discrimination and harassment (made to any office represented by the MDT), including sexual and gender-based harassment and violence, dating violence, domestic violence, stalking, and retaliation. The MDT should be composed of a core group of administrators who work together to implement intentional, consistent, and compassionate responses when a report is received by campus Title IX/DHR professionals. Membership should be narrowly defined for privacy considerations, but include designated representatives from the Title IX/DHR program, student conduct, and UPD, at a minimum, for cases involving students, and a smaller team, including a representative from human resources, employee and labor relations, and academic/faculty affairs for employee cases. University counsel should also be present. All team members should be appropriately trained in the legal and regulatory framework (including confidentiality and privacy requirements), the dynamics of the issues, and how to implement the Nondiscrimination Policy. Members should not also serve as decision-makers (outcome or sanction) or appellate authorities at other points in the process.

Maintaining a centralized, team-based process encourages consistent application of policy, helps to minimize *ad hoc* responses, closes communication gaps, improves shared fluency, allows for central record keeping for assessment of patterns, and ensures that the initial assessment, discussed below, includes all available and relevant information maintained in university records systems. In building the MDT, we recommend that the CSU develop consistent protocols for application to critical decisions. This includes identifying who has the responsibility for making a determination, outlining the applicable law and guidance, identifying a list of factors to consider for key decisions, and maintaining appropriate documentation. Critical decisions may include, among others: emergency removal; supportive measures; evaluating a complainant's request for anonymity, that a respondent not be notified, or that no investigation be pursued; when to move forward with a formal investigation without a participating complainant; and, other appropriate remedies based on the reported conduct. MDT members may also be part of timely warning assessments as part of a more immediate, on-call response, given the time sensitivity of a given assessment.

We also learned from many individuals about a perceived conflict of interest or bias in intake, initial assessment, and the decision as to whether the conduct constitutes a potential policy violation. Given the subjectivity involved in this stage of the process, as well as the issues of trust identified in this report,

ensuring that decisions about whether to move forward are documented and informed by the MDT's evaluation of consistent and articulated factors can help to restore trust in the decision making and reduce the perception that Title IX/DHR administrators are unfairly exercising their discretion to determine that a report should not move forward because the reported set of facts would not rise to the level of a potential policy violation. While the Title IX Coordinator/DHR Administrator has ultimate authority and responsibility for decision making, MDT members can provide diverse and important perspectives that help the Title IX Coordinator/DHR Administrator to evaluate a complainant's request for anonymity, determine the appropriate course of action, and document the facts and circumstances that inform the university's determination.¹⁷⁹ The use of an MDT can augment the university's existing decision-making structures and documentation process in these areas and serve as an important check and balance to ensure informed decision-making. The MDT should consistently document the information gathered, the factors considered, the determination reached, and any additional steps (individual and community) taken to eliminate, prevent and respond to the reported conduct.

From a practical perspective, we recommend that the Title IX/DHR program circulate an agenda with all new and ongoing cases (anonymized with student or employee ID numbers to protect privacy) in advance of each meeting so that all participants can come prepared to discuss any information they have about the participants/matters. Administrative support within the Title IX/DHR program should be responsible for preparing and sending case management meeting agendas; documenting information gathered, factors considered, and determinations; and tracking resolution statuses so that appropriate information can be effectively captured and shared with campus partners in a more efficient manner.

The MDT approach has significant positive benefits, including the following:

- Ensures information is consistently gathered from multiple sources re: prior reports and potential pattern
- Leverages expertise from diverse perspectives to inform judgements about:
 - Adequacy and appropriateness of supportive measures
 - Emergency removal and administrative leave considerations
 - Considerations for non-responsive parties

¹⁷⁹ We heard a perception that Title IX Coordinators/DHR Administrators did not have full agency and autonomy in making these determinations. If accurate, this is untenable, as the autonomy and independence of these civil rights professionals is paramount.

- Evaluating whether to move forward with an investigation without complainant participation
- Broader community remedies and considerations
- Supports documentation and recordkeeping re: the rationale and factors considered in reaching key decisions
- Builds shared fluency and trust among key campus partners

Following written specific protocols and consistently documenting information collected will ultimately serve to improve accountability and bridge the trust gap.

In addition to the MDT, the use of checklists and other practice aides or tools, including an enterprise level software, can provide the basis for consistent approaches and quality assurance across reports. Such tools also help to establish consistent frameworks for decision-making that capture all information known at a particular time; who was involved in decision-making; and the factors considered. These tools also help to facilitate training and supervision of decided business processes and are useful for both new Title IX/DHR professionals and experienced personnel.

b. Intake, Outreach and Initial Assessment

We identified a number of opportunities to incorporate effective practices and strengthen intake, outreach, and initial assessment protocols. As it relates to the allocation of personnel and functions within the Title IX/DHR program, effective practices separate the intake function from the investigation function and establish dedicated outreach, intake, and supportive measures personnel. The dedicated intake coordinator would be responsible for responding to new reports with outreach, intake, supportive measures, and ongoing case management. This separation of roles helps to guard against the potential for actual or perceived conflict of interest when the same administrator serves both a supportive and an investigative role. Although the preferred model is to have a dedicated administrator within the Title IX/DHR program to serve as an intake and outreach coordinator, the separation can also be accomplished by rotating personnel and roles so that if one individual conducts the intake meeting in a matter, another person serves as the investigator for that matter.

Ideally, the intake coordinator should offer and conduct an intake interview or meeting for every report where a complainant is willing to meet. The meeting should be documented as to all required elements, including supportive measures offered and provided, supportive measures not provided in response to a request, emergency removal considerations, the factors relied upon in acceding to a complainant's

decision not to file a formal complaint, the factors relied upon in evaluating whether the Title IX Coordinator/DHR Administrator should file a formal complaint or move forward without a complainant's participation, and other key determinations reached during the initial assessment process. The CSU should develop specific protocols and templates for use in intake meetings to ensure that all required compliance elements in intake and initial assessment are met.

As part of the intake protocols, we recommend that each campus Title IX/DHR program evaluate the feasibility of arranging to have the confidential campus Advocate available for each intake with a complainant. This is an important element of helping complainants access the resources and advocacy they may need to support engagement in investigation and resolution processes (and to better understand the roles of Title IX/DHR office and the confidential campus Advocate). Making this connection early in the process may help complainants feel supported and remain engaged throughout the investigation process. Once a respondent is notified, the same outreach and intake protocols can help provide needed support for a respondent, help them to be engaged in the process, and potentially reduce the potential for the continuation of conduct or retaliation.

For those reports where a complainant does not respond to outreach, we recommend that the intake and outreach coordinator or designee conduct a minimum of three efforts to meet with a complainant, including through multiple modalities (email, text, telephone call, or other viable form of contact used on a particular campus) and potentially, through other campus resources as appropriate based on the known information. For example, in cases that are more egregious or pose higher levels of risk to safety, using resources within other departments may be appropriate to seek in-person contact with the complainant.

The intake meeting is an important part of an initial assessment, which is designed to evaluate known facts and circumstances, assess and impose interim steps to protect the complainant and the campus community, facilitate compliance with Title IX and Clery responsibilities, and identify the appropriate institutional response after triaging available and relevant information. During the initial assessment, the Title IX Coordinator/DHR Administrator should take steps to respond to any immediate health or safety concerns raised by the report. The Title IX Coordinator/DHR Administrator should also assess the nature and circumstances of the report to determine whether the reported conduct raises a potential policy violation, whether the reported conduct is within the scope of the Nondiscrimination Policy, and the appropriate manner of resolution under the Nondiscrimination Policy. As noted above, while the Title IX Coordinator/DHR Administrator has the ultimate oversight authority for the implementation of Title IX,

the MDT members can provide diverse perspectives and information that will inform the Title IX Coordinator/DHR Administrator's decisions.

As part of the initial assessment, the Title IX Coordinator/DHR Administrator, or designee, should take the following steps on a consistent basis:

- Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that identifies the complainant, the respondent, any witness and/or any other individual with knowledge of the reported incident or available physical evidence;
- Address immediate physical safety and emotional well-being;
- Notify the complainant of their right to contact (or decline to contact) law enforcement or seek a civil protection order;
- Notify the complainant of the right to seek medical treatment;
- Notify the complainant of the importance of preservation of evidence;
- Refer the report to appropriate campus officials to enter the report into the daily crime log if required by the Clery Act and assess the reported conduct to determine the need for a timely warning under the Clery Act;
- Evaluate all other reporting responsibilities;
- Provide the complainant with written information about on and off campus resources;
- Notify the complainant of reasonably available supportive measures in response to a report, whether or not a formal complaint is filed;
- Provide the complainant with an explanation of the procedural options, including the right to file a formal complaint;
- Notify the complainant of the right to be accompanied at any meeting by an advisor of choice;
- Assess the available information for any pattern of conduct by respondent, including by querying all relevant records systems – UPD, student conduct, human resources, academic/faculty affairs;
- Assess for history and pattern;
- Conduct individualized analysis of safety and risk to individuals and the campus community;
- Explain the policy prohibiting retaliation and how to report acts of retaliation;
- Determine the age of the complainant; and if the complainant is a minor, make the appropriate report of suspected abuse consistent with state law;
- Discuss the complainant's expressed preference for manner of resolution and any barriers to proceeding; and,
- Document all information gathered in the initial assessment.

At the conclusion of the initial assessment, the Title IX Coordinator/DHR Administrator should provide the complainant with a written overview of the proposed course of action, which may include no further

action, referral to another department, supportive measures only, a formal investigation, or another form of resolution. For example, Cal State Northridge strives to provide every complainant with a “final statement of concern” that documents the issues raised and how the concerns have or will be resolved. Having a concluding statement of this nature helps to provide a check and balance to ensure that every report receives a response, and that any handoffs to other departments are clear and able to be tracked.

c. Investigations and Hearings

The 23 universities currently use a mix of internal and external investigators to conduct investigations under the Nondiscrimination Policy. Some universities pool resources with others, particularly if there are a small number of investigations or limited staffing on a particular campus. Other campuses rely upon external attorneys retained by OGC through the California Attorney General’s Office or private law firms or consultant groups. Investigator positions on many campuses are entry level, and investigators are often learning on the job as they often have no significant Title IX experience prior to joining CSU. On many campuses, the investigator positions are those that have remained vacant for long periods of time, leaving the investigative responsibilities to the Title IX Coordinator or DHR Administrator (in addition to all other job responsibilities). As noted elsewhere in this report, this understaffing impacts the timeliness and quality of investigations, even with the relatively low number of investigations on many campuses.

We reviewed investigative reports and other Title IX/DHR records at each of the 23 universities. We observed a wide range with respect to the quality of the reports, the depth of the fact-gathering, and the analysis. We heard or observed concerns about the work product of newer investigators, who needed greater support to ensure competent and professional work product. We also heard significant concerns about the quality, responsiveness, and timing of some of the external investigators available to campuses under a master contractual agreement negotiated by the Chancellor’s Office. While providing access to a pool of external investigators at negotiated rates is an important service, there is currently no ability to select the actual investigator within one of the investigator groups. On many campuses, investigations have been delayed by the challenges in the availability of investigative services.

At the outset, we identified opportunities to streamline the process for initiating an investigation. Neither the Title IX regulations nor the Nondiscrimination Policy require a detailed formal complaint, nor do they require that the complainant review and approve the language in the notice of allegations. On many campuses, however, the process for the creation and review of these two documents has encompassed many more steps – and much more time – than necessary. For example, at many universities, the Title

IX/DHR program conducts an interview with the complainant, sends the complainant the notes of the interview to review, drafts a formal complaint, sends the formal complaint to the complainant to review, then drafts the notice of allegations, and sends the notice to the complainant to for review. This level of process is neither required, nor optimal, as this aspect of the process can last from three to six weeks. In reality, the drafting of the formal complaint (if completed by the Title IX Coordinator/DHR Administrator) and notice of allegations can and should be completed within days following an intake interview. The current process also has the effect of placing a burden on a complainant to complete a form or review and approve a document, when these tasks can be substituted by an intake meeting and an email from a complainant requesting an investigation. In this way, these steps of the process can and should be completed in a more timely and efficient manner by the Title IX Coordinator/DHR Administrator and/or investigator. We recommend streamlining the process for the initiation of the investigation, while still providing sufficient written notice to a respondent. This streamlining will impact overall timeframes for initiating the investigation. In general, each university will benefit from a process mapping exercise, which will help to identify areas of delay and the underlying reasons for the delay. Those that are in the control of the Title IX/DHR program should be addressed and remedied.

During the investigation process, safeguards and checks and balances should be in place to allow the Title IX Coordinator/DHR Administrator and/or their supervisor(s) to monitor the investigative progress, ensuring that all steps are being taken to move efficiently and that as little delay as possible is attributable to the investigator. While the law and policy allow for reasonable extensions for good cause, the goal should be to complete the investigation as expeditiously as possible given the disruptive impacts on a complainant, a respondent, and often, a broader circle of individuals in the social circle or workplace environment. Ultimately, the Title IX Coordinator/DHR Administrator plays an important oversight role in ensuring that the investigation is prompt and equitable, that it is neutral, that it follows the Nondiscrimination Policy, and that there are sufficient facts to enable the decision-maker to reach an informed and supported determination. University Counsel should also review investigative reports and outcome letters to ensure that the investigation is thorough, unbiased, and reasonably supported by evidence, that the analysis comports with policy and the law, and that the investigative report is competently written. This oversight role, by both the Title IX Coordinator/DHR Administrator and University Counsel, is one that reinforces and supports the integrity of the investigation and ultimate outcome.

The most common concerns we heard about campus investigations were tied to the overly legalistic, procedurally-based nature of the process, which is driven by the complexities of Title IX and California state law, and the length of time it takes to complete an investigation. Few campuses completed investigations within one semester, with many having investigations that lasted more than a year from the filing of the formal complaint to the finding, with subsequent time needed for sanction and appeal. The length of investigations was identified as a significant reason complainants or witnesses declined to participate or continue to participate in campus processes.

Further, we observed additional delays occasioned by the hearing processes, given the unavailability of university-appointed advisors or hearing officers contracted by the Chancellor's Office.

In short, across the system, we saw the need for access to and the availability of trained, experienced investigators who provide high quality, comprehensive, and robust investigations according to consistent standards. In Appendix VI, we provide a proposed model to centralize and standardize university investigation and hearing processes across the system.

d. Documentation

The gaps in documentation are discussed in Section VII.A.2, and in individual University Reports. Recognizing the need for a shared, enterprise-level records management system is addressed elsewhere in this report, here we offer more tailored observations about how to improve consistent gathering, storing, and tracking data.

First, there is a need for governing protocols to ensure that each university seeks and records consistent categories of information that will best position the CSU to analyze and learn from the data it collects. Second, there is a need for tools and/or checklists that will prompt users to gather a consistent set of data and provide a framework for entering the data in to the records management system in a uniform and searchable manner. The ability to query records, track trends and document responses is critical to building and sustaining effective programs. For example, having a case opening and closing checklist and protocol can help to ensure the completeness of the data.

e. Communications

As noted above, frequent, direct, and candid communication is an important aspect of restoring campus trust and demonstrating accountability through action. This must be done through multiple modalities,

and communications should be part of a broader awareness and outreach campaign. Every level of communication should be considered holistically, from communications by senior leadership, template communications, prevention and education programming, and web content.

We heard questions on many campuses about the types of information that could be shared more broadly with the campus community. Recognizing that gaps in communication often get filled with negative inference, it is important for campuses to engage in a consistent decision-making framework around critical communications that can be utilized when needed. The framework should include guidance about balancing legal constraints and privacy considerations with requests for transparency or candor about issues of concern.

As to more routine communications, on most campuses, the current format and content of the annual report at most of the CSU universities can be vastly improved to communicate meaningful information to the community about the nature and types of reports on campus, aggregate demographics about complainants and respondents, patterns and trends, and more. While we recognize the challenges in data identified throughout this report, as well as the resource constraints that impact the ability to do more proactive work in this regard, there are a number of examples of effective practices used within the CSU. For example, at Chico, the Title IX/DHR program prepares an annual report that includes substantive narrative responses to accompany the required statistics. The report includes information about increase or decrease in reports, and potential explanations; the impact on reporting of the remote environment occasioned by the COVID-19 pandemic; the impact of the 2020 Title IX regulations; and, the identification of priorities to address concerns. In the 2020-2021 annual report, Chico identified two priorities: 1) restore pre-pandemic levels of reporting through information sharing and outreach, and, 2) implement a restorative justice-based adaptive resolution model to address harm outside of the investigative model. In the 2021-2022 annual report, Chico provided an update on those efforts.

At every university, we reviewed the Title IX/DHR web content. As with all other aspects of this review, given 23 separate universities, we found significant variation in content, approach, and accessibility and user-friendliness of the websites. A system level approach to baseline elements of the web content is recommended, including a link to available resources at the system level.

Finally, with respect to template communications, many of the universities will benefit from the use of consistent, trauma-informed, and user-friendly templates that are balanced and neutral in tone and content.

f. Athletics

During our assessment, we interviewed Athletics Directors, if available, and other senior leadership within Athletics Departments at each university. We inquired about student-athlete and athletics employee understanding of reporting responsibilities under Title IX, the Clery Act, CANRA, and the Nondiscrimination Policy; how conduct matters are referred to the centralized student conduct or Title IX/DHR programs; how decisions are made about whether student-athletes should be restricted from play or practice as a supportive measure or form of emergency removal; the substantive content of team or Athletics department rules or handbooks; prevention and education programming; any intersections with minors (typically through camps, interactions with recruits, and volunteer opportunities); and, policies and procedures about the use of chaperones or well-being attendants in visits with athletic trainers.¹⁸⁰ We will follow up with separate correspondence to the Chancellor's Office regarding specifically tailored recommendations in these areas.

g. Sharing of Information by University Police Departments

During our assessment, we interviewed the Chief of Police in each University Police Department, if available, and other senior leadership within UPD at each university. We inquired into a number of areas related to UPD's response to reports of sexual assault, dating violence, domestic violence, and stalking, including, among others, records management systems, internal response protocols, training, intersections with Clery Act responsibilities,¹⁸¹ coordination of information with Title IX/DHR professionals, and the coordination of parallel investigations. In particular, we inquired about each university's approach to California Penal Code 293, which provides that a law enforcement agency must inform a victim of a sex offense that their name will become a matter of public record unless they request otherwise, and further, that the law enforcement agency may not disclose their name to other persons except where authorized or required by law, if the victim has chosen to exercise their right to maintain their name as private.

¹⁸⁰ San José State University has issued a [Sports Medicine Wellbeing Attendant \[Chaperone\], Examination, and Treatment Policy](#) and [handout](#) that may serve as a template for other CSU universities.

¹⁸¹ Although our assessment did not include a review of Clery Act compliance, to the extent that our observations implicated Clery Act considerations, we will follow up with correspondence to the Chancellor's Office.

We also reviewed Article V.C (Other Matters Related to the Duty to Report) of the Nondiscrimination Policy, which provides:

For certain sex offenses the victim has the right to affirmatively request from University Police, after being informed of their options, that the victim's identity remain confidential. However, even if the victim requests confidentiality of identity, the University Police should specifically ask the victim if the victim's name can be provided to the Title IX Office so that the Title IX Coordinator can contact the victim to discuss supportive measures that can be offered. And in all cases, even when the victim requests confidentiality, the identity of the alleged perpetrator (if known) must be reported to the Title IX Coordinator.

University Police are strongly encouraged to have regular meetings with the Title IX Coordinator to discuss strategies to ensure that victims are fully apprised of their rights and options under the law and under this Nondiscrimination Policy.

Across the system, we observed significant variation in how Penal Code 293 and the Nondiscrimination Policy were implemented. We encourage the Chancellor's Office to provide specific guidance to all university police departments across the system to ensure that officers are trained to share Title IX resources with complainants; able to have an informed discussion about the difference between maintaining their name as private in police records and sharing their name with Title IX; and, that they use a form that allows a complainant to consent to sharing their name with the Title IX office, even if choosing to maintain their identity as private in UPD records. We note that under Senate Bill 493 (SB 493), California has defined a responsible employee as "an employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate school official who has that authority." While university police officers are not specifically identified as responsible employees under SB 493, we encourage the Chancellor's Office to review SB 493 in connection with Penal Code 293 to evaluate, under California law, whether SB 493 provides authorization by law that would give authority to share the complainant's name with the Title IX Coordinator, even if the complainant asks that their identity be kept private.¹⁸²

¹⁸² We also note that the NPRM, as published, currently intends to "require any employee who is not a confidential employee and who has authority to institute corrective measures on behalf of the recipient to notify the Title IX Coordinator when the employee has information about conduct that may constitute

h. Auxiliaries

We understand that at many universities in the CSU, auxiliary employees may or may not be considered employees who have a duty to report to the Title IX Coordinator/DHR Administrator. Because of the number and visibility of auxiliary employees, we recommend that the CSU, individual universities, and the various auxiliaries collectively address the application of the Nondiscrimination Policy to auxiliary operations and personnel. We recommend that that each university and its auxiliaries, with the support of the Chancellor’s Office for consistency in approach and application, address the following questions and memorialize their understanding in writing:

- Whether the Nondiscrimination Policy applies to auxiliary operations, personnel, locations, programs and activities;
- Whether the auxiliary has any existing policies that are inconsistent with the Nondiscrimination Policy and its accompanying procedures; and
- Whether auxiliary employees are Responsible Employees who are required to promptly report to the Title IX Coordinator and/or DHR Administrator when they know or have reason to know of incidents that may violate the Nondiscrimination Policy.

3. Recommendations for Enhanced Accountability

In conjunction with the above recommendations, we offer the following recommendations at the system and university level to promote accountability – both at the individual and programmatic level:

1. Continue to evaluate barriers to reporting and engagement at the campus level, with aggregation of data and advice and guidance by the Chancellor’s Office
2. Review and revise tone, content, and format of reporting forms and other template communications
3. Identify and reconcile conflicts between collective bargaining agreements, state statutory rights, and other state and federal requirements
 - 3.1. Convene conference with campus leaders and system leaders to engage in meaningful and constructive discussion about the overlapping, complex, and conflicting state, contractual, and federal legal requirements
 - 3.2. Convene meaningful and constructive discussion and, where appropriate, bargaining, with representative union groups to reconcile these conflicts

sex discrimination under Title IX.” This includes “employees with responsibility for administrative leadership,” which includes “public safety supervisors,” as well as “other employees with a similar level of responsibility.”

4. Document, track, and assess effectiveness of Title IX/DHR programs
5. Within campus Title IX/DHR programs, coordinate with the Regional Director and Systemwide Title IX/Civil Rights Division to:
 - 5.1. Map process for standards, efficiency, conflicts and gaps
 - 5.2. Develop robust intake, outreach, and case management for supportive measures and resources
 - 5.3. Develop integrated, written processes for initial assessment
 - 5.4. Separate support/advocacy functions from investigation
 - 5.5. Strengthen campus collaboration and information sharing through multidisciplinary team
 - 5.6. Develop tools for consistent, effective documentation and case management
 - 5.7. Oversee investigations for competency and consistency of prompt and equitable processes
6. Review the current disciplinary processes for faculty to promote prompt and equitable processes
 - 6.1. Ensure Title IX Coordinator/DHR Administrator remains engaged in sanction and appeal until final
 - 6.2. Ensure that decisions about negotiated settlements are supported by careful and coordinated review by all relevant campus and system level administrators

VIII. Conclusion

We recognize that the challenges facing the CSU are significant, particularly as it relates to infrastructure, financial and personnel resources. We also recognize that our recommendations are expansive, and in many respects, daunting. Addressing the gaps and challenges identified in the Systemwide Report and University Reports will require a concerted effort by the Board of Trustees, the Chancellor’s Office, the 23 universities, and campus partner to achieve meaningful and sustainable change. The work involved will require intensive resources, time, and innovation – and will likely span a number of years in the implementation, all while continuing to prioritize the immediate needs of students, staff, and faculty. We have every confidence that the CSU is up to the task.

As Interim Chancellor Koester shared following our May 24, 2023 presentation to the Board of Trustees, “While the work will indeed be difficult, it also presents a unique and invaluable opportunity to strengthen our culture of compliance and our culture of care as we strive to create and sustain safe, welcoming and inclusive environments across the CSU, where students, faculty and staff can thrive personally,

professionally and intellectually, free from discrimination, harassment and sexual misconduct. . . . We will not squander this opportunity. We will get this right. The CSU's mission and core values demand it.”¹⁸³

¹⁸³ The Chancellor’s full statement is available [here](#).

Appendix I
May 24, 2023 Presentation to the Board of Trustees

Systemwide Title IX and DHR Assessment

California State University

Presented By:

The Institutional Response Group | Cozen O'Connor

Gina Maisto Smith, Chair

Leslie M. Gomez, Vice Chair

Board of Trustees

May 24, 2023



1

Scope of the Engagement

- Systemwide assessment of the implementation of CSU's Title IX and DHR programs
- Evaluate strengths, challenges, and resources at all 23 universities and the Chancellor's Office
- Assess systemwide opportunities for coordination, alignment, oversight, and efficiency



2

Title IX

- Sex Discrimination
- Sexual Assault
- Domestic Violence
- Sexual Harassment
- Dating Violence
- Stalking

Discrimination, Harassment and Retaliation (DHR)

- Age
- Disability
- Gender
- Genetic Information
- Gender Identity
- Gender Expression
- Marital Status
- Medical Condition
- Nationality
- Race or Ethnicity
- Religion or Religious Creed
- Sex
- Sexual Orientation
- Veteran or Military Status

Other Conduct of Concern

- Unprofessional Conduct
- Bullying
- Abusive Conduct
- Microaggressions



3

Core Obligations

- Coordinator/Administrator
- Notice of nondiscrimination
- Written grievance procedures
- Prevention and education
- Training
- Response to reports and formal complaints
 - Supportive measures
 - Investigation or other resolution
 - Individual or community remedies

Eliminate

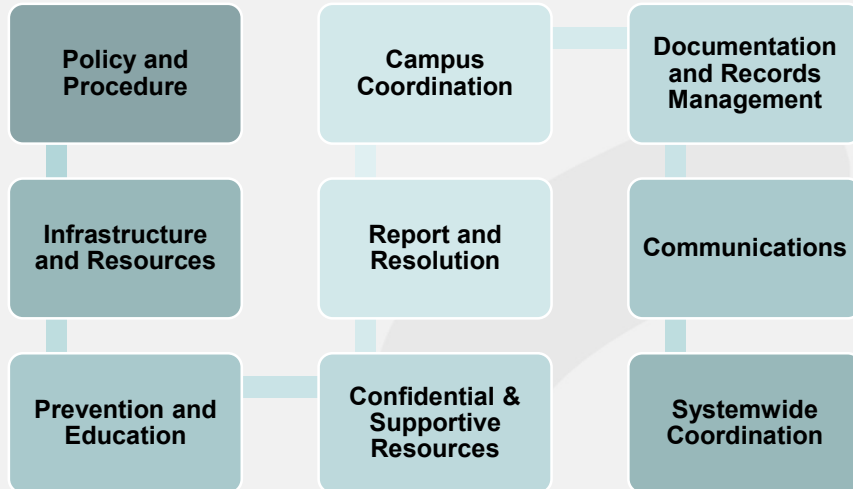
Prevent

Remedy



4

Goal: Strengthen Institutional Culture



5

Observed Strengths

- Universal commitment and dedication
- Transformative impacts of CSU mission
- Humility and openness to this effort
- Strengths of individual personnel
- Campus-specific strengths and practices



6

THE CONTEXT



7

Our Approach

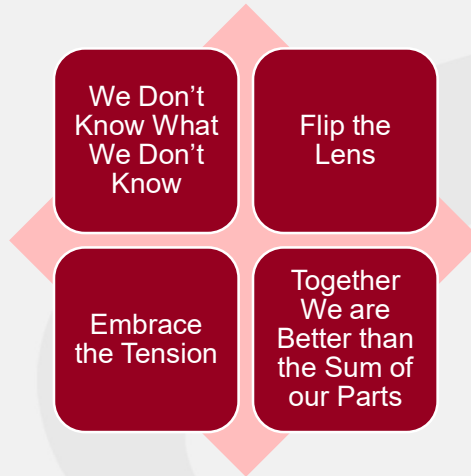
- Holistic, not limited to legal compliance
 - Law
 - Impacts of the Conduct
 - Institutional Context



8

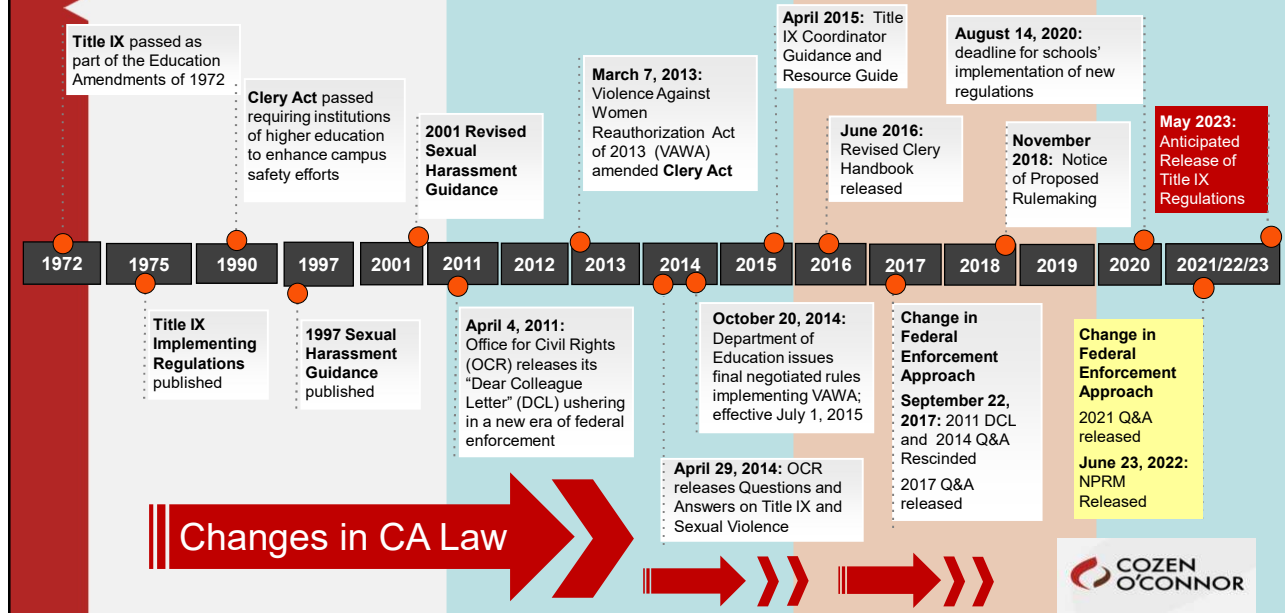
Framing the Conversation

- Humility
- Empathy
- Accountability
- Collaboration



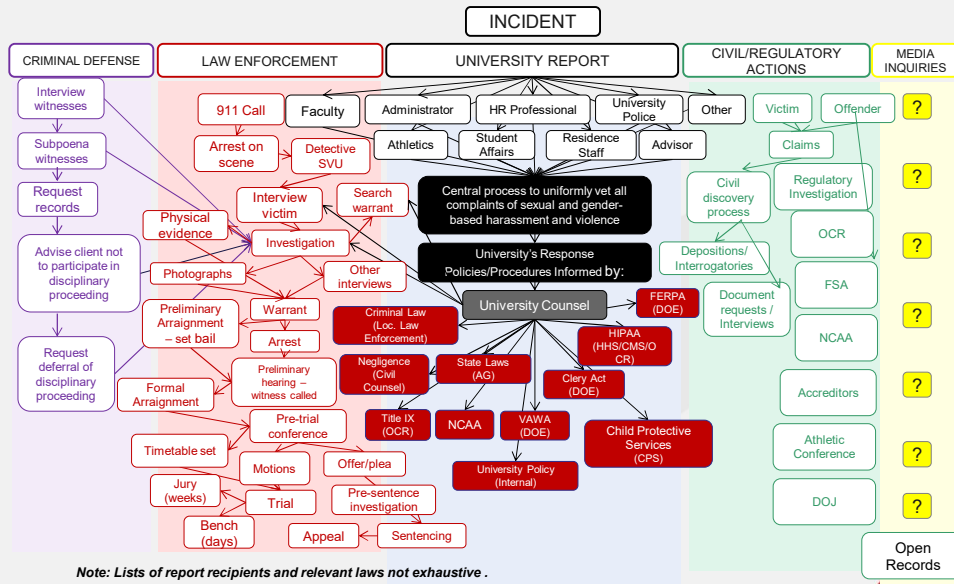
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Evolution of Federal Legislation and Guidance



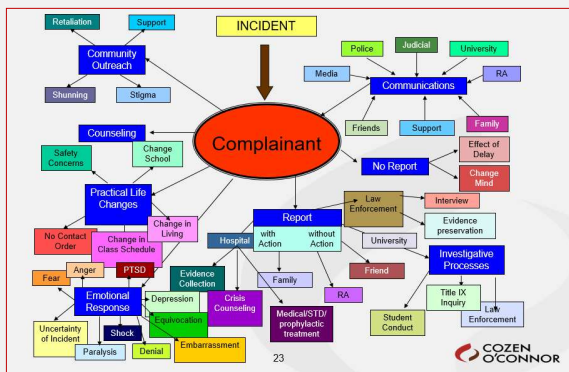
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The Challenge of the Context



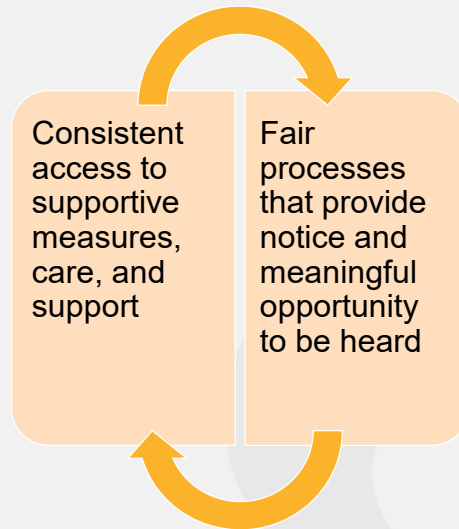
11

Informed Care for the Individual



12

Care-Compliance Continuum



OVERVIEW OF THE ASSESSMENT

Steps in the Engagement

People

- Campus Site Visits
- Community Engagement

Paper

- Policies and Procedures
- Templates, Training Materials, Cases

Analysis

- Aggregate Themes and Information
- Public Release of Written Reports



15

Consistent and Ongoing Engagement

Ongoing Engagement

- Board of Trustees
- Chancellor
- Presidents and Vice Chancellors
- CSU Academic Senate
- Council of Campus Senate Chairs
- CO Systemwide Title IX/DHR
- Title IX Assessment Team
- Civil Rights Team (including OGC)
- Associated Students, Inc.
- Cal State Student Association

Systemwide Coordination

- Title IX Coordinators
- DHR Administrators
- Systemwide Clery Coordinator
- Confidential Victim Advocates
- Hearing Advisors
- Learning & Development Services
- CFA Womxn's Caucus Tri-Chairs
- Campus VP/AVPs for HR and Academic Affairs



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Campus Visit Schedule



JULY
Chancellor's Office
Fresno State

AUGUST
Sonoma State
San Jose State
Channel Islands

SEPTEMBER
Northridge
San Francisco
Stanislaus
Maritime
Bakersfield
Chico

OCTOBER
Sacramento State
San Marcos
San Bernardino
East Bay

NOVEMBER
San Diego
Long Beach
Los Angeles

DECEMBER
Monterey Bay
Humboldt
Pomona

JANUARY
Dominguez Hill
San Luis Obispo
Fullerton

ADDITIONAL VISITS
Sonoma State (January)
San Jose State (March and April)

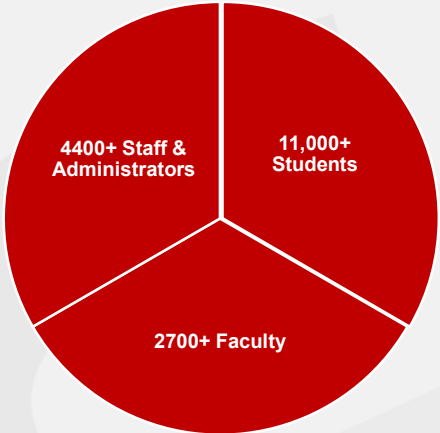


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Systemwide Survey

- December 2022 to February 2023
- Individually tailored to each university and the CO
- Anonymous participation

Nearly 18,000 Responses



Category	Count
Staff & Administrators	4400+
Students	11,000+
Faculty	2700+



18

CAVEATS AND COMPLEXITIES



19

Caveats and Complexities

- Timing of the assessment
 - Institutional responses
 - COVID-19
 - 2020 Title IX Regulations
 - National discourse on social and racial justice
- Impacts of social media and legislative actions



20

External Challenges

- Underfunding and severe resource constraints
- Conflicts in evolving state and federal law
- Disciplinary procedures in collective bargaining agreements not aligned with federal law
- Nationwide shortage of Title IX/DHR professionals
- Tone and tenor of national dialogue



21

OBSERVATIONS AND RECOMMENDATIONS

SYSTEMWIDE COORDINATION AND OVERSIGHT



22

Current Chancellor's Office Systemwide Title IX and DHR Compliance Services

- Draft systemwide policies and templates
- Provide onboarding for Title IX Coordinators
- Review systemwide online training content
- Provide training to campus Title IX/DHR professionals
- Host annual conference and periodic meetings
- Collect campus data for annual reports
- Coordinate and train external hearing officers
- Coordinate and train university-appointed advisors
- Respond to PRA requests
- Respond to external regulator/auditor requests
- Hear Title IX/DHR appeals
- Respond to whistleblower complaints
- Respond to complaints referred from campuses



23

Systemwide Coordination Challenges

- No oversight authority for campus Title IX/DHR programs
- *Ad hoc* support and guidance to all campuses
- Limited education for Board of Trustees, Presidents, senior leaders, and supervisors over Title IX/DHR
- Inconsistent elevation of university reports to the CO
- No enterprise-level records management system
- Inadequate data and information to track patterns and trends to inform prevention and remedial efforts



24

Systemwide Recommendations

- Combine CO Title IX and DHR Compliance Services under the leadership of an Assistant/Associate Vice Chancellor
- Centralize oversight and accountability processes at the CO
- Develop, train and oversee shared pool of investigators and hearing officers through stand alone regional center(s)
- CO to lead and coordinate prevention and education efforts
- Implement enterprise-level case management system



25

OBSERVATIONS AND RECOMMENDATIONS

CORE FINDINGS ACROSS THE CSU



26

Core Observations

- 1 Infrastructure
- 2 Prevention and Education
- 3 Response to Other Conduct of Concern
- 4 Trust Gap
- 5 Accountability



27

Core Observation #1: Infrastructure

- 1** 1. Infrastructure, as designed, is insufficient to consistently carry out care and compliance responsibilities at most of the 23 universities
 - Directly impacted by lack of resources
 - Aggravated by instability, transition and overload
 - Hindered by insufficient records management systems
 - Leads to insufficient institutional history and accountability



28

Infrastructure: Reported Impacts

1

- Hinders ability to consistently demonstrate care and implement core functions in a compliant and effective manner

2

- Impacts responsiveness, timeliness and overall effectiveness

3

- Limits ability to engage in proactive, strategic work

4

5

- Leads to diminished trust in system, university, office, and administrators, which increases barriers to reporting and disengagement with process



29

Infrastructure Recommendations: System Level

1

- Identify additional financial resources

2

- Expand capabilities for oversight of prevention and education, investigations and resolutions

3

- Identify model for supporting campus resources: university-appointed hearing advisors, confidential advocates, respondent support

4

- Expand staffing in Office of General Counsel to sufficiently support campus implementation needs

5

- Provide support and accountability structure to strengthen coordination and internal procedures on each campus



30

Infrastructure Recommendations: Campus Level

1

- Work with CO to develop project plans for addressing gaps and implementing recommendations

2

- Identify recurring baseline funding for Title IX/DHR programs

3

- Combine Title IX and DHR functions

4

- Enterprise-level case management system to align with CO

5

- Campus-specific recommendations



31

Core Observation #2: Prevention & Education

2. Prevention and education programming

1

- At most universities, limited in-person (or synchronous) engagement beyond the required online modules on gender equity and non-discrimination

3

- While necessary to establish a baseline, they are ineffective to shift culture and climate

4

5

- Significant gaps in required primary prevention and awareness programming



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Strategic Integration of Educational Objectives

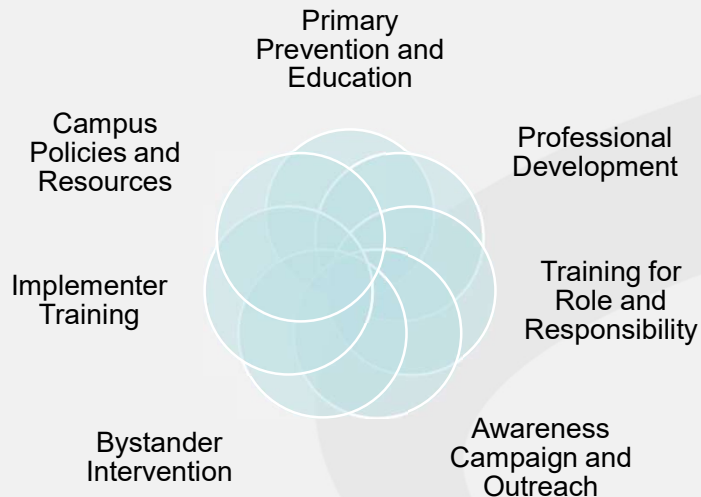
1

2

3

4

5



33

Individual Campus Programming

1

2

3

4

5

- Primary prevention vs. training
- Few dedicated personnel or campus coordinating committees
- *Ad hoc* and diffuse, rather than coordinated and intentional
- Insufficient professional development
 - Employee understanding of reporting responsibilities
 - Manager/department chair core competencies and skill sets

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Prevention and Education Recommendations: System Level

1

- Dedicated prevention and education position at the CO

2

- CO to take expanded role in ensuring compliance on all campuses

3

4

5

- CO to create matrix of all training requirements and assist universities in developing strategic plan



35

Prevention and Education Recommendations: System Level

1

- CO to provide all university-level senior leaders, deans, department chairs, and managers additional education on

2

- Title IX and DHR
- Respectful and inclusive environments
- Conflict resolution
- Bystander intervention strategies
- Effective leadership

3

4

5

- CO to host annual systemwide symposium focused on prevention and education



36

Prevention and Education Recommendations: Campus Level

1

- Individual with dedicated responsibilities for coordination and tracking of prevention, education and training

2

- Campus prevention services coordinating committee

3

- Strategic plan for increased engagement with all campus community members

4

- Expansion of professional development and training for faculty and staff, including senior leadership, deans, department chairs, managers and leaders

5



37

Core Observation #3: Other Conduct

3. "Other Conduct of Concern"

1

- Response to other conduct of concern that may not meet policy thresholds is a significant driver of culture and climate

2

3

- Conduct that does not rise to the level of a policy violation based on protected status because it is not severe, persistent or pervasive

4

- Conduct not based on protected status but may implicate other policies

5

- Conduct that may not be subject to discipline because of free speech or academic freedom



38

Impacts of Process Gaps for Responding to Other Conduct of Concern

1

- No consistent formal process for reporting, resolving, documenting, or tracking

2

- Contributes to perception of ineffectiveness

3

- Limits ability to take effective action

4

5

- Coupled with minimal training and professional development, unaddressed conduct directly impacts culture



39

Recommendations: System Level

1

- Develop a written policy or statement to establish expectations and process for responding to other conduct of concern

2

3

- Reinforce expectations through programming and in-person (or synchronous) engagement

4

5

- Strengthen and expand available campus competencies



40

Recommendations: System Level

1

2

3

4

5

- Aid in building core competencies, systems, and structures at each university for responding to other conduct of concern
- Assist in analysis of data to inform
 - Remedial actions regarding culture and climate
 - Targeted prevention programming
 - Response to ongoing issues of concern at both the university and system-level



41

Recommendations: Campus Level

1

2

3

4

5

- Develop a centralized reporting and intake system to document and track reports about other conduct of concern
- Robust triage/review process by core administrators
- Ensure sufficient documentation system to track
 - Responsiveness
 - Patterns and trends



42

Core Observation #4: Trust Gap

- 1
 - 2
 - 3
 - 4**
 - 5
4. Distrust of senior leadership and compliance processes across many universities
- Palpable theme across all constituent groups
 - Students
 - Staff
 - Faculty
 - Title IX/DHR responses live in broader ecosystem of trust



43

Sources of Distrust

- 1
 - 2
 - 3
 - 4**
 - 5
- High profile incidents involving leaders at the highest levels of CSU
 - University-specific issues
 - Limited awareness of Title IX/DHR role and resources
 - Protracted processes for accountability, particularly for faculty and staff under CBA and CA state law
 - Negative experiences and perceptions of process



44

Impacts of Trust Gap

1

- Increases barriers to reporting

2

- Enhances fears about actual or perceived retaliation

3

- Underreporting impacts ability to address conduct

4

- Unaddressed conduct negatively impacts morale, undermines confidence in the institution, and impacts core mission

5



45

Trust Gap Recommendations: System Level

1

- Senior leadership must clearly communicate priorities, commitment, and values

2

- Develop robust, accessible systemwide Title IX/DHR website

3

- Create a system-level advisory committee that includes faculty, staff and student representation

4

- Develop clear and plain language communications that are responsive to the needs of the community

5

- Create systemwide annual report
- Track and share data/metrics
- Conduct routine systemwide and university climate surveys



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Trust Gap Recommendations: Campus Level

1

- Increase visibility and awareness of Title IX/DHR functions and resources

2

- Prioritize in-person interactive engagement with students, faculty and staff

3

- Revised and expanded web content
- Awareness campaign

4

- Expand annual report with meaningful information/data

5

- Create anonymous reporting options
- Collect post-process feedback of parties and all impacted individuals



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Core Observation #5: Accountability

1

5. Accountability

2

- Individual actors

3

- Underreporting
- Relatively small percentage of cases formally investigated
- Protracted disciplinary processes

4

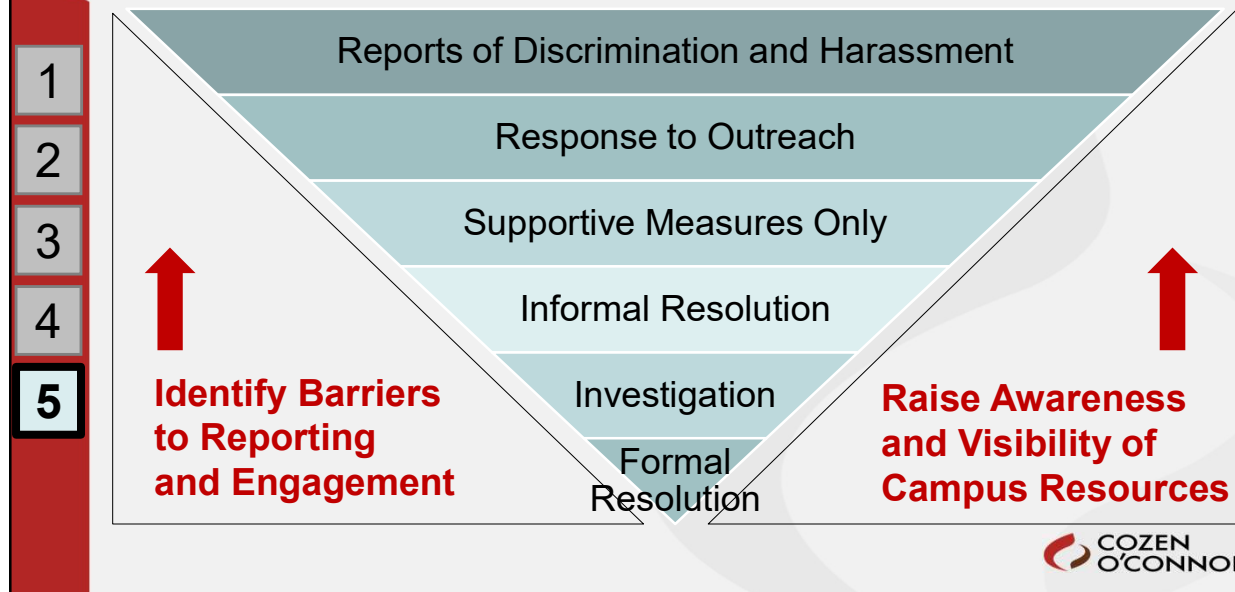
5

- Campus Title IX/DHR programs need increased structures for accountability



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Few Cases Reach Formal Resolution



49

Post-Title IX/DHR Sanctioning Processes

- 1
- 2
- 3
- 4
- 5
 - Protracted disciplinary processes for employees
 - Statutory and contractual requirements and collective bargaining agreements
 - Third party decision-makers (arbitrators and administrative law judges)
 - Not aligned with federal requirements under Title IX and the Clery Act
 - Negotiated outcomes and settlements contributes to perception of institutional bias

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Barriers to Institutional Accountability

1

- Inconsistent documentation and recordkeeping protocols

2

- Immature structures to ensure consistent and informed decision-making

3

- Limited effective supervisory structures for Title IX and DHR programs

4

- No formal standards and processes for implementing systemwide policy

5

- No standardized quality control or quality assurance



51

Recommendations: System Level

1

- Continue to evaluate barriers to reporting and engagement

2

- Review and revise tone, content, and format of reporting forms and other template communications

3

- Identify and work toward reconciling conflicts between CBAs, state statutory rights, and other state and federal requirements

4

5

- Document, track and assess effectiveness of Title IX/DHR programs



52

Recommendations: System Level

- 1
 - 2
 - 3
 - 4
 - 5**
- Expanded and enhanced CO team should
 - Develop systemwide expectations and accompanying standards, policies, and procedures for all CSU universities
 - Oversee compliance program administration by having a CO team member partner with CSU institutions
 - Develop protocols to review initial assessments, closures, investigation reports, written determinations
 - Develop and roll out process for rigorous screening and evaluation of the effectiveness of campus TIX/DHR functions



53

Recommendations: Campus Level

- 1
 - 2
 - 3
 - 4
 - 5**
- Within Title IX/DHR programs
 - Map process for efficiency, conflicts and gaps
 - Expand intake, outreach, and ongoing case management
 - Separate support/advocacy functions from investigation
 - Effective documentation and case management
 - Strengthen campus collaboration and information sharing through multi-disciplinary team
 - Ensure Title IX Coordinator/DHR Administrator remains engaged in sanction and appeal until final



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Next Steps

- Public release of written reports
- Work with the University Implementation Teams
- Develop system and individual university project plans



55

Conclusion

- This deck is not meant to stand alone as the full Cozen O'Connor report.
- It is an abbreviated visual aid accompanying an oral presentation and will be supplemented in subsequent written reports.
- The Calstatereview@cozen.com email address remains open.



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Appendix II
Cozen O'Connor Institutional Response Group

Appendix II
Cozen O'Connor Institutional Response Group

I. Overview of Qualifications

In the context of higher education, we bring a unique background and skillset cultivated by having dedicated more than five decades of our professional careers to the response and evaluation of sexual and gender-based harassment and violence, child abuse, and other forms of interpersonal violence. As career child abuse and sexual assault prosecutors, we observed firsthand the need for improved systems, expanded resources, comprehensive training and education, and the development of fair, impartial, and trauma-informed processes for investigation and resolution. As educators, consultants, and advisors, our service to institutions is based on the depth and breadth of our collective professional experience. The patterns we observed over decades are a direct outgrowth of working with thousands of individuals impacted by interpersonal violence in the context of the law, and our advice and counsel are informed by a deep and nuanced understanding of the dynamics of sexual and gender-based harassment and violence, and the impacts of trauma on individuals and communities, including hierarchical communities dominated by traditional power structures. Our commitment to these issues is evident in our professional histories, our continued pro bono work, our board service, and our multiple community based awards and recognition from victim serving agencies.

Over the past decade, colleges and universities nationwide have engaged in the proactive – and at times, reactive – assessment of policies and implementation practices related to issues of sexual and gender-based harassment and violence. During this time, educational institutions have sought to evaluate their compliance with complicated and ever-evolving law and guidance, and to improve the effectiveness of institutional responses to reports of sexual and gender-based harassment and violence. We have had the opportunity to work with hundreds of public and private institutions across the country in shaping policy, structuring systems, supporting effective implementation, and delivering training and education programs. We have also had the opportunity to work directly with the U.S. Department of Education, Office for Civil Rights (OCR) and Clery Compliance Division, the negotiated rulemaking committee for the Violence Against Women Reauthorization Act of 2013 (which amended the Clery Act), President Obama's White House Task Force to Protect Students from Sexual Assault, the American Law Institute Project on Campus Sexual Assault, Futures Without Violence, and ChildFirst Pennsylvania, among other government and community-based initiatives. We have also had the opportunity to present educational and training programs through the Clery Center, the Higher Education Prevention Network (HEPNet), and other professional organizations dedicated to improving campus responses to sexual and gender-based

harassment and violence. We are committed to changing the conversation with respect to campus responses by building the framework to develop compassionate, trauma-informed, fair and impartial, and legally compliant practices that tend to the individual needs of students and employees.

The Institutional Response Group works with colleges and universities across 40 of the 50 states, including the following public universities: Arizona State University; University of California, Los Angeles; University of California, Berkeley; University of Colorado at Boulder, Colorado Springs, and Denver; University of Connecticut; University of Delaware; University of Florida; Purdue University; University of Iowa; Wichita State University; University of Maryland, College Park; University of Maryland, Baltimore County; St. Mary's College of Maryland; University of Michigan; Michigan State University; Eastern Michigan University; Western Michigan University; University of Missouri; University of Montana; Montana State University; Chadron State College; University of New Mexico; University of North Carolina, Chapel Hill; University of North Carolina, School of the Arts; University of North Dakota; University of Central Oklahoma; The Ohio State University; Oregon State University; University of Oregon; The Pennsylvania State University; University of South Carolina; Medical University of South Carolina; Texas State University; University of Utah; University of Vermont; University of Virginia; and University of Washington.

II. Holistic and Values-Based Response

Cozen O'Connor's Institutional Response Group relies on a three-tiered, holistic framework in conducting its work, recognizing that in addition to compliance with the ever-shifting legal and regulatory framework, an institution's response to sexual and gender-based harassment and violence must also be guided by other vital considerations, including the psychological impacts (which require an understanding of the dynamics of sexual and gender-based harassment and violence, trauma, barriers to reporting, and other related concepts) and cultural context (an institution's unique policies, procedures, personnel, resources, culture, climate, and institutional values). An important foundation of our work is the incorporation of trauma-informed practices and procedurally fair investigative protocols.

In our work across the nation, we seek to bring a values-based approach that involves four key principles: humility, empathy, accountability, and collaboration. Humility is the recognition that "we don't know what we don't know" about another person's lived experience, about an institution and its history, or about other concepts. Empathy is grounded in humility. We articulate the concept as "flipping the lens" – taking the time to learn about another's perspective by listening with an earnest intent to understand. Accountability requires each individual to take responsibility for their own actions, to embrace the tension

of difficult conversations or difficult concepts, and to have the courage to acknowledge and apologize for harm. Collaboration is the recognition that “together, we are better than the sum of our parts,” and is fostered through shared governance, multidisciplinary teams, and campus partnerships. These foundational principles are a critical part of both how we do our work and how educational institutions can more effectively prevent and respond to sexual and gender-based harassment and violence occurring on their campuses.

III. Prior Engagement with the CSU

In October 2014, while at a prior firm, Gina Smith, Leslie Gomez, along with Jody Shipper (now of Grand River Solutions), presented a two-day Title IX investigation training open to all 23 CSU universities and the Chancellor’s Office.

In July 2021, we were engaged by San José State University (SJSU) in two capacities: to provide legal advice and guidance regarding the resolution of regulatory investigations related to Title IX of the Education Amendments of 1972; and to assist SJSU in implementing a legally compliant and effective Title IX program, including prevention and education, written Title IX grievance procedures, intake and outreach processes, informal and formal resolution processes (including investigations, decision-making, and appeals), internal operating protocols, documentation practices, and campus coordination and systems for effective implementation.

In December 2021, SJSU asked us to gather and assess information and to provide privileged legal advice about a number of issues within the SJSU Athletics Department.

In March 2022, Peter Lim, also of the Institutional Response Group, was engaged to serve as an interim Deputy Title IX Coordinator, and on July 1, 2022, he was appointed interim Title IX Coordinator at SJSU, a position he continues to hold. Peter Lim participated in some assessment interviews at SJSU, but is not a member of our assessment team.

IV. Additional Context about Cozen O’Connor in Light of Concerns raised by CFA

The article, [*Performative, Minimal Title IX Changes by CSU Management Not Enough to Fix Systemic Sexual Violence Issues*](#) (November 17, 2022), was brought to our attention by one of the CSU campuses. We were not surprised to read about the trust issues within the CSU – those issues were communicated to us by many campus constituents, including faculty and students. We were also not surprised to read about the CFA’s skepticism about our role. In our work across the country, we are often faced with questions that

arise from perceptions about the role of an external law firm. What surprised us was that the article discounted our work and our approach without first seeking to speak with us to directly raise questions and concerns, especially as we had many positive and productive discussions with CFA representatives across the CSU, both before and after the November article.

As noted above, the Institutional Response Group is a practice specifically founded to better prevent sexual and gender-based harassment and violence, discrimination, harassment, and child abuse, and to improve institutional responses when those issues arise. Importantly, members of the Institutional Response Group do not litigate claims for or against colleges and universities. In this way, we are best positioned to serve as neutral, subject matter experts in our approach to our work, which requires a nuanced understanding of the legal and regulatory framework, the dynamics of the issues (trauma, barriers to reporting, perpetration, retaliation), and the unique characteristics of the institution, including its culture, climate, policies, personnel, resources, and history.

Our team of attorneys (8 in total) conducting the systemwide assessment has extensive experience investigating and resolving reports involving sexual and gender-based harassment and violence, discrimination, harassment and retaliation. Most of us are former sexual violence, child abuse, interpersonal violence prosecutors, from the Philadelphia District Attorney's Office or the Manhattan District Attorney's Office. We have worked hard to build and embody a reputation for candor, integrity and reliability. Many of our reports are publicly available – and most of these contain unflinching accounts of institutional failures or challenges in institutional responses. We are advocates for improving institutional responses – not advocates for protecting institutional reputation over institutional integrity. While the CFA correctly notes that Cozen O'Connor more broadly has a traditional Labor and Employment department that does represent colleges and universities, that department is separate and distinct from the Institutional Response Group – and our independence, judgement, and commitment is in no way compromised by their unrelated work or the work of the 800+ attorneys in the firm's 32 offices.

As this report reflects, contrary to the misperception in the article that Cozen O'Connor is narrowly focused on the "process" or the handling of cases, our review is much broader in scope. We looked carefully at prevention and education programming; the visibility and accessibility of campus confidential resources, including the confidential survivor advocate, health services, counseling, and the ombuds; and responses to conduct that is disruptive to the fabric of the campus, but may not rise to the level of a policy violation, including bullying, bias incidents and other harmful conduct. In this report, we have made

recommendations to strengthen practices in each of these areas, all of which are central to preventing discrimination and harassment and providing care to those who are harmed.

While our site visits necessarily focused on understanding the structure, personnel, and coordination between departments responsible for implementing the Title IX/DHR programs, our assessment of the strengths and challenges is not limited to input from implementers, as the article suggests. Speaking with “implementers” is a necessary framework for us to gain a foundational understanding of how any campus operationalizes its Title IX and DHR programs – particularly as there is little uniformity across the 23 campuses. In every meeting, we asked for frank and candid feedback about individual and community concerns and challenges – and this feedback has been shared freely and frequently, including by administrators, faculty, staff and students across campuses.

Our campus visits typically include representatives from Title IX/DHR, university police, student conduct, residence life, fraternity and sorority life, athletics, counseling, health services, health promotion, ombuds, human resources, provost, faculty/academic affairs, and senior leadership. In addition, we specifically requested to meet with campus confidential advocates on each campus, as well as faculty and staff leaders of affinity groups, identity centers, and other formally designated roles that can help communicate the unique needs of specific campus populations (members of the BIPOC, LGBTQIA+, Chicax/Latinx, Native Americans/Indigenous, Asian American and Pacific Islander (AAPI) communities, veterans, first generation students, Dreamers, and more). We also met with members of Title IX task forces or working groups. These perspectives are critical to our understanding of campus climate and culture and the issues of concern to students, faculty and staff.

To better inform our process, and to share information about the review, at the system level, we met with the CSU Academic Senate (ASCSU), the ASCSU Academic Senate Executive Committee, the Council of Campus Senate Chairs, and Vice President of Systemwide Affairs for the California State Student Association. Ironically, on the same day the CFA article was posted, we communicated with the ASCSU and the CSSA to specifically ask for assistance in connecting with faculty and student leadership on each campus to ensure that we had provided a full opportunity to hear from interested community members.

As part of our site visit and follow up engagement, we had the opportunity to engage directly with members of the campus community in a variety of forums, including with students through ASI, and with faculty through meetings with the campus Academic Senate, union leadership, faculty participation in

other campus committees, and/or individual meetings with faculty who have reached out to us through the CalStateReview@cozen.com email address.

In late December, we released a survey to be disseminated to every student, staff and faculty member on every campus. This survey provides all interested community members an opportunity to provide additional feedback and share their insights and experiences. Given the close of the academic semester, and that that many faculty were off contract, the survey remained until March 1, 2023.

We wholeheartedly agree with the CFA that the experiences of survivors are an important element in understanding how an institution responds to reports of discrimination or harassment, the culture regarding barriers to reporting and retaliation, and gaps in resources, policies and institutional responses. While it is extraordinarily valuable to hear from parties who have directly interacted with the Title IX or DHR processes, those who have been impacted by sexual and gender-based harassment and violence, discrimination or harassment should have the choice whether and to what extent they wish to engage in our review. We honored those choices by making ourselves available to any individual who wished to share their experience with us.

We recognize that where there is a gap in communication, that gap is often filled with negative inferences. We acknowledge that our communication regarding our planned community engagement could have been more proactive and timely. In every conversation we hold on campuses across the CSU, we seek to listen with an earnest intent to understand individual and community perspectives. We seek to remain humble in our approach, to recognize that we don't know what we don't know, and that we have much to learn on each campus. The faculty members we have met with across the system have been insightful and have shared important perspectives, including the recognition that preventing and addressing discrimination and harassment necessarily requires cross-constituent collaboration and implementation by a multidisciplinary group that includes CFA members on each campus. We hope that the CFA remains open to learning more about the nature of our work and our commitment to the issues, to reviewing this report with an openness to the concepts we have identified, and to working in partnership with the CSU to enhance the effectiveness of the systemwide assessment. We also hope that the invaluable participation of CFA members in this review is the beginning of a collaborative and intentional commitment to align efforts around the shared goals of preventing and effectively addressing discrimination, harassment, and bias, and to strengthen systems of care to best serve students, staff and faculty across the CSU.

Appendix III
Cozen O'Connor Systemwide Title IX/DHR Assessment
Individual Campus Visit Template (In person or Zoom)

**Appendix III
Cozen O'Connor Systemwide Title IX/DHR Assessment
Individual Campus Visit Template (In person or Zoom)**

Day 1	Day 2	Day 3
Title IX Coordinator	DHR Administrator	Counseling
Title IX Team/Student Cases¹⁸⁴	Human Resources/Faculty Affairs¹⁸⁵	Health Services
		Health Promotion / Education
VP Student Affairs / Dean of Students	Provost	Residence Life / Housing
Student Conduct	Campus Law Enforcement	Diversity and Inclusion
Victim Advocate	Athletics Department	Identity Center / Affinity Group Leaders
Campus Counsel	Clery Coordinator	OPEN

Other Campus Constituents: Faculty (e.g. faculty committee that focuses on Title IX/DHR issues, if one exists, and/or faculty leaders or open forum), Students (e.g. student group that focuses on Title IX/DHR issues, if one exists, and/or student leaders or open forum), Investigators, Greek Life Coordinators, Hearing Officers/Hearing Advisors, University-Provided Advisors, Appellate Officers/Authorities, Informal Resolution Facilitators, Ombuds, Threat Assessment/Care Team, Bias Incident Response Team, Other: _____

¹⁸⁴ This meeting should include all individuals who intersect with student Title IX cases, even if some individuals have separate meetings later. For example, this meeting may include:

- Title IX Coordinator
- Title IX Investigator(s) for student cases
- Title IX Decision-Maker(s) for student cases
- Campus Counsel
- Individuals designated as Advisors for student Complainants and Respondents
- 1-2 individuals from Campus Law Enforcement who work most directly with students in Title IX cases
- 1-2 individuals from Student Conduct who intersect most directly with Title IX cases

¹⁸⁵ This meeting should include all individuals who intersect with faculty or staff cases, even if some individuals have separate meetings later. For example, this meeting may include:

- Title IX Coordinator
- DHR Administrator
- Title IX and DHR Investigator(s) and Decision-Makers for employee cases
- Campus Counsel
- 1-4 individuals from Human Resources who work most directly with Title IX and DHR matters
- 1-4 individuals from Faculty Affairs who work most directly with Title IX and DHR matters

Appendix IV
Sample Systemwide Survey

California State University Systemwide Title IX and DHR External Assessment California State University, Bakersfield

Introduction

Content Advisory: This survey contains general questions about sexual assault, stalking, dating and domestic violence, discrimination, harassment and retaliation. The survey is voluntary. You may choose not to take this survey, choose to skip questions, or choose to stop taking the survey at any time. Confidential resources and support are available through the University through the links provided below.

The California State University has engaged [Cozen O'Connor's Institutional Response Group](#) to conduct a [systemwide assessment](#) of the CSU's implementation of its Title IX and antidiscrimination programs that prohibit discrimination, harassment, and retaliation (DHR). The assessment includes an individual evaluation of each of the 23 CSU universities, as well as the Chancellor's Office, and seeks to identify opportunities to strengthen campus practices and systemwide collaboration for the purpose of enhancing care and support, ensuring prompt and equitable processes and accountability, and fostering a healthy learning, working, and living environment for all campus community members. The goal of the assessment is to strengthen CSU's culture by assessing current practices and providing insights, recommendations, and resources to advance Title IX and civil rights training, awareness, prevention, intervention, compliance, and support systems.

This survey, created and administered by Cozen O'Connor, was designed to ensure that every campus community member has the opportunity to share their insights into their campus, its culture and climate, and its strengths and challenges related to its Title IX and DHR programs. Participation in the survey is voluntary and you are not required to answer all of the questions to participate. Responses to the survey go directly to Cozen O'Connor and no personally-identifying information is recorded unless you manually add your name and contact information at the conclusion of the survey. The ability to share information without personal attribution is an important feature of this forum, and we encourage you to respond candidly.

Depending on the nature and depth of your response, the survey should take between 10 and 30 minutes to complete. You may also share your perspective or request a follow-up phone call or Zoom meeting with Cozen O'Connor by writing to CalStateReview@cozen.com or by sharing your contact information at the end of this survey.

This survey is intended to inform our review, not to serve as a place to report conduct for which you are seeking supportive measures or resolution under the [CSU's Nondiscrimination Policy](#). To report any concerns about discrimination, harassment, sexual misconduct, dating violence, domestic violence, stalking, or retaliation on your campus, please:

- Contact the Title IX Coordinator/DHR Administrator, Marcus Brown, at mbrown59@csub.edu or (661) 654 - 2713 or in person at 9001 Stockdale Highway, BDC 33, Bakersfield, CA 93311-1022, and/or
- Complete the [Online Complaint Form](#)

You may also contact law enforcement for assistance in filing a criminal complaint or preserving physical evidence:

- Call 911 or local police
- [University Police Department](#): (661) 654-2111

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Please select your role at CSU Bakersfield. Please mark all that apply:

- Undergraduate student
- Graduate student
- Staff
- Administrator or Manager
- Faculty
- Other (please specify)

For students and alumni, please list graduation year (or planned graduation year):



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Culture and Climate/Equity and Inclusion

Please rate your general sense of physical safety and security on campus:

Not safe at all Very safe

Please share any additional observations:

Where are the places or settings on campus you feel more or less comfortable or more or less safe?

Please rate the culture and climate within your workplace environment as it relates to inclusivity and respect:

Not at all inclusive and respectful	Very inclusive and respectful
<input type="radio"/>	<input type="checkbox"/>

Please share any additional observations:



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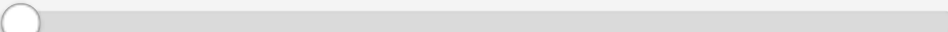
Training, Prevention and Education

As a student or employee, have you participated in online or in-person training or education about any of the following topics? Please mark all that apply:

- Discrimination, harassment, and retaliation
- Sexual and gender-based harassment or discrimination
- Sexual violence
- Consent
- Interpersonal violence (dating violence, domestic violence, and stalking)
- Alcohol and other drugs
- Bystander/upstander intervention
- Healthy relationships
- Diversity, equity and inclusion
- How to report prohibited conduct including sexual assault, dating violence, domestic violence, stalking, discrimination, harassment, or bias
- The California State University's policy and procedures for responding to reports of discrimination, harassment, and retaliation, including sexual and gender-based harassment and violence
- Employee reporting obligations (i.e. Responsible Employee under Title IX and state law, Campus Security Authority under the Clery Act, and/or Mandated Reporting under the California Abuse and Neglect Reporting Act (CANRA))
- Campus and/or community resources and supportive measures for complainants (individuals who have reported and/or experienced harm)
- Campus and/or community resources and supportive measures for respondents (individuals who have been accused of or have committed harm)

How would you assess the effectiveness and relevance of Title IX or DHR prevention and education programming and training for **any pre-recorded (also known as asynchronous) online program** you completed:

Not Effective Very Effective



How would you assess the effectiveness and relevance of Title IX or DHR prevention and education programming and training for **any in-person or “live” Zoom program** you attended:

Not Effective Very Effective



If you did not complete any Title IX or DHR training through CSU Bakersfield, please select the reasons that apply:

- I do not remember being offered a training on these topics
- I was offered a training, but decided not to take it because I did not have time
- I was offered a training, but decided not to take it because it did not seem relevant to me
- I was offered a training, but decided not to take it because it was not mandatory
- Other (please specify)

Do you know whom to contact on your campus to request additional training, prevention or educational opportunities regarding Title IX/DHR?

- Yes
- No
- Don't Know/Not Sure

Please share any additional insights or recommendations for improvement to the University’s Title IX or DHR prevention and education programming:



Policy

Please describe your familiarity (level of awareness and knowledge) with each of the following:

CSU's Nondiscrimination Policy (which addresses the response to sexual assault, dating violence, domestic violence, stalking, sexual exploitation, sexual misconduct, retaliation, and discrimination and/or harassment on the basis of protected characteristics including age, disability, gender, gender identity, gender expression, genetic information, marital status, medical condition, nationality, race or ethnicity, religion, sexual orientation, veteran status and military status).

Not Aware or Knowledgeable	Very Aware and Knowledgeable	<input type="checkbox"/>
<input type="range"/>		

Procedures for addressing reports under the Nondiscrimination Policy that are related to Title IX (sexual harassment) or Discrimination, Harassment, or Retaliation (DHR) issues.

Not Aware or Knowledgeable	Very Aware and Knowledgeable	<input type="checkbox"/>
<input type="range"/>		

Have you ever reported a concern or complaint using the Nondiscrimination Policy or Procedures (previously referred to as Executive Orders 1095 and 1096)?

- Yes
 No
 Don't Know/Not Sure

If you have used the Nondiscrimination Policy or Procedures, please share your feedback. Check all that apply:

- The policy was easy to read and follow.
 The policy was difficult to read and follow.
 I was able to find the answers to my questions in the policy.
 The policy directed me to the right resources or people on campus.
 I could not find what I needed in the policy.
 I looked for, but could not find, the policy.
 I have not used the policy.

Please share any additional observations:

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Reporting

Please describe your familiarity (level of awareness and knowledge) with each of the following:

How to make a report to CSU Bakersfield if you experience conduct that might violate the Nondiscrimination Policy.

Not Aware or Knowledgeable Very Aware and Knowledgeable

The purpose/role of CSU Bakersfield's Title IX Coordinator and/or Office of Equity, Inclusion and Compliance.

Not Aware or Knowledgeable Very Aware and Knowledgeable

Please share any additional observations:

The purpose/role of CSU Bakersfield's DHR Administrator and/or Office of Equity, Inclusion and Compliance.

Not Aware or Knowledgeable Very Aware and Knowledgeable

Please share any additional observations:

Do you have concerns about the impact of power imbalances or potential retaliation for making a report involving **sexual misconduct, discrimination, harassment and retaliation** involving a University employee as the respondent or involving another person who holds a position of power at the University?

- Yes
- No

If yes, please explain:

Have you or anyone you know personally experienced **retaliation** by someone acting on behalf of the University, or by any member of the University community in connection with a report of sexual misconduct, discrimination, harassment and retaliation?

- Yes
- No

If yes, please describe the circumstances:



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Title IX/Sexual Misconduct Reporting

Have you or someone you know personally experienced **sexual harassment, sexual assault, dating or domestic violence, stalking, sexual exploitation, or related sexual misconduct** that has any connection to CSU Bakersfield?

- Yes
- No

If you reported the conduct to CSU Bakersfield, please share where you reported it:

- Title IX Coordinator/Office of Equity, Inclusion and Compliance
- DHR Administrator/Office of Equity, Inclusion and Compliance
- Human Resources
- Faculty Affairs
- Dena of Students
- Student Housing and Residence Life (including RAs)
- University Police Department
- Division of Student Affairs
- Athletics (including coaches and asst. coaches)
- Faculty Member
- Other:

If you made a report to the Title IX Coordinator or Office of Equity, Inclusion and Compliance, what was your role in the report:

- I was the complainant (the person the incident happened to)
- I was reporting an incident that happened to someone else (friend or colleague)
- I reported the incident as part of my employee reporting responsibilities

Please share any feedback about your interactions with the Office of Equity, Inclusion and Compliance:

Do you think the incident was addressed appropriately by the University?

- Yes
- No

Please explain.

If you did not report the conduct to CSU Bakersfield, did any of the following reasons impact your decision not to report to CSU Bakersfield? Please check all that apply:

- Not sure how to report
- Afraid of getting in trouble for violating a University policy (e.g. underage drinking or misuse of technology)
- Self-blame, embarrassment or shame
- Worried about others' reactions (being blamed, not being believed, being treated differently by others)
- Did not want to get the other person in trouble
- Fear of retaliation
- Afraid that family or partner would find out
- Did not think the incident was serious enough to report
- Did not think reporting would solve anything
- Not comfortable discussing the details of the incident
- Wanted to forget about it
- Not sure if what happened fit the University's definition of the conduct
- Concerned about privacy
- Did not know enough about the University's process
- Did not want to go through the University's process
- Did not trust the University process
- Did not think the University would do anything
- The person it happened to did not want me to report it
- Other:

Please use the space below to explain your response(s) above or to add any additional factors impacting your decision not to make a report:



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Discrimination, Harassment, and Retaliation Reporting

Have you or someone you know experienced **discrimination, harassment, or bias due to any Protected Status** under CSU policy (Age, Disability (physical and mental), Gender (or sex, including sex stereotyping), Gender Identity (including transgender), Gender Expression, Genetic Information, Marital Status, Medical Condition, Nationality, Race or Ethnicity (including color, caste, or ancestry), Religion (or religious creed), Sexual Orientation, and Veteran or Military Status) that has any connection to CSU Bakersfield?

- Yes
- No

If you reported the conduct to CSU Bakersfield, please share where you reported it:

- DHR Administrator/Office of Equity, Inclusion and Compliance
- Title IX Coordinator/Office of Equity, Inclusion and Compliance
- Human Resources
- Faculty Affairs
- Dean of Students
- Student Housing and Residence Life (including RAs)
- University Police Department
- Division of Student Affairs
- Athletics (including coaches and asst. coaches)
- Faculty Member
- Other:

If you made a report to the DHR Administrator or Office of Equity, Inclusion and Compliance, what was your role in the report:

- I was the complainant (the person the incident happened to)
- I was reporting an incident that happened to someone else (friend or colleague)
- I reported the incident as part of my employee reporting responsibilities

Please share any feedback about your interactions with the Office of Equity, Inclusion and Compliance:

Do you think the incident was addressed appropriately by the University?

- Yes
- No

Please explain

Have you or someone you know experienced **discrimination, harassment, or bias due to any Protected Status** under CSU policy (Age, Disability (physical and mental), Gender (or sex, including sex stereotyping), Gender Identity (including transgender), Gender Expression, Genetic Information, Marital Status, Medical Condition, Nationality, Race or Ethnicity (including color, caste, or ancestry), Religion (or religious creed), Sexual Orientation, and Veteran or Military Status) that has any connection to CSU Bakersfield **but decided not to report it** to CSU Bakersfield?

- Yes, I experienced one or more of the above forms of conduct, but I did not report it to CSU Bakersfield
- Yes, someone I know experienced one or more of the above forms of conduct, but I did not report it to CSU Bakersfield
- No

If your answer to the above was "yes," did any of the following reasons impact your decision not to report to CSU Bakersfield? Please check all that apply:

- Not sure how to report
- Afraid of getting in trouble for violating another University policy
- Self-blame, embarrassment or shame
- Worried about others' reactions (being blamed, not being believed, being treated differently by others)
- Did not want to get the other person in trouble
- Fear of retaliation
- Afraid that family or partner would find out
- Did not think the incident was serious enough to report
- Did not think reporting would solve anything
- Not comfortable discussing the details of the incident
- Wanted to forget about it
- Not sure if what happened fit the University's definition of the conduct
- Concerned about privacy
- Did not know enough about the University's process
- Did not want to go through the University's process
- Did not trust the University process
- Did not think the University would do anything
- The person it happened to did not want me to report it

Please use the space below to explain your response(s) above:



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Respondents

If you have been accused of, or were the subject of a report of, sexual misconduct, discrimination, harassment, or retaliation, please provide the following additional information.

Please share any feedback about your interactions with the Office of Equity, Inclusion and Compliance:

Do you think the incident was addressed appropriately by the University?

- Yes
- No

Please explain



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Campus Resources

Please describe your familiarity (level of awareness and knowledge) with each of the following:

How to seek confidential assistance through the Campus Advocates.

Not Aware or Knowledgeable	Very Aware and Knowledgeable	<input type="checkbox"/>
<input type="range"/>		

How to request supportive measures or resources?

Not Aware or Knowledgeable	Very Aware and Knowledgeable	<input type="checkbox"/>
<input type="range"/>		

If you are a student, how to seek confidential assistance through the Student Health Center.

Not Aware or Knowledgeable	Very Aware and Knowledgeable	<input type="checkbox"/>
<input type="range"/>		

If you are a student, how to seek confidential assistance through the Counseling Center.

Not Aware or Knowledgeable	Very Aware and Knowledgeable	<input type="checkbox"/>
<input type="range"/>		

If you are a student, how to seek assistance through the Ombudsperson.

Not Aware or Knowledgeable	Very Aware and Knowledgeable	<input type="checkbox"/>
<input type="range"/>		

If you are an employee, how to seek confidential assistance through the Employee Assistance Program.

Not Aware or Knowledgeable	Very Aware and Knowledgeable	<input type="checkbox"/>
<input type="range"/>		

Please share any comments, concerns, or observations about any of the above:

If you or someone you know were to experience sexual or gender-based harassment, interpersonal violence, discrimination, harassment or bias at CSU Bakersfield, would you consider using, or referring the impacted person to, the following **confidential** campus resources?

	Yes	No	Unsure/Don't Know
Counseling Center	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Student Health Center	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Campus Advocates	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employee Assistance Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you or someone you know were to experience sexual or gender-based harassment, interpersonal violence, discrimination, harassment or bias at CSU Bakersfield, would you consider using, or referring the impacted person to, the following **reporting options**?

	Yes	No	Unsure/Don't Know
Title IX Coordinator/Office of Equity, Inclusion and Compliance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DHR Administrator/Office of Equity, Inclusion and Compliance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Human Resources/Employee Relations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Office of the Provost/Academic Affairs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dean of Students/Student Conduct	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
University Police Department	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Student Housing and Residence Life	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain any responses:

Is there a person or office listed above to whom you would be **most likely** to report and/or make a referral? If so, please explain.

Is there a person or office *not listed above* to whom you would be **most likely** to report and/or make a referral? If so, please explain.

Is there a person or office listed above to whom you would be **least likely** to report and/or make a referral? If so, please explain.



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Conclusion

Do you have recommendations for CSU Bakersfield about how to foster reporting, increase trust, and prevent and address sexual misconduct, discrimination, harassment and retaliation?

If CSU Bakersfield offered an **anonymous** reporting option, would you consider using it?

- Yes
- No

Why or why not?

Please add any additional information you wish to share:

Thank you for your participation in this review. Your comments are greatly appreciated.

Do you wish to have Cozen O'Connor contact you for an individual follow-up conversation? Please note that comments shared during the meeting will not be shared with the CSU with personal attribution.

- Yes
- No

If so, please provide your contact information below. Alternatively, you can email us directly at CalStateReview@cozen.com to request a meeting.

Email Address	<input type="text"/>
Phone Number	<input type="text"/>

If we are unable to schedule individual follow up conversations, due to volume of responses, are you interested in participating in a Zoom focus group discussion?

- Yes
- No

Appendix V
Definitions of Prohibited Conduct under the Nondiscrimination Policy

Appendix V Definitions of Prohibited Conduct under the Nondiscrimination Policy

Under the Nondiscrimination Policy, Protected Status includes Age, Disability (physical or mental), Gender (or sex), Genetic Information, Gender Identity (including transgender), Gender Expression, Marital Status, Medical Condition, Nationality, Race or Ethnicity (including color, caste, or ancestry), Religion or Religious Creed, Sexual Orientation, and Veteran or Military Status, as defined below:

Age, with respect to employment discrimination, refers to the chronological age of any individual who has reached their 40th birthday. Age based stereotype refers to generalized opinions about matters including the qualifications, job performance, health, work habits, and productivity of individuals over forty. With respect to discrimination in non-employment programs and activities, Age means how old a person is, or the number of years from the date of a person's birth.

Disability means:

- Having a physical or mental condition that limits a major life activity. "Limits" means making the achievement of a major life activity difficult. "Limits" is determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity. A "major life activity" is broadly construed and includes physical, mental, and social activities (such as walking, talking, seeing, hearing) and working; or
- Having a known history of a qualifying impairment; or
- Being regarded or treated as having or having had a qualifying impairment; or
- Being regarded or treated as having or having had such an impairment that has no presently disabling effects but may become a qualifying impairment in the future.

Disability includes HIV and AIDS.

Gender means sex, and includes Gender Identity, Gender Expression, and Sex Stereotyping.

- **Sex** includes, but is not limited to pregnancy, childbirth, breastfeeding or any related medical conditions.
- **Gender Identity** means a person's identification as female, male, nonbinary, or another gender different from the person's sex assigned at birth.
- **Nonbinary** is a general term for people whose gender identities fall outside of the binary conception of male or female. Nonbinary people may or may not identify as transgender.
- **Transgender** is a general term that refers to a person whose gender identity differs from their sex assigned at birth. A transgender person may or may not medically transition and may identify as male, female, or nonbinary.
- **Gender Expression** means a person's gender-related appearance or behavior whether or not stereotypically associated with the person's assigned sex at birth.
- **Sex Stereotype** means an assumption about a person's appearance or behavior or about an individual's ability or inability to perform certain kinds of work based on a myth, social expectation, or generalization about the individual's sex.

Genetic Information means:

- The person's genetic tests.
- The genetic tests of the person's family members.
- The manifestation of a disease or disorder in the person's family members.

- Any request for, or receipt of genetic services, or participation in clinical research that includes genetic services, by a person or any person's family member.

Genetic Information does not include information about the sex or age of any person.

Marital Status means an individual's state of marriage, non-marriage, divorce or dissolution, separation, widowhood, annulment, or other marital state, including domestic partnership.

Medical Condition means either of the following:

- Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer; or
- Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:
 - Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder; or
 - Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

Nationality includes citizenship, country of origin, and national origin. It also includes language use restrictions and holding or presenting a driver's license issued under section 12801.9 of the Vehicle Code.

Race or Ethnicity includes ancestry, color, caste, ethnic group identification, and ethnic background.

Religion or Religious Creed includes all aspects of religious belief, observance, and practice, including religious dress and grooming practices, and includes agnosticism and atheism. Religious dress and grooming practices, such as wearing religious clothing, head or face covering, jewelry, and artifacts, are part of a Complainant's religious observance or belief.

Sexual Orientation means a person's identity in relation to the gender or genders to which they are sexually or romantically attracted and includes but is not limited to heterosexuality, gay, lesbian, bisexuality, and queer.

Veteran or Military Status means service in the uniformed services.

The Nondiscrimination Policy defines the following forms of prohibited conduct.¹⁸⁶

I. Sexual Harassment

¹⁸⁶ For the complete definition and additional contextual information, see Nondiscrimination Policy, Article VII. Policy Definitions, Section A. Prohibited Conduct Defined, <https://calstate.policystat.com/policy/12891658/latest/> (last accessed May 6, 2023).

Sexual Harassment means unwelcome verbal, nonverbal or physical conduct of a sexual nature that includes, but is not limited to, sexual advances, requests for sexual favors, offering employment benefits or giving preferential treatment in exchange for sexual favors, or indecent exposure, and any other conduct of a sexual nature where:

- a. Submission to, or rejection of, the conduct is explicitly or implicitly used as the basis for any decision affecting a Complainant's academic status or progress, or access to benefits and services, honors, programs, or activities available at or through the university; or
- b. Submission to, or rejection of, the conduct by the Complainant is explicitly or implicitly used as the basis for any decision affecting a term or condition of the Complainant's employment, or an employment decision; or
- c. The conduct is sufficiently severe, persistent, or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the Complainant, and is in fact considered by the Complainant, as limiting their ability to participate in or benefit from the services, activities or opportunities offered by the university; or
- d. The conduct is sufficiently severe, persistent, or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the Complainant, and is in fact considered by the Complainant, as creating an intimidating, hostile or offensive environment.

...

Claiming that the conduct was not motivated by sexual desire is not a defense to a complaint of Sexual Harassment.

II. Sexual Misconduct

All sexual activity between members of the CSU community must be based on Affirmative Consent. Engaging in any sexual activity without first obtaining Affirmative Consent to the specific activity is **Sexual Misconduct**, whether or not the conduct violates any civil or criminal law.

- Sexual activity includes, but is not limited to:
 - kissing,
 - touching intimate body parts
 - fondling,
 - intercourse,
 - penetration, no matter how slight, of the vagina or anus with any part or object,
 - oral copulation of a sex organ by another person.
- Sexual Misconduct includes, but is not limited to, the following conduct:
 - an attempt, coupled with the ability, to commit a violent injury on the person of another because of that person's Gender or Sex,
 - the intentional touching of another person's intimate body parts without Affirmative Consent,
 - intentionally causing a person to touch the intimate body parts of another without Affirmative Consent,
 - using a person's own intimate body part to intentionally touch another person's body without Affirmative Consent,

- any unwelcome physical sexual acts, such as unwelcome sexual touching,
 - using physical force, violence, threat, or intimidation to engage in sexual activity,
 - ignoring the objections of the other person to engage in sexual activity,
 - causing the other person's incapacitation through the use of drugs or alcohol to engage in sexual activity,
 - taking advantage of the other person's incapacitation to engage in sexual activity.
- Intimate body part means the sexual organ, anus, groin, buttocks, or breasts of any person.
 - Sexual activity between a Minor (a person younger than 18 years old) and a person who is at least 18 and two years older than the Minor always constitutes Sexual Misconduct, even if there is Affirmative Consent to all sexual activity. The existence of Affirmative Consent and/or the type of sexual activity may be relevant to the determination of an appropriate Sanction.

III. Sexual Assault¹⁸⁷

Sexual Assault includes the following:

- I. Rape is the penetration, or attempted penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Affirmative Consent of the Complainant. Rape also includes the attempted penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Affirmative Consent of the Complainant, with the present ability and the intent to commit Rape.
- II. Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the Affirmative Consent of the victim, including instances where the Complainant is incapable of giving Affirmative Consent because of their age or because of their temporary or permanent mental incapacity.
- III. Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- IV. Statutory Rape is sexual intercourse with a person who is under the age of 18 years, the California statutory age of consent.

The definition of Affirmative Consent is that under Article VII.A.3 above.

IV. Stalking

Stalking means engaging in a Course of Conduct directed at a specific person that would cause a reasonable person to fear for the safety of self or others' safety or to suffer Substantial Emotional Distress. For purposes of this definition:

¹⁸⁷ Sexual Assault is defined in the subsection of the Nondiscrimination Policy that applies to the Federally-Mandated Hearing Process (Track 1). For the complete definition, see Nondiscrimination Policy, Article VII. Policy Definitions, Section C. Track 1: Federally Mandated Hearing Process Prohibited Conduct Defined, <https://calstate.policystat.com/policy/12891658/latest/> (last accessed May 6, 2023).

- Course of Conduct means two or more acts, including but not limited to, acts in which one party directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about the other party, or interferes with the other party's property.
- Substantial Emotional Distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

V. Dating Violence

Dating Violence means physical violence or threat of physical violence committed by a person—who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- I. The length of the relationship.
- II. The type of relationship.
- III. The frequency of interaction between the persons involved in the relationship.

VI. Domestic Violence

Domestic Violence means physical violence or threat of physical violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant.

Physical violence means physical conduct that intentionally or recklessly threatens the health and safety of the recipient of the behavior, including assault.

VII. Sexual Exploitation

Sexual Exploitation means a person taking sexual advantage of another person for the benefit of anyone other than that person without that person's consent, including, but not limited to, any of the following acts:

- a. The prostituting of another person.
- b. The trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor of services, through force, fraud, or coercion.
- c. The recording of images, including video or photograph, or audio of another person's sexual activity or intimate parts, without that person's consent.
- d. The distribution of images, including video or photographs, or audio of another person's sexual activity or intimate parts, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure.
- e. The viewing of another person's sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy, without that person's consent, for the purpose of arousing or gratifying sexual desire.

Appendix VI
Center for Investigations and Resolutions

Appendix VI Center for Investigations and Resolutions

As part of Cozen O'Connor's recommendations, we propose establishing a Center for Investigations and Resolutions (CSU-CIR) to centralize investigative, hearing officer, and informal resolution services for the 23 CSU universities and the Chancellor's Office.¹⁸⁸ While the initial goal is to centralize investigative and resolution services for efficiency, cost-effectiveness, quality, and neutrality, the CSU-CIR could also be expanded to become an industry-building and revenue-generating program.

Our specific recommendations include:

1. Create a Center for Investigation and Resolution (CSU-CIR), initially developed under the systemwide leadership of the Chancellor's Office, but which we recommend be expanded to an independent entity
 - 1.1. The Systemwide Investigations and Resolutions Coordinator/Director will work to develop the proposal, funding model, budget requirements, staffing, and protocols for the CSU-CIR
 - 1.2. The CSU-CIR should provide trained, experienced, neutral, and impartial investigators and hearing officers, which are available to each university
 - 1.3. The CSU-CIR investigators and hearing officers may also assist in facilitating informal resolutions
 - 1.4. The CSU-CIR should contemplate future state expansion capacity for the provision of statewide investigations for other educational institutions, including community colleges, which would allow it to be revenue-generating
 - 1.5. The CSU-CIR may also be expanded to serve as a state of the art training facility and post-graduate certificate or degree program for Title IX and DHR professionals

Currently, each of the 23 universities rely on a combination of internal and external investigators to conduct investigations under the Nondiscrimination Policy. Some universities pool resources with others,

¹⁸⁸ We have been cultivating the idea of a regional center for more than a decade. For additional information, please see Gina Maisto Smith and Leslie M. Gomez, *The Regional Center for Investigation and Adjudication: A Proposed Solution to the Challenges of Title IX Investigations in Higher Education*, Penn State Law Review, Vol. 120, Issue 4 (Spring 2016); Gina Maisto Smith and Leslie M. Gomez, *The Regional Center for Investigation and Adjudication: A Proposed Solution to the Challenges of Title IX Investigations in Higher Education*, Dispute Resolution Magazine (Spring 2016).

particularly if there are a small number of investigations or limited staffing on a particular campus. Other universities rely upon external attorneys retained by the Office of General Counsel through the California Attorney General's Office or private law firms or consultant groups. Investigator positions on many campuses are entry level, and investigators are often learning on the job as they often have no significant Title IX experience prior to joining CSU. We heard or observed concerns about the work product of newer investigators, who needed greater support to ensure competent and professional work product. On many campuses, the investigator positions are those that have remained vacant for long periods of time, leaving the investigative responsibilities to the Title IX Coordinator or DHR Administrator (in addition to all other job responsibilities). As noted elsewhere in this report, this understaffing impacts the timeliness and quality of investigations, even with the relatively low number of investigations on many campuses. We also heard significant concerns about the quality, responsiveness, and timing of some of the external investigators available to campuses under a master contractual agreement negotiated by the Chancellor's Office. While providing access to a pool of external investigators at negotiated rates is an important service, there is currently no ability to select the actual investigator within one of the investigator groups. On many campuses, investigations have been delayed by the challenges in the availability of investigative services.

Nationally, challenges in providing prompt and equitable investigations and resolution processes include:

- Limited financial resources at many institutions, which may lead to insufficient dedication of funds or personnel necessary to successfully implement Title IX obligations;
- Inexperienced or insufficiently trained investigators, adjudicators or other implementers;
- An inability to access key evidence or information that may only be available through subpoena, search warrant or court order;
- Inconsistent processes across campuses, which can lead to disparate outcomes based on the variations in campus procedures;
- A perception of institutional bias that undercuts faith in the outcomes (based on the perceived self-interest of the institution, which is often viewed to be at odds with the goals of transparency, accountability and reliability in campus processes);

- Lack of coordination between campus and law enforcement processes, leading to multiple or repetitive interviews of the parties and witnesses, potential adverse impacts on the integrity of the investigation, and unnecessary duplication of efforts.

The cumulative impact of these challenges can lead to inadequate or less than thorough investigations, which have the likelihood of leading to inequitable findings based on incomplete development of facts or reliance on information that is not fully developed or supported by other corroborative information. In addition, because campus cases most often involve the subjective assessment of credibility without consistent standards of care, campus processes are subject to criticism, appeal, and ultimately, civil liability. Unlike the criminal justice context, there is no immunity for the application of good faith efforts to investigate and adjudicate.

The goal behind the CSU-CIR is to provide each university with access to trained, experienced investigators with familiarity with the CSU, but who are also viewed as neutral and impartial because they are not campus-based. The CSU-CIR can play an important role in quality control and quality assurance in all aspects of effective investigative protocols, including comprehensive gathering of relevant facts in a timely and efficient manner. In this way, the CSU-CIR works to ensure the prompt and equitable nature of Title IX and DHR investigations. Similar efficiencies exist for the provision of hearing officer or informal resolution services, which can also be carried out by the experienced and trained professionals at the CSU-CIR.

The specifics of the CSU-CIR infrastructure may include physical locations in northern, central, and southern California, or may be based in a virtual setting. There are many creative financing models, including assessing the universities a set price per investigation, assessing the universities a pro rata contribution based on campus size or budget, financing through the Chancellor's Office, or creating opportunities for revenue-generation within the CSU-CIR as identified in the recommendations.

Benefits of the regional center approach include:

- A model for timely and efficient responsiveness;
- A coordinated approach that streamlines the investigation processes, improves the reliability of investigations, and reinforces the integrity of the process;

- Coordination of federal, state and local laws, including consistent application of procedural due process requirements and incorporates Title IX and Clery Act (as amended by the Violence Against Women Reauthorization Act of 2013) requirements as well;
- The development of a standard of care for investigations the consistent application of fair and impartial procedures;
- Consistent application of standards of care that reinforce due process considerations;
- Fair and impartial investigations that remove the perception of institutional bias;
- Improved service to complainants and respondents;
- Opportunity for data collection and research opportunities; and
- Greater faith in the outcome of the processes.

In a future state, with partnership with local law enforcement and prosecuting authorities, the CSU-CIR could potentially function like a child advocacy center – with the CSU-CIR investigation serving both administrative and criminal justice purposes. This expanded model could include the following key elements:

- Jurisdiction to investigate cases involving sexual assault, dating violence, domestic violence and stalking (that would otherwise meet state criminal law definitions);
- Provision of victim advocacy and information to ensure that complainants were fully provided with information about both campus and law enforcement options;
- A process to incorporate, recognize and prioritize adult victim/complainant agency and autonomy to evaluate a complainant's requested course of action with broader campus or public safety concerns;
- Trained and experienced forensic interviewers who would gather and record information from the complainant, respondent and other witnesses;

- Investigators with subpoena power who have the ability to conduct an impartial and thorough investigation;
- A fair and impartial adjudication by the center (based on a preponderance of the evidence) that would be returned to campus for sanction and, may be the basis for any criminal charges (if chosen by the complainant or with the coordinated and informed understanding of the complainant)
- The center would be staffed and/or funded by a partnership between law enforcement, state and/or federal government, and contributions by educational institutions.

Under this hybrid/law enforcement model, educational institutions would be required to maintain their Title IX and Clery Act responsibilities to provide training, prevention and education programming; to implement supportive measures and ongoing remedies; to assign sanctions; to track patterns and monitor climate; to maintain appropriate documentation; and to take steps designed to eliminate, prevent and address the impacts of sexual and gender-based harassment and violence.

The below is a graphic image of the CSU-CIR model:

