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

California State University, San Bernardino

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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 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.

Our work involved a comprehensive assessment of infrastructure and implementation of CSU policies and procedures at the system and each university. 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 status discrimination and harassment, and *other conduct of concern*.

We assessed the strengths, challenges, and resources at each of the 23 universities within the CSU and the Chancellor's Office headquarters, and identified opportunities for systemwide coordination, alignment, oversight, and efficiency to support effective implementation. Specifically, the review included the assessment of:

- Infrastructure and resources at each CSU university and the systemwide Title IX and DHR offices;

- Training, education, and prevention programming for students, staff, and faculty at each university, the Chancellor's Office, and members of the Board of Trustees;

- 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 protocols; staffing and models for investigations, hearings, sanctioning/discipline, grievance, 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 resolution, and factors impacting timely resolution; informal

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[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).

resolution processes; and, protocols for responding to reports of misconduct by students or employees that do not rise to the level of a policy violation;

- University culture and climate regarding Title IX and DHR issues; and

- Support and resources offered to university Title IX or DHR staff by the CSU's systemwide Title IX or DHR staff at the Chancellor's Office.

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 available here. A recording of the presentation can be accessed here.

This report outlines Cozen O'Connor's assessment of the Title IX and DHR programs at California State University, San Bernardino (San Bernardino Report). The San Bernardino review was led by Maureen Holland and Adam Shapiro. The San Bernardino Report supplements Cozen O'Connor's Systemwide Report. The Systemwide Report and a Summary of the Systemwide Report can be accessed here: The CSU's Commitment to Change | CSU (calstate.edu). The San Bernardino Report must be read in conjunction with the Systemwide Report, as the Systemwide Report provides a more detailed discussion about the assessment, the scope of the engagement, our approach to the issues, and common observations and recommendations across all 23 CSU universities. For ease of reading and efficiency, the content from the Systemwide Report is not replicated in each University Report.

CSU San Bernardino is located in San Bernardino, CA. It has a student population of approximately 19,812, 4% of whom live on campus, and a workforce of approximately 2,058 staff and faculty. An overview of the university's metrics and demographics is included in Appendix I.

II. Overview of Engagement

As outlined in the Systemwide Report, our assessment included a review of written documents, as well as interviews with university administrators, students, faculty, and staff, on each campus. Information gathered in our interviews is presented without personal attribution in order to ensure that administrators, students, faculty, and staff could participate openly in the assessment without fear of retaliation or other concerns that might inhibit candor. Relevant de-identified and aggregated information from the interviews is set forth in each of our reports, 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.

With respect to San Bernardino, Cozen O'Connor conducted a three day onsite visit from October 25 to 27, 2022. In total, Cozen O'Connor conducted 20 meetings with 38 administrators and other key university partners, some of whom we spoke to on multiple occasions. These meetings included interviews with the following individuals and departments (identified by role):

- University President
- Institutional Equity & Compliance (IEC)
  - Executive Director (Title IX Coordinator and DHR Administrator)
  - Interim Executive Director (former)
  - IEC Investigators (3)
  - IEC Program Specialist
  - IEC Coordinator
- Confidential Survivor Advocate (current and former)
- Vice President of Student Affairs
- Associate Vice President for Student Affairs and Dean of Students
- Associate Dean of Students and Director of Student Conduct
- Housing and Residential Education
  - Director of Housing and Residential Education
  - Associate Director of Residence Life
- Director of Student Engagement
- Interim Associate Director, Associated Students
- Vice President for Human Resources
- Interim AVP, Faculty Affairs & Development
- Director for Academic Labor Relations
- Director of Employee and Labor Relations
- Interim Associate Provost, Faculty Affairs & Development
- Interim Provost and Vice President for Academic Affairs
- University Police
  - Interim Chief of Police & Director of Public Safety
  - Lieutenant
- Health Counseling and Wellness
  - Executive Director
  - Group and Workshop Coordinator
  - Medical Chief
- University Ombuds Officer
- Clery Director
- Diversity Equity and Inclusion
  - Co-Chief Diversity Officers (3)
  - Interim Diversity and Inclusion Manager
- University Counsel (current and former)
- Athletics

- o Deputy Director of Athletics and SWA
- o Associate Athletics Director for Administration
- Interim Assistant Dean – Palm Desert Campus

In addition to these meetings with administrators and campus partners, Cozen O'Connor sought feedback from students, staff, and faculty through a variety of modalities, including in-person engagement, through a systemwide survey, through a dedicated email address (calstatereview@cozen.com), as well as individual meetings via Zoom.

During our campus visit, Cozen O'Connor met with the Faculty Senate (13 attendees), San Bernardino's Student Government President, and held an open forum for faculty, staff, and students from the Palm Desert campus (4 attendees). Additionally, following our campus visit, we held a Zoom meeting with faculty and staff union leaders (12 attendees).

In December 2022, we asked each of the 23 universities to disseminate an invitation to participate in an online survey. University presidents and the Chancellor's Office communicated the availability of the survey to all faculty, staff, and students at the university. The survey was open from December 2022 through February 2023. In total, we received 758 responses to the survey from San Bernardino students, faculty, staff, and administrators. A summary of the survey response rate and data is included in Appendix II.

III.   Summary of Findings and Recommendations

As supported by the evidence base outlined below, our core findings and recommendations are as follows:

Increase Awareness and Visibility of Institutional Equity and Compliance: the Office of Institutional Equity and Compliance (IEC) has undergone significant turnover in recent years, which has affected the stability of IEC and its capacity to perform its core work, and has resulted in low levels of awareness among students, staff and faculty. With new full-time dedicated leadership, additional personnel, and external support, IEC is now well-positioned to build a stable foundation upon which it can grow and be more visible to the community. To this end, we recommend improving the IEC website and other external-facing digital and print communications; revising the online reporting form; and launching an awareness campaign to educate the campus about IEC, including personnel, functions, and available resources.

Strengthen Internal Protocols and Coordination with Campus Partners: The constant turnover within IEC in recent years has also impaired IEC's ability to strengthen its own internal processes and to build key campus partnerships in furtherance of its mission. We recommend that San Bernardino create a formal multidisciplinary team that would meet on a regular basis to discuss all incoming student, staff, and/or faculty reports related to Title IX/DHR; that IEC conduct an internal mapping exercise of internal processes to identify efficiencies and inefficiencies in the process and to prioritize timeliness and communication; and that IEC take other measures that would strengthen its processes such as formally separating its intake/outreach functions from its investigative functions.

Address the Trust Gap: Although we observed many strengths and heard positive feedback about the IEC from those who work most closely with the office, we also heard directly from multiple individuals who had negative experiences with or perceptions of Title IX and DHR at the university and about the culture and climate at San Bernardino more broadly. Some stakeholders, particularly faculty and staff, described a culture of fear, retaliation, bullying, and prioritization of some constituencies' needs over others. Stakeholders also described deep divisions; for example, between administrators and faculty, management personnel plan employees (MPPs) and employees, and employee

relations personnel and collective bargaining units. Our recommendations about enhanced community engagement and communication seek to address this trust gap.

Develop and Coordinate Prevention and Education Programming: Given staffing and resource challenges, San Bernardino's approach to prevention and education, the responsibility for which is owned primarily by the Survivor Advocate, is *ad hoc* rather than strategic, and prevention and education programming is minimal. We recommend that San Bernardino build a formal prevention and education program, including a dedicated prevention coordinator and a campus Prevention and Education Oversight Committee, to address issues related to discrimination and harassment, including sexual and gender-based harassment and violence.

Develop a System to Address *Other Conduct of Concern*:[2] As with other universities, San Bernardino grapples with conduct issues that do not rise to the level of a policy violation, but are nonetheless disruptive to the university's living, learning, and working environment. San Bernardino has an ombuds office but has no consistent and formalized mechanism for navigating these behaviors, which we refer to as *other conduct of concern*. As a result, the university triages these behaviors in an *ad hoc* manner, leading to inconsistent responses, which have led to perceptions by students, staff, and faculty that there is a lack of accountability. We recommend that San Bernardino work closely with the Chancellor's Office to develop a formal process to address *other conduct of concern*. In developing this formal process, attention should be paid to strengthening and expanding competencies regarding conflict resolution, restorative justice, and other remedial responses; creating a centralized and anonymous reporting mechanism at the

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[2] We use the term *other conduct of concern* to refer to conduct that may not rise to the level of protected status 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
- 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.

university level; and establishing a formal triage and review process that ensures appropriate analysis, documentation, and tracking.

IV.   The Office of Institutional Equity and Compliance

A.   Infrastructure

The Office of Equity, Diversity, and Inclusion (IEC) is the office responsible for the implementation of Title IX and DHR at San Bernardino, as well as the university's whistleblower function. The office is currently physically located in Sierra Hall. IEC's Executive Director, who serves as the Title IX Coordinator/DHR Administrator, reports to the university's Vice President of Human Resources. As stated on IEC's website, IEC's purpose is to "investigat[e] complaints or allegations of sex/gender/sexual orientation, discrimination, harassment or retaliation and acts of sexual violence, while using a variety of CSU Policies, complaint processes and as well as raise awareness on campus." Among IEC's functions, as described by the website, are: "upholding the university's obligation to respond to sexual harassment, gender harassment and sexual violence; following CSU policies and complaint procedures; working with designated San Bernardino personnel; offering resources and remedies for victims; [and] providing education and training for the campus at large."

As presently constituted, IEC consists of six staff members: the Executive Director (and Title IX Coordinator/DHR Administrator); an Interim Associate Director/Deputy Title IX Coordinator; two Investigators; a Program Specialist; and an Administrative Support Coordinator. IEC is also receiving support from an external consultant, hired in December 2022.

The primary challenge we observed in terms of the functioning of the university's Title IX and DHR programs was that IEC has struggled to find its footing due to high levels of turnover in recent years. The turnover was not limited to the leadership or staff ranks; rather, it was widespread. At the time of our campus visit, IEC was being led by an external Interim Executive Director whose background was in Human Resources. Prior to the Interim Director's leadership, IEC had been without a permanent Director for several months following the departure of the former Title IX Coordinator/DHR Administrator. Since our campus visit, IEC's Interim Executive Director has left the university (having fulfilled her commitment to lead IEC for a period of eight months). For a brief period following the departure of the Interim Executive Director, one of IEC's newly-hired investigators was called on to serve as the campus's Interim Title IX

Coordinator/DHR Administrator with support through an external consultant. The Executive Director role has now been filled since March 2023 by a newly-hired, permanent Executive Director.

In addition to the turnover at the leadership level, IEC has experienced steady turnover at the staff level as well. The Deputy Title IX Coordinator was hired in fall 2022 as an Investigator and briefly served as the university's Interim Title IX Coordinator/DHR Administrator from December 2022 to March 2023. Both of IEC's Investigators have worked at IEC for less than one year; one was hired in fall 2022, and the other was hired in April 2023 (but had previously worked as an investigator). The longest-tenured investigator at the time of our campus visit had been working at IEC for just over one year, but that investigator has now since left the university. The Program Specialist has been with IEC since October 2021. Finally, the Administrative Support Coordinator has been with IEC since 2019. As is evident from their dates of hire, the members of the IEC team are all relatively new to their roles and the functioning of IEC is nascent. IEC does not have a long collective institutional memory and the team is still building relationships and gaining experience. As expressed to us during our campus visit, IEC's significant turnover has affected its ability to effectively fulfill its Title IX and DHR mission. We received consistent feedback that IEC was "staying afloat" due to the dedication and care of its staff, but that IEC could not be expected to sustainably fulfill core functions without stability in personnel.

At the time of our campus visit, we received consistent feedback that the IEC staff was working tirelessly, but that "stability" and "permanent leadership" were needed. We also received feedback that, due to the turnover and staffing issues, the newly hired IEC investigators were not receiving consistent feedback or clear guidance on internal protocols that would enable them to develop professionally and excel. According to administrators and campus partners with whom we spoke, IEC was a "sink or swim" environment that was effectively "running on fumes" on the backs of dedicated and hard-working employees.

We received consistent feedback about other related challenges, some of which are downstream effects of resourcing issues within IEC. For instance, we learned that the campus community lacks awareness of IEC. This was reported to be attributable to several factors, including: its location on campus in a satellite office (due to a flood in the Student Union); a lack of training/education opportunities; and the heavily commuter-based student population. Additionally, we received feedback that there were knowledge gaps among employees in terms of their responsible reporting obligations, such that the campus CARE Team was being inundated with Title IX- and DHR-related reports that should have been made to IEC in the first

instance. Finally, and relatedly, we consistently heard that the university was fulfilling only the minimum requirements for prevention and education. This function had largely fallen to the Survivor Advocate, a role that had been vacant for several months leading up to our campus visit and that, since then, has had to prioritize crisis intervention and case management over prevention and education due to their own resource constraints.

We note that since our campus visit, IEC has begun to undergo significant changes in terms of resourcing. These changes reflect a commitment from the top and a prioritization of Title IX and DHR. As noted above, when the former Interim Executive Director left her position, the university contracted with an external consultant to provide support to the investigator who was temporarily elevated to the role of Interim Executive Director. Additionally, as detailed above, in March 2023, the university hired a permanent Executive Director to serve as the Title IX Coordinator/DHR Administrator. IEC also continues to be supported, since December 2022, by an external consultant who assists IEC with the intake function, mapping of processes and procedures, and building out training and education programming. The intention is for this external consultant to serve on a temporary basis until IEC has established stability and consistency in its operations. Additionally, the university plans to hire a permanent prevention education employee this summer.

At the time of our campus visit, IEC was in the process of exploring a transition to Maxient as its case management system, but the process was reported as challenging and the team had not yet received formal training on how to use Maxient. As a result, IEC was continuing to track cases through the use of a shared drive as well as Excel spreadsheets and a case management platform called Perspective.

Each of the 23 CSU universities maintains data about the nature of reports, resolutions, and other demographics, albeit in inconsistent and varied manners. Each of the 23 CSU universities also produces an annual report and shares data with the Chancellor's Office. An overview of the metrics from the Title IX annual reports is included in Appendix III.

B.   Visibility and Community Awareness

In our review of San Bernardino's infrastructure and operations related to Title IX and DHR, we observed that the Title IX and DHR programs at San Bernardino were in a state of flux, with IEC having experienced routine turnover and significant changes in leadership in recent years. IEC is now under new leadership and the university has prioritized resourcing the office to better serve the community. Although we

recognize that significant change is now underway such that not all of the feedback received and observations made during our campus visit are still applicable today, this information serves as a foundational "starting point" to understanding where the Title IX and DHR functions have been and how they have been perceived by the community. This foundation informs the path forward.

Individuals with whom we spoke reported that IEC had been rebranded several times in the past few years, such that the student population is generally not aware of the office's identity or function. More broadly, we learned that the student population (which consists of a sizable commuter population) does not know what IEC is, where it is located, or the services it offers. According to one administrator, "Students are here, and they're here purposefully. They want [to earn their] degree and to get out. They just want to keep their heads down and graduate rather than engaging with a Title IX process that could last months." Similarly, a student leader shared that "there's not much information out there about IEC and Title IX" and that Title IX and DHR were not among the top concerns for students.

Others commented that IEC's location in a satellite office on campus (due to a major flood in the Student Union) has decreased IEC's visibility on campus, especially for students. One administrator commented that "students probably don't even know where IEC is located now," and another said, "Students are confused as to who IEC is and what they do. IEC used to be in the Student Union. Now it's 'IEC' and IEC is no longer central for students. It feels disconnected." Others commented that IEC needs to engage in a "branding campaign" to emphasize that "IEC is Title IX." A current employee (who is also a former student) explained that IEC's visibility has decreased in recent years, noting that the office "used to go around campus and make presentations about 'this is what our office is and does' but that doesn't happen as much now."

Other individuals with whom we spoke referenced limited awareness among employees, especially faculty members, regarding their responsible employee reporting requirements. Multiple key campus partners reported that "everything" was being referred to the CARE Team in the first instance, and that "faculty members constantly email the CARE Team with student concerns because they don't know where to go with the information they are receiving."

As noted elsewhere, IEC's low visibility and the overall lack of awareness about IEC in the campus community directly correlates with IEC having operated in a state of flux in recent years. One of the downstream effects of IEC's constant turnover and staffing issues is that IEC has not been able to

proactively and intentionally engage with the community as often as it would like to through trainings, tabling, branding/awareness campaigns, and other means. In conversations with senior administrators, they highlighted that a starting point for re-engaging with the campus community will be to have a dedicated office outpost in the Student Union or other more visible campus location. The university has since made plans to establish a small IEC satellite within the Student Union, beginning this summer.

C.   Website

San Bernardino's IEC website contains a wealth of information about Title IX and IEC and has been updated to reflect the office's current staffing levels. However, the website is difficult to navigate in part due to the density of information it contains, some of which is duplicative. The website could benefit from consolidating and condensing information, and updating certain information. Most notably, as detailed below, we recommend making the online reporting link more visible on the website, and making enhancements to the online reporting process.

IEC's website currently includes the following:

- A Home landing page with information about IEC, and with sub-links containing information about What We Do and instructions for Filing a Report
- A Complaint Process landing page with information about Title IX reporting, and with sub-links containing information about executive orders, flowcharts, and FAQs relating to Title IX; Student Complaint Forms; and DHR Information
- Information relating to Title IX Training
- An Events page (containing no information at present)
- A Resources homepage, with sub-links to, among other things, an IEC Brochure, information about available Rights and Options, Sexual Harassment Prevention, and Myths and Facts about sexual misconduct.
- A Contact Us page listing contact information for all IEC team members

Some potential areas for improvement include, but are not limited to:

- Making the online reporting tool more visible and pronounced throughout the website. A link to the reporting tool is available on the right-hand side of every IEC webpage, but it is easy to miss.
- Revising the online reporting tool and the instructions for reporting. As noted above, IEC's website contains instructions for filing a Title IX or DHR incident report. The website gives students the option of filing Title IX incident reports in several ways, including via the Perspective online reporting tool. The website instructs employees and third parties to file DHR incident reports with IEC via email or snail mail using a printable PDF form. As noted above, the link to the printable form on IEC's website is broken. Separate and apart from updating this broken link, we note that these reporting instructions are incomplete and confusing, as detailed below under Reporting Options.

- When developing a streamlined reporting channel, we recommend that IEC clarify that a person may report directly via email, phone call, appointment, walk-in, or incident reporting form and that they may fill out as much of the reporting form as they would like. If IEC maintains or updates its current Perspective online reporting form, we recommend that IEC clarify the effect of making an "anonymous" report. Currently, there is a check box that reads, "Is Anonymous." It is not clear that, if a person checks that box, IEC will not know their identity, will not be able to contact them to discuss the report they made, and – depending on the level of information given and other attendant facts – may not be able to address their report. Finally, we recommend that IEC remove the "required" designation for fields or add a caveat so that, for example, a person is not discouraged from reporting if they do not know the date of the incident.
- Revising the Complaint Process landing page to include information about DHR. Currently, the page only includes information about Title IX.
- Streamlining and updating the website's landing page. Front and center on the landing page is information relating to the federal Title IX regulations promulgated by the Department of Education in May 2020. The website describes these as the "new federal regulations," even though they were released three years ago, which reflects that the webpage is in need of an update. Additionally, the landing page is text-heavy and dense, and could be streamlined to make it more inviting and approachable for the user.
- Consolidating some of the information about IEC's mission, role, and services. This information is available in multiple places on the website, including IEC's landing page, the What We Do webpage, the IEC Brochure, and the IEC Overview PDF. Separately, the "IEC Brochure" contains information only about Title IX (and not DHR) and should be described as such on the website. Additionally, the IEC Overview PDF contains several grammatical errors, typos, and a substantive inaccuracy in the first paragraph alone (referring to Title IX as "government legislation from the Department of Education's Office of Civil Rights") and should be updated accordingly.
- Creating and updating process flowcharts. The website contains one process flowchart, for Title IX investigations and hearings. Similar flowcharts would be useful for each of the "three tracks" of the CSU Nondiscrimination Policy.
- Rethinking the navigation tabs to make navigation of the website more intuitive and user-friendly. At present, information is not always included under self-explanatory headings/tabs. For instance, an explanation about Title IX is located under the "Home" tab whereas an explanation about DHR is located under the "Complaint Process" tab. Similarly, there are instructions about filing Title IX and DHR incident reports both under the "Home" tab and the "Complaint Process" tab.
- Including Survivor Advocacy Services on the Resources webpage.

As IEC builds out its forward-facing resources, including its website, we recommend that IEC seek input from campus partners, including its Implementation Team which has student, faculty, and staff representatives. This stakeholder input would help ensure that resources are easy to find, intuitively organized, clear, sufficiently detailed, and that they meet the needs of individuals of various roles. As part of the stakeholder input process, IEC may benefit from asking some stakeholders to review the materials from different perspectives – for example, reviewing the website as if they were a responsible employee, a friend supporting a complainant, a friend supporting a respondent, or a person who was considering reporting DHR conduct, and so on.

D. Reporting Options

Reports of prohibited conduct based on protected statuses, including discrimination, harassment, and retaliation, may be made to IEC in person or via email, telephone, or a Perspective online reporting form that is accessible on every page of IEC's website.[3] The online reporting form is not directly linked to other university webpages such as Human Resources, Faculty Affairs, and Student Affairs/Student Conduct. The online reporting form states that filing a Title IX report "will not be confidential." While we understand the need to distinguish reporting from accessing confidential resources, and we understand that IEC upholds privacy even though it is not a confidential resource, this nuance is not captured in the reporting form as written. We recommend rephrasing to capture the difference between confidentiality and privacy and to accurately describe IEC's role as a resource that, while not confidential, maintains privacy and treats all information with sensitivity and care. Further, we note that the form currently provides information about confidential resources, but, notably, it lists the name and contact information of the university's former Survivor Advocate, who no longer works at the university.

The online reporting form is intended only as a vehicle for making Title IX reports, and not DHR reports. There is no way to file an online DHR report, which is a potential barrier to reporting for members of the campus community. Additionally, IEC's website contains instructions for filing Title IX and DHR reports, but the instructions and process are not user-friendly, which again represents a potential barrier to reporting. Specifically, the website gives students the option of filing Title IX incident reports in several ways, including via the online reporting form. However, the website instructs employees and third parties to file DHR incident reports with IEC via email or regular mail using a printable PDF form. Notably, the link to the printable form on IEC's website is broken. Moreover, we note that these reporting instructions are incomplete and confusing. By only providing guidance to students wishing to file a Title IX report and employees/third parties wishing to file a DHR report, the webpage has a gap in terms of not providing instructions to employees/third parties who wish to file a Title IX report, or students who wish to file a DHR report. To make the reporting process more user-friendly and streamlined, which will reduce barriers to reporting, we recommend consolidating the available reporting mechanisms so that all community members (regardless of their status as students, employees, or third parties) would be able file a Title IX or DHR report using an online reporting tool.

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[3] The CSU System also publishes an online Complaint Form as Attachment F of the Nondiscrimination Policy.

E.   Case Processing

As explained during our campus visit, IEC typically receives reports by email, phone call, walk-in, and online incident report. Upon receipt of a report, IEC's Administrative Support Coordinator creates a case file and conducts email outreach to the complainant on behalf of the Title IX Coordinator/DHR Administrator. The outreach letter includes extensive information about the Nondiscrimination Policy, available rights and options, the availability of supportive measures and other resources, and the option to participate in an intake meeting. The university's Survivor Advocate is copied on all outreach emails to complainants, and conducts her own outreach to complainants to offer assistance and support.

If a complainant does not respond, IEC attempts outreach two additional times (for a total of three). These outreach attempts consist of both emails and phone calls. If there is no response following at least three attempts, IEC closes the matter. If the complainant responds and indicates they wish to meet, IEC schedules an intake meeting. During the intake meeting, an IEC staff member follows a template which explains, among other things, information about parties' right to an advisor, options for informal and formal resolutions, and an explanation of the potential case timeline. At the time of our campus visit, the Interim Executive Director (Title IX Coordinator/DHR Administrator) was conducting most of the intake meetings for DHR matters. However, due to low staffing in the office, administrators reported that investigators sometimes conducted the intake meetings for DHR matters and usually conducted the intake meetings for Title IX matters. Because of the structure and resource constraints, there is no single employee dedicated to intake and supportive measures within IEC.

Our recommendations include formally separating IEC's intake and outreach functions from its investigative functions in order to avoid potential confusion by parties between IEC's responsibility to help the parties through the provision of supportive measures and IEC's responsibility, in cases that proceed to formal resolution, to conduct a neutral and impartial gathering of facts. We understand that since our campus visit, and consistent with this recommendation, IEC has been relying upon an external consultant to conduct all intake meetings.

The steps following the intake meeting with the complainant may include the following: provision and oversight of supportive measures, investigation and hearing, informal resolution, or the dismissal of a formal complaint (based on the judgment of the IEC's Title IX Coordinator/DHR Administrator). The provision of supportive measures is managed by the IEC staff. A complainant may receive supportive

measures even if no formal complaint and investigation is sought. The majority of reports to IEC involve either the provision and oversight of supportive measures only or no response from complainants.

In the event a complainant wishes to proceed to resolution and IEC determines it is within its jurisdiction to do so, the respondent is provided the same process and access to the supportive measures and resources. To the extent a matter does not fall within IEC's jurisdiction, IEC refers the matter to another office such as Student Affairs (Student Conduct), Human Resources (Employee Relations), or Faculty Affairs (Academic Labor Relations).

Title IX and DHR investigations are conducted by the IEC staff. IEC now has three investigators, but, as noted elsewhere in this report, that number has fluctuated several times in recent years due to turnover within the office. Depending on available resources and the complexity of a case, IEC may also retain an external investigator. It was reported to us that prior to IEC's Interim Director becoming the Title IX Coordinator/DHR Administrator in April 2022, there were several months where IEC did not have sufficient resources to conduct any investigations itself and as a result, outsourced all of its investigations.

In the event a case proceeds to a hearing, a hearing officer is selected from a pool of personnel provided by the Chancellor's Office.

      F.   Review of Case Files and Templates[4]

IEC provided sample templates of their communications with parties and witnesses with respect to, among other things, the Notice of Allegations, the notice of evidence review, and the notice of hearing. IEC's template communications are legally compliant, neutral in tone, informative, and convey professionalism and competency. The outreach letters, notices of investigations, and other correspondence include all necessary information for parties to make informed decisions, including information about their rights and options, information about the Nondiscrimination Policy, and information about the availability of supportive measures. The outreach letter in particular is lengthy (three pages plus attachments) and contains a substantial amount of information, which is informative

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[4] We requested to review a small sample of case files at each university to evaluate form, comprehensiveness of documentation, timeliness, and responsiveness. Given the scope of our assessment, we did not conduct an extensive audit of all Title IX and DHR records.

but could be overwhelming to potential complainants. One administrator described the outreach letter as "intimidating."

We recommend that IEC review its template communications and simplify them where possible. As we recommended above with respect to web resources, we recommend that IEC seek input from campus partners, including student, faculty and staff representatives, about clarity, brevity, tone, and format.

At Cozen O'Connor's request, IEC provided a sample of Title IX and DHR investigation reports. IEC provided three reports, one relating to a Title IX investigation and two relating to DHR investigations. The investigation reports were all from the 2020-2021 academic year, when IEC had a different Title IX Coordinator/DHR Administrator and staff. In terms of substance, the investigation reports reflected that IEC was thorough in terms of collecting and summarizing evidence, consistent and clear in their writing, and, where applicable, cogent in their reasoning and analysis. However, in one case, the report identified four potential witnesses who were identified by the parties who were not interviewed, and the report did not explain the rationale for not interviewing them. Additionally, the reports reflected long timeframes in terms of the length of the investigative process, with each of them taking more than eight months from the filing of the complaint to the issuance of the written report. In one case, the delay was caused in part to turnover within the IEC office such that a new investigator had to be assigned. The case timelines included: 8.5 months (DHR), 8.5 months (DHR), and 11 months (Title IX).

G.   Community Feedback about IEC

The significant transitions in staffing have made it difficult to assess the campus's perception of IEC, as the personnel in the office have had to continually reestablish relationships as transitions have occurred. As noted above, our engagement with the campus community supported that there was a low level of awareness of IEC due to several factors: insufficient communication regarding the recent rebranding of the office; significant IEC leadership and staff turnover; IEC's temporary relocation to a satellite office on the edge of campus; pandemic-related reductions in traditional awareness-building efforts like tabling, presentations, and information fairs; increased awareness in other offices that could serve as conduits to IEC, such as the CARE Team; and general difficulties in building awareness of campus offices in the context of a mostly-commuter campus.

Among those who were aware of IEC (or of "Title IX" or "DHR"), we heard mixed feedback about the office and the programs it oversees. Some campus stakeholders, including many faculty, described distrust of

existing systems and structures, particularly when they were associated with the campus administration and/or the Chancellor's Office. While we understood some university community members to be skeptical of the Title IX/DHR functions, others expressed hope that with new leadership – including a Title IX Coordinator/DHR Administrator and Vice President for Human Resources who are new to the university and to the system – San Bernardino may be entering a new era in which trust can be cultivated and rebuilt.

As with other CSU universities, we also heard some feedback from faculty and staff members about there being a culture of fear and retaliation on campus that has impacted employees' willingness to file reports with IEC. Certain segments of San Bernardino's faculty and staff unions were particularly vocal in terms of expressing to us their concern that they had been bullied and intimidated by members of the administration.

V.   Core Title IX and Related Requirements

In evaluating legal compliance and effectiveness based on the observations described above, we reviewed Title IX's implementing regulations as the legal framework. Title IX's implementing regulations, amended most recently in May 2020, require that educational institutions (i) appoint a Title IX coordinator;[5] (ii) adopt grievance procedures that are prompt and equitable;[6] and (iii) publish a non-discrimination statement.[7] In the sections below, we describe our observations of the university's compliance with each of these core Title IX obligations. Although the implementing regulations and regulatory frameworks are not as prescriptive under other federal and state laws that address all other protected status discrimination, harassment, and retaliation,[8] we incorporate the Title IX framework as it relates to these core requirements, because they apply equally to DHR programs.

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[5] 34 C.F.R. § 106.8(a).

[6] 34 C.F.R. § 106.8(b).

[7] 34 C.F.R. § 106.8(c).

[8] These include 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. The implementing regulations for these statutes outline some requirements that are similar or identical to certain of the "core Title IX obligations." For instance, most of the regulatory frameworks require a notice of non-discrimination. *See* 34 C.F.R. § 100.6(d) (Title VI), 34 C.F.R. § 104.8 (Section 504), and 34 C.F.R. § 110.25 (Age Discrimination Act), and 28 C.F.R. § 35.106 (ADA). Furthermore, the implementing regulations for the Age Discrimination Act closely mirror the core Title IX obligations in that they require educational institutions to: (i) designate at least one employee to coordinate their efforts to comply with and carry out their responsibilities, including investigation of complaints; (ii) notify beneficiaries of information regarding the regulations and the contact information for the responsible employee;

A. Title IX Coordinator

Under the current Title IX regulations, every educational institution that receives federal funding must designate at least one employee, known as the Title IX Coordinator, to coordinate the institution's Title IX compliance efforts.[9] In this role, the Title IX Coordinator is designated as the university official responsible for receiving and coordinating reports of sex discrimination, including sexual harassment, made by any person.[10] The Title IX Coordinator's role and responsibilities should be clearly defined, and the institution must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the institution, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator.[11] The Title IX regulations detail the responsibilities of the Title IX Coordinator, which include, among other things:

1. Receiving reports and written complaints;[12]

2. Coordinating the effective implementation of supportive measures;[13]

3. Contacting complainants to discuss the availability of supportive measures, with or without the filing of a formal complaint;[14]

4. Considering the wishes of the complainant with respect to supportive measures, including explaining the process for filing a formal complaint;[15]

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and (iii) adopt and publish grievance procedures providing for prompt and equitable resolution of complaints. 34 C.F.R. § 110.25.

[9] 34 C.F.R. § 106.8(a).

[10] *Id.*

[11] *Id.*

[12] 34 C.F.R. § 106.30(a) (defining "actual knowledge" as including notice to the Title IX Coordinator).

[13] *Id.*

[14] 34 C.F.R. § 106.44(a).

[15] *Id.*

5.   Attending appropriate training;[16]

6.   Remaining free from conflicts of interest or bias with respect to complainants or respondents, generally or individually;[17]

7.   Overseeing the prompt and equitable nature of any investigation or resolution;[18] and

8.   Overseeing effective implementation of any remedies issued in connection with the grievance process.[19]

Under the Title IX regulations, guidance documents issued by the U.S. Department of Education, Office for Civil Rights (OCR), and effective practices, the Title IX Coordinator should be sufficiently positioned within the institutional organizational structure, sufficiently resourced to carry out care and compliance responsibilities, sufficiently trained and experienced, and free from conflicts of interest.[20] Generally, Title IX Coordinators and DHR Administrators should be positioned to operate with appropriate independence and autonomy, have sufficient supervision and oversight, and have direct or dotted reporting lines to senior leadership.

The Chancellor's Office has published guidance regarding the role of campus Title IX Coordinators. Attachment B to the Systemwide Nondiscrimination Policy mandates that campus Title IX Coordinators "shall have authority across **all** campus-based divisions and programs (e.g., Human Resources, Academic

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[16] 34 C.F.R. § 106.45(b)(1)(iii) ("A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in 34 C.F.R. § 106.30, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.")

[17] 34 C.F.R. § 106.45(b)(1)(iii).

[18] 34 C.F.R. § 106.8(a) (charging the Title IX Coordinator with "coordinating [institutional] efforts to comply" with Title IX).

[19] 34 C.F.R. § 106.8(a); 34 C.F.R. § 106.45(b)(7)(iv).

[20] These effective practices have been articulated, among other places, in a Dear Colleague Letter from the U.S. Department of Education's Office for Civil Rights on April 24, 2015. Although this Dear Colleague Letter has since been rescinded, the underlying concepts described in the letter are still instructive. The 2015 Dear Colleague Letter stated, "The Title IX coordinator's role should be independent to avoid any potential conflicts of interest and the Title IX coordinator should report directly to the recipient's senior leadership . . . ." The Letter further instructed that "the Title IX coordinator must have the authority necessary to [coordinate the recipient's compliance with Title IX" and, in order to do so, "Title IX coordinators must have the full support of their institutions . . . [including by] making the role of the Title IX coordinator visible in the school community and ensuring that the Title IX coordinator is sufficiently knowledgeable about Title IX and the recipient's policies and procedures."

Affairs, Student Affairs, Athletics, Housing, University Police, etc.) to monitor, supervise, oversee, and ensure implementation of [the Nondiscrimination Policy] in all areas . . . ." (emphasis in original) Attachment B further requires that all campus Title IX Coordinators and Deputy Title IX Coordinators be MPPs and "have the qualifications, authority and time to address all complaints throughout the campus involving Title IX issues."[21] Finally, Attachment B recommends that all campus Title IX Coordinators "be someone without other institutional responsibilities that could create a conflict of interest (e.g., someone serving as University Counsel or as a disciplinary decision maker)" and that they report to a supervisor who is a Vice President or higher.

In addition to reviewing these written guidelines applicable to the system as a whole, Cozen O'Connor evaluated whether, in practice, each campus Title IX Coordinator and DHR Administrator was well positioned to effectively carry out their duties. As described above, this analysis consisted of assessing whether each Title IX Coordinator/DHR Administrator was appropriately positioned organizationally; sufficiently resourced; sufficiently trained; and free from conflicts of interest.

The Executive Director of IEC has served as San Bernardino's Title IX Coordinator and DHR Administrator since March 2023. His contact information – as well as contact information for the Title IX Office more broadly – is displayed on the university's IEC website. We find that the Title IX Coordinator/DHR Administrator is appropriately positioned organizationally, as he reports directly to the Vice President of Human Resources, who is a part of the President's senior leadership team.

In terms of resources, the Title IX and DHR functions struggle in much the same way as other Title IX/DHR offices across the system. While IEC currently has more employees than many other campus Title IX/DHR offices – six in total, consisting of the Title IX Coordinator and DHR Administrator; an Interim Associate Director and Deputy Title IX Coordinator; two Investigators; a Program Specialist; and an Administrative Support Coordinator – the IEC team reported that staffing was nonetheless insufficient to meet the needs of the campus. Additionally, the IEC team reported, and we observed, that there has been steady turnover

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[21] The Nondiscrimination Policy similarly defines campus DHR Administrators as "the [MPP] Employee at each campus who is designated to administer this Nondiscrimination Policy and coordinate compliance with the laws prohibiting Discrimination, Harassment and Retaliation." The Nondiscrimination Policy states that the DHR Administrator "may delegate tasks to one or more designees, provided that any designee shall be an MPP Employee or an external consultant, and the DHR Administrator retains overall responsibility and authority."

within the IEC team in recent years, which has presented challenges in terms of the basic functioning of the office.

In terms of training, we observed that the Title IX Coordinator/DHR Administrator has fluency with respect to Title IX and DHR issues. Materials used to train the IEC team are posted on a page on IEC's website.

Finally, San Bernardino's IEC houses both the Title IX and DHR functions and we did not identify any concerns with respect to conflicts of interest in terms of the Title IX Coordinator/DHR Administrator role.

B.   Notice of Nondiscrimination

The Title IX regulations require that institutions publish a non-discrimination statement.[22] The statement must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and unions that:

1. The institution does not discriminate on the basis of sex in its education programs and activities, and that it is required by Title IX not to discriminate in such a manner;[23]

2. The institution does not discriminate with respect to admissions or employment; and

3. Inquiries about the policy may be referred to the Title IX Coordinator, the Assistant Secretary for Civil Rights in the U.S. Department of Education's Office for Civil Rights, or both.

Along with these notification requirements, institutions must display contact information for the Title IX Coordinator on their respective websites, and in each handbook or catalog that it makes available to all stakeholders listed above.[24]

San Bernardino has a Notice of Non-Discrimination on the Basis of Gender or Sex published on IEC's website. Consistent with the Title IX regulations, the Notice states that the University does not discriminate on the basis of gender or sexual orientation in its education programs and activities, including employment and admissions. According to the Notice, this prohibition on discrimination extends to sexual harassment, sexual misconduct, sexual exploitation, dating and domestic violence, and stalking. The

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[22] 34 C.F.R. § 106.8(b).

[23] *Id.*

[24] 34 C.F.R. § 106.8(b)(2).

Notice provides the required contact information, for the campus Title IX Coordinator and OCR, to individuals seeking to report sex discrimination.

Unlike most CSU universities, most of San Bernardino's website footers contain a direct link to the Notice on the bottom of each webpage. The Athletics website does not contain such a link.

San Bernardino also has a broader Notice of Non-Discrimination on the basis of protected statuses other than sex and gender, which is posted on the IEC website under the DHR section of the "Complaint Process" tab and on the University's Human Resources website under the DHR section of the "Current Employees" tab. The broader Notice of Non-Discrimination is not published on most other University websites. Uniformly publishing such a broader Notice of Non-Discrimination, while not a requirement of Title IX, would be consistent with the purpose of 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, the Age Discrimination Act of 1975, and other relevant federal and state laws prohibiting protected status discrimination, harassment, and retaliation.

C. Grievance Procedures

Finally, the Title IX regulations require educational institutions to "adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited [as sex discrimination under Title IX] and a grievance process that complies with [34 C.F.R. § 106.45] for formal complaints . . . ."[25] The regulations further require educational institutions to provide notice of the grievance procedures and 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 institution will respond to such a report or complaint.[26]

CSU's Chancellor's Office maintains the CSU Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking, and Retaliation (Nondiscrimination Policy). Consistent with its obligations under Title IX and other federal and state laws prohibiting protected status discrimination, harassment, and retaliation, this document sets forth the

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[25] 34 C.F.R. § 106.8(c).

[26] *Id*.

grievance procedures and process for resolving reports of sex discrimination, as well as other protected status prohibited conduct. Pursuant to the Nondiscrimination Policy, there are three separate tracks for formal resolution of complaints. Specifically, "Track One" applies to reports of sexual harassment that fall within the federal mandated hearing process required under the 2020 Title IX regulations; "Track Two" applies to reports of sexual misconduct, dating violence, or domestic violence against a student where credibility is an issue, that fall within the mandated hearing process articulated in California case law; and "Track Three" applies to all other reports that allege a violation of the Nondiscrimination Policy.

This Nondiscrimination Policy, which applies to all 23 CSU universities, is an omnibus policy document that maps the complex and overlapping procedural requirements mandated by several federal and state frameworks, including the federal Title IX regulations, California state law relating to sex discrimination and sexual harassment in higher education, California case law relating to due process, and other federal and state laws relating to discrimination based on other protected statuses. Although the Nondiscrimination Policy is consistent with the legal requirements of Title IX and the related federal framework for discrimination and harassment on the basis of protected statuses, Title IX/DHR professionals and campus constituents from every university consistently expressed to Cozen O'Connor that the Nondiscrimination Policy was impenetrable in practice; that it was dense, lengthy, and difficult to navigate; and, that it bred confusion. We heard a strong desire for the Chancellor's Office to simplify its procedures, and were optimistic that the forthcoming amendments to the federal Title IX regulations, expected to be released by the U.S. Department of Education in the fall of 2023, would provide the impetus for the Chancellor's Office to do so.

The CSU's prohibition against certain consensual relationships is embedded within the Nondiscrimination Policy.[27] We learned that at many of the CSU universities, the prohibition is not adequately communicated to the campus community, limited or no training is offered on the prohibition, and the prohibition is not enforced. Given the significant overlap of the prohibited relationship policy with Title IX, and DHR and *other conduct of concern,* attention should be given to the training and enforcement of this prohibition.

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[27] Under Article II, Section F of 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."

We recommend that training on this section of the policy be incorporated into required training and education. On many campuses, this was an issue of significant concern for faculty and staff.

VI.   Campus Coordination

Through our campus visit and follow-up meetings, we consistently heard administrators and key campus partners comment on the healthy collaboration within IEC and between IEC and other partner offices such as Human Resources and Employee Relations, Academic Labor Relations, Student Affairs, Student Conduct and Ethical Development (SCED), Housing and Residential Education, and UPD. The IEC team meets internally as a team every other week to discuss new and ongoing cases. The IEC Executive Director also meets individually with each IEC investigator and the Interim Associate Director once a week. In terms of inter-office coordination, individuals described information flowing effectively between other offices and IEC, explaining that there were open lines of communication and well developed relationships. At the time of our campus visit, the Interim IEC Director had routine (generally once per month) meetings about active cases with the President, Vice Presidents, and University Counsel. Since the new IEC Director's arrival, the President has authorized the IEC Director and the campus review Implementation Team to lead these efforts without his direct oversight, except where requested by the IEC Director or members of the Implementation Team.

However, despite these open lines of communication with IEC, this communication generally occurs in an organic fashion, on an as-needed basis. There is no formal multidisciplinary team in place that meets on a regular basis to discuss all new student, staff, and/or faculty IEC cases. We consistently heard that there is a strong willingness from all campus partners to institute such a routinized and structured meeting, especially because the university has other multidisciplinary teams (such as the CARE Team and the Threat Assessment Team) that were reported to be functioning well. Our recommendations speak to establishing such a multidisciplinary team for Title IX and DHR related issues.

Similarly, in terms of recordkeeping and data management across offices, multiple individuals commented that the ability to locate and share information across departments has been hindered by a lack of established processes and the lack of a unified recordkeeping system; and, as a result, institutional knowledge that is not documented has been lost with the turnover of employees. As noted above, IEC has had significant turnover in recent years and has relied on a shared drive and spreadsheets to maintain case information, as well as a software called Perspective. Recently, IEC began exploring a transition to Maxient. Additionally, we learned that faculty personnel files were scattered in various locations on

campus at the department and college level, and some were paper files. Collectively, these inconsistent and decentralized recordkeeping practices make it difficult to reliably query information on a pan-institutional level, and make the campus reliant on the individual knowledge of longtime employees. Our recommendations speak to centralizing documentation.

A. University Police Department

The University Police Department (UPD) is a full-service, state law enforcement agency. UPD has 18 sworn police officers and a support staff that operates 24 hours a day, year round. UPD has statewide police authority, and is vested with law enforcement powers and responsibilities, identical to the municipal police or sheriff's departments in the San Bernardino community. The department provides emergency response, conducts criminal investigations, offers crime prevention and educational programs, disaster preparedness, and a range of other services.

As noted above, UPD coordinates the university's Threat Assessment function. Additionally, UPD provides resources to individuals who have made reports of sexual assault or violence. UPD's website contains instructions and resources relating to sexual assault; among other things, the webpage states, "We also want you to report this to the campus Title IX Coordinator and we will work collaboratively with them. A campus administrative investigation may occur concurrently with a criminal investigation."

Police are responsible employees and share reports with IEC; however, consistent with California Penal Code 293, UPD will honor a complainant's wish to maintain confidentiality and not include the complainant's name in the information shared with the Title IX Coordinator. According to the UPD website, "The university police will keep all information about a survivor confidential upon request."

B. Student Conduct and Ethical Development

The Office of Student Conduct and Ethical Development (SCED) administers the Student Conduct Code by educating students about their social and ethical responsibilities as members of the university community, and by implementing the Student Conduct Process disciplinary procedures. SCED responds to a variety of incidents that may include behavioral misconduct, academic dishonesty, and concerning student behavior. Incidents of student misconduct may include issues with alcohol, drugs, theft, weapons, violence, harassment, sexual misconduct, hazing, or other violations that are not academic in nature and

do not rise to the level of a Title IX or DHR violation. SCED refers matters that relate to Title IX/DHR to IEC, and IEC refers matters that don't rise to the level of a potential Title IX/DHR violation to SCED.

SCED is led by the Associate Dean and Director of SCED, who has been with San Bernardino's Office of Student Conduct since 2016. The Associate Dean and Director reports to the Associate Vice President for Student Affairs and Dean of Students. SCED consists of the Director, an Assistant Director, a CARE Case Management Specialist, and an Administrative Support Coordinator.

C. Housing and Residential Education

The Department of Housing and Residential Education (DHRE) consists of approximately 15 employees, some of whom we met during our campus visit. DHRE staff and/or student Resident Assistants (RAs) are often the first to receive disclosures from students experiencing sexual or gender-based harassment, interpersonal violence, or bias. At San Bernardino, RAs receive training through DHRE about how to receive reports or disclosures. RAs are trained to ask students whether they would like to share more information with the RA or with the professional staff on call. Either way, the information is gathered and reported to IEC.

DHRE staff noted that their current reporting system allows for direct reporting from an RA to IEC without the report going through DHRE supervisory staff. This was reported to be a byproduct of IEC not using the Maxient records management system used by DHRE and other units. DHRE staff noted that direct reporting allowed for more timely responses by IEC, but also left open the possibility that RAs would submit incomplete or inaccurate reports. DHRE said its preference is for IEC and/or the RA to ensure that the report is also shared within DHRE so that professional staff can ensure completeness and accuracy in reporting, and so that DHRE can be aware of concerns within housing and can provide support where necessary.

Each fall, IEC trains RAs on "critical basics" such as "mandatory reporting," communication expectations, personnel in the IEC office, and skill-building/workshopping receiving disclosures. Each winter, DHRE holds training where it gathers feedback from RAs and professional staff and shares that feedback back with IEC. During the winter training session, DHRE practices addressing common issues, including Title IX-related concerns, that have come up during the fall semester.

DHRE has a housing-specific "Bias Incident Protocol," which provides that, if conduct that occurs in housing does not meet the threshold for a Nondiscrimination Policy violation, it is referred to housing to address if it violates housing policy.

D. Human Resources and Faculty Affairs

IEC reports to the Vice President of Human Resources, who joined San Bernardino in fall 2022. The Human Resources Division provides services relating to benefits, compensation, employment, performance management, and other related functions. The division also oversees the university's employee and labor relations function for staff. This entails ensuring compliance with the Collective Bargaining Agreements, providing training and information to the administration to prevent and resolve grievances, addressing employee relations issues, and in some cases investigating complaints of discrimination and harassment. The employee and labor relations portion of HR's website has specific information about discrimination, harassment, and retaliation, a broad notice of non-discrimination on the basis of all protected statuses, instructions for reporting DHR incidents, and contact information for IEC and OCR. The Employee and Labor Relations function is led by the Director of Employee and Labor Relations, who reports to the Vice President of Human Resources, who reports to the President.

Campus partners and administrators all reported a strong, collaborative working relationship between IEC and the Employee and Labor Relations functions.

E. Faculty Affairs

The Office of Faculty Affairs and Development is a division of Academic Affairs and provides support to the Provost and Vice President of Academic Affairs, Deans, Department Chairs, and faculty on faculty matters. Among other things, Faculty Affairs facilitates faculty education and training on working in a diverse environment, provides compliance and interpretation regarding the faculty Collective Bargaining Agreement, and manages academic labor matters including grievances and complaints. The Academic Labor Relations function strives to foster a collaborative and civil environment in order to encourage conflict resolution. The function is led by the Director for Academic Labor Relations, who reports to the Interim Associate Vice President for Faculty Affairs & Development.

Campus partners and administrators all reported a strong, collaborative working relationship between IEC and the Faculty Affairs functions.

F.   Clery Act Responsibilities

San Bernardino's Clery Act responsibilities are fulfilled by the university's Clery Director, who also serves as the Executive Director of Risk Management. The Clery Director reports to the Vice President for Administration and Finance and has served in the role for over two years. The Clery Director receives routine assistance in performing their duties from a Clery Coordinator (a Crime Analyst who sits within UPD), as well as UPD's Chief of Police.

The Clery function is responsible, among other things, for maintaining information necessary to prepare the university's Annual Security Report, and for identifying and training campus security authorities (CSAs). In fulfilling these duties, the Clery Director chairs a dedicated Clery Compliance Team comprised of representatives from key campus partner offices, who collectively work together to provide comprehensive oversight, review, revision, and implementation of Clery Act duties. Members of the Clery Compliance Team include individuals in the following roles/offices: the Clery Director; the Clery Coordinator (UPD Crime Analyst), UPD Chief of Police, Dean of Students, Student Conduct, IEC, Student Engagement, Human Resources, Housing/Residential Education, Faculty Affairs, Athletics, and University Counsel.

In addition to the Clery Compliance Team, there are also two Clery "subcommittees" relating to CSAs and Clery Geography/Travel. The Clery Compliance Team is required by the system to meet at least four times per year, but in practice it meets more regularly (the university's Clery website contains meeting minutes and agendas, which reflect five meetings from July 2022 to May 2023). We received consistent feedback during our campus visit that the Clery Compliance Team was functioning well and that its members played vital roles in assisting the Clery Director to identify and notify CSAs of their duties, and relay reports of potential Clery crimes. We also note that San Bernardino has a robust Clery Act website that contains substantive information about the Clery Act and the Clery Compliance Team.

Timely warning assessments are made by UPD in consultation with the Clery Director. In determining whether to issue a timely warning, they rely upon a timely warning assessment form, which they keep in their records regardless of whether or not a timely warning notice is actually issued.

VII.   Campus Resources for Students and Employees

The care side of campus resources is critically important to the effective functioning of the Title IX and DHR programs. CSU San Bernardino provides the following resources dedicated to supporting student and employee well-being.

A.   Confidential Advocates[28]

San Bernardino offers confidential campus advocate services through Survivor Advocacy Services, which reports up to the Executive Director of Health, Counseling and Wellness. San Bernardino has one Survivor Advocate, who assumed that role in September 2022. Prior to hiring the current Survivor Advocate, the university lacked a confidential advocate for a period of approximately six months. During that period, the university was served by an external Survivor Advocate from Partners Against Violence, a San Bernardino-based nonprofit offering crisis support and advocacy to crime and sexual assault survivors. It was reported to us that the Survivor Advocate position had experienced significant turnover in recent years, with multiple individuals coming and going over a short span of years.

The mission of Survivor Advocacy Services is "to provide survivors of sexual violence, intimate partner violence, domestic violence, and stalking with a safe and confidential space in which they can learn about the dynamics of abuse, their rights, and options, and be empowered to make their own decisions about justice and healing" and "to change the campus culture through prevention education, awareness programming, advocacy for survivors, and collaboration with key partners." The office provides several confidential services, including crisis intervention; education on reporting options; consultations; advocacy services; accompaniment to Title IX, law enforcement, and other proceedings; and referrals to campus and community resources. The office is also responsible for the campus's prevention education programming, and the Survivor Advocate oversees the Violence Outreach Intervention and Community Empowerment (VOICE) peer education program. VOICE student peer educators provide trainings, upon request, to students on such topics as sexual assault advocacy, dating violence, stalking, bystander intervention, healthy relationships, consent, communication, boundaries, survivor allyship, and violence in LGBTQ communities. There is no full-time employee prevention educator.

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[28] The Confidential Advocate role is defined in Attachment C of the Nondiscrimination Policy and discussed in the Systemwide Report.

We received feedback that the Survivor Advocacy Services function was still nascent and that the working relationship between the Survivor Advocate and other campus partner offices such as IEC was still in its infancy due to the recent onboarding of the new Survivor Advocate. We learned that there has been good coordination between the Survivor Advocate and IEC personnel to date, including copying the advocate on all outreach emails from IEC to complainants, and the Survivor Advocate making herself available for Title IX intake meetings. However, we received feedback expressing concern that the Survivor Advocate had not received any formal training (from the university, the Chancellor's Office, or otherwise) about the role, including about best practices for intersecting with IEC and the CARE Team, and expectations about how and whether she is allowed to share information with her supervisor.

Survivor Advocacy Services is available for all students, staff, and employees. However, at the time of our campus visit, only students had utilized the office in the few months since the new Survivor Advocate had begun.

B. Respondent Support

Like most other CSU universities, CSU San Bernardino does not have any dedicated resources uniquely for respondents, such as a dedicated support person for respondents or a respondent advisor program. In the event a Title IX case proceeds to a hearing, the Chancellor's Office provides a hearing advisor to respondents if they do not already have their own advisor, as required by the federal Title IX regulations. While there is no requirement to have a respondent support person or advisor, we recommend that CSU San Bernardino identify a dedicated resource to address the unique needs of respondents in the grievance process.

C. Counseling Services

Student Health & Counseling Services (CAPS) offers mental health counseling, advocacy, and outreach services to currently enrolled students who pay the student health fee. CAPS relies on a short-term counseling model for individual and couples therapy, and makes referrals to other campus and community resources as needed. There is no fixed limit to the number of individual counseling sessions available to students; most students utilize anywhere from one to five total sessions, and students who require longer-term care are referred out to community resources. The CAPS professional team consists of 18 counselors, as well as one counselor on the school's Palm Desert campus, and support staff; additionally, the Survivor Advocate is housed within CAPS.

CAPS also offers group counseling and wellness workshops. Group counseling sessions include an all-gender empowerment support group for students who are survivors of sexual assault, dating/domestic violence, or stalking; a support group for survivors of childhood sexual abuse; and multiple support groups that relate to healthy romantic relationships. Workshops include Sexual Assault Advocacy 101 (in partnership with the Survivor Advocate) and a workshop on healthy relationships.

D.   Student Health Services

Students may receive medical treatment at the Student Health Center. The Health Center conducts Health Promotion events and workshops on a variety of health topics, which are run by student peer health educators.

E.   Ombuds

San Bernardino has an Ombuds Office, which serves as "a confidential, informal, impartial, independent resource for . . . students, faculty, staff, alumni, and community members with a university-related concern seeking assistance with resolving problems, disputes, or complaints." The Ombuds offers neutral assistance to the community, which may include dispute resolution and problem solving methods, including conflict coaching, informal mediation, facilitation, and shuttle diplomacy. During our campus visit, we received mixed feedback about the effectiveness of the Ombuds Office, with some individuals reporting that IEC was "not effective" or could not be "trusted," in part because the Ombuds position reports up to the President.

F.   Additional Resources for Students

San Bernardino has a Campus Assessment, Response and Education (CARE) Team to provide support and resources to students in need. The CARE Team is a multidisciplinary group that assesses and responds to issues that may present barriers to students' personal and academic success, such as food and housing insecurity, emotional distress, health concerns, or other personal challenges. The CARE Team also responds to referrals involving individuals that may be exhibiting concerning behaviors that may be disruptive, erratic, or threatening. The role of the CARE Team is to be a centralized structure that provides a supportive resource for students, address student concerns, and maintain a safe campus environment. Referrals to the CARE Team may be made online via a Maxient online reporting form. Once a report is made, the CARE Team will review all available information and make a determination regarding

appropriate resources. The CARE Team may also follow up with the reporting party to gather additional information that will assist us in responding to the situation. The CARE team may provide referrals to other community resources and supportive services.

The CARE Team is co-chaired by the Associate Vice President of Student Affairs (Dean of Students) and the Associate Dean of Students (Director of Student Conduct & Ethical Development). The CARE Team includes over 15 "core" team members, including but not limited to employees from the following offices: IEC; CAPS; Student Health Center; Housing and Residential Education; Student Affairs; UPD; Services to Students with Disabilities (SSD); and a representative from the university's Palm Desert campus.

San Bernardino also offers services to students experiencing food insecurity, hunger, disasters, unstable housing, homelessness, and poverty. Through the Basic Needs program, the university assists students with, among other things, access to food, rapid re-housing, and emergency financial grants.

Additionally, San Bernardino has a multidisciplinary Threat Assessment Team. The purpose of this team is to determine if an individual (student, employee, visitor, or non-affiliated) poses, or may reasonably pose, a threat of violence to themselves, others, or the campus community, and to intervene if necessary. The Threat Assessment Team is housed in the University Police Department (UPD) and consists of representatives from various other offices including IEC, Human Resources, Student Affairs/CARE, Risk Management, and Legal (as well as a designated FBI Liaison). The Threat Assessment Team publishes a brochure describing its work.

G.   Additional Resources for Employees

The university also offers an Employee Assistance Program (EAP) called LifeMatters that is administered through Empathia. The program is designed to provide resources for professional assistance to faculty, staff, and their families (dependents and permanent household members) in assessing and resolving personal problems that may be affecting well-being or job performance. Resources available to employees include counseling services, campus resources and referrals to community resources. The counseling services for employees include six free sessions with a counselor, and consultations are available to discuss a range of topics including relationship services, financial services, health services, workplace services, legal services, professional development, and skills coaching.

VIII.   Prevention, Education, Professional Development, Training and Awareness[29]

Under the Nondiscrimination Policy, the Title IX Coordinator is responsible for "coordinating training, education, and preventive measures," which may be delegated to a Deputy Title IX Coordinator.[30] Even if responsibilities are shared with a Confidential Advocate, the Title IX Coordinator "remains primarily responsible for all campus-based prevention and awareness activities."[31] The Nondiscrimination Policy further provides: Confidential Advocates may serve on campus-based task force committees/teams to provide general advice and consulting, participate in prevention and awareness activities and programs, and 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.[32]

This level of coordination and oversight is not occurring at CSU San Bernardino, nor at most universities across the system.

A.   Students

Across the CSU, all students are assigned completion of an online training every year. In addition, certain student populations, including athletes, members of fraternities and sororities, and club/organization officers, are also required to receive supplemental Title IX training. IEC's website has an information tab for "Training" but the information on the site relates almost exclusively to the mandatory online trainings and there is no information available about requesting customized in-person or virtual trainings from the IEC staff.

Administrators reported that IEC was doing "the bare minimum" in terms of Title IX trainings, instead relying almost exclusively on the systemwide online trainings, in large part due to the staffing and turnover

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[29] The legal and regulatory framework, which sets forth requirements under federal and state law, is outlined in Section VII.B.2. of the Systemwide Report, Legal Framework re: Prevention and Education.

[30] See Attachment B: Campus Title IX Coordinators Role and Responsibilities.

[31] See Attachment C: Confidential Sexual Assault Victim's Advocates.

[32] *Id.* Under Attachment C, all awareness outreach activities must "comply and be consistent with University policies" and the Advocate is required to "partner and collaborate with the Title IX Coordinator to ensure the activities comply with CSU policy and are consistent with campus-based practices."

issues within IEC. The programming, to the extent it exists, has fallen almost exclusively to the Survivor Advocacy Services office. However, we learned that the Survivor Advocate position had sat vacant for almost half a year leading up to our campus visit and that the new Survivor Advocate – who had just been onboarded to the role very recently – had been focusing exclusively on direct support services and crisis intervention for students because that was occupying all of her time such that she had no bandwidth to work on prevention.

Survivor Advocacy Services does not have an employee prevention educator. Rather, the prevention and education programming by the office is offered primarily by student peer educators through the VOICE program, under the supervision of the Survivor Advocate. Trainings by VOICE are available upon request, and include topics such as Sexual Assault Advocacy 101, Dating Violence 101, Stalking 101, Bystander Intervention, Healthy Relationships, Consent, Communication, Boundaries, Survivor Ally Training, and Violence in LGBTQ Communities. At the time of our campus visit, VOICE peer educators were hired on a volunteer basis, but we understand that they now receive compensation for their services.

Separate and apart from the VOICE program, Survivor Advocacy Services has invited community partners, such as Partners Against Violence, to the university to provide education and training programs for the campus community. Survivor Advocacy Services also partners with CAPS to provide workshops on sexual assault and other topics, and the Survivor Advocacy Services website also lists one workshop (on healthy relationships) that was offered during spring 2023.
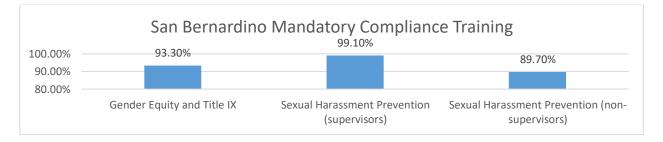
San Bernardino's Annual Security Report, required under the Clery Act, lists general primary prevention and awareness programs offered by the CSU system, and states that San Bernardino has workshops and trainings on issues such as bystander intervention and risk reduction. The Report lists some prevention programming from 2021 as well as Sexual Assault Awareness Month programming. Some of the prevention programs listed in the Report are Letters to Survivors; Denim Day; Sexual Assault & Mental Health: The Impact on Immigrants; and Identifying Red Flags in a Relationship. The Report also lists supplemental Title IX trainings for athletes, new employees, and Housing student leaders.

B. Employees

Consistent with California state law, CSU policy requires all CSU employees to 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). In addition to this annual requirement for all CSU employees, supervisors

and non-supervisors are required to participate in CSU's *Discrimination Harassment Prevention Program* every two years (for at least 120 minutes).

The systemwide Learning and Development Office in the Chancellor's Office hosts these online modules, which are provided by an external vendor, on its systemwide employee learning management system. The Learning and Development Office tracks employee completion of these required programs. The below chart, provided by the Chancellor's Office, shows the completion percentage for San Bernardino for the 2022 calendar year:[33]

San Bernardino Mandatory Compliance Training

	Gender Equity and Title IX	Sexual Harassment Prevention (supervisors)	Sexual Harassment Prevention (non-supervisors)
	93.30%	99.10%	89.70%

As at other CSU universities, we also noted the need for expanded professional development and training opportunities for faculty and staff.

C. Coordination

Employees also reported to us during the campus visit that there used to be a multidisciplinary group called the Prevention Partners Group that consisted of approximately a dozen representatives from IEC, Survivor Advocacy Services, Student Health Center, CAPS, Housing, Queer & Transgender Resource Center, Student Affairs, Women's Resource Center, and other campus constituents. The purpose of the Group was to coordinate and offer prevention programming in order to prevent overlapping programs and to ensure consistent messaging. However, the Group disbanded during the COVID pandemic and has not been reconstituted. Since our campus visit, San Bernardino created a position for a permanent prevention education employee, and the university intends to hire an individual to this position this summer.

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[33] These percentages have been validated by each campus. Please note employees designated by their campus as "on leave" were removed from these final percentages.

IX. **Other Conduct of Concern**

As with other universities across the CSU system and nationwide, San Bernardino has grappled with conduct issues that have been determined not to rise to the level of a potential policy violation and those that are not based on protected status but that may constitute unprofessionalism, inappropriate supervisory practices, or mistreatment directed at others regardless of identity. We use the term *other conduct of concern* to refer to conduct that may not rise to the level of protected status 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

- 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.

Like universities nationwide, San Bernardino has struggled with a response mechanism for addressing issues relating to civility, bullying, protected speech that negatively impacts constituents, and actions and words that entail misconduct but that do not relate to protected status and/or do not rise to the level of being sufficiently persistent, severe, and/or pervasive.

The feedback we received at San Bernardino regarding this *other conduct of concern* was that it was not being triaged effectively and that the university's response mechanisms were inconsistent, which contributed to a perception that there was a lack of accountability with respect to unprofessional or uncivil behaviors. When the university encounters these behaviors, they are generally referred to Student Affairs (Student Conduct), Human Resources (Employee Relations), or Faculty Affairs (Academic Labor Relations).

We heard in multiple meetings that concerns relating to these behaviors were particularly pronounced among the faculty. Some individuals commented that the "faculty seems to get a bit of a pass" and others explained that the university's lack of a "civility policy," an "anti-bullying policy," or something similar, was impacting campus culture in a negative way. Others described how faculty members frequently report their colleagues to IEC for these behaviors, and then grow frustrated with IEC for not investigating the conduct. Faculty reported that administrators regularly engaged in problematic conduct and that efforts to address it were stymied by other administrators and, in some instances, the Chancellor's Office.

Similarly, on the staff side, we heard that when incident reports are referred from IEC to Human Resources/Employee Relations, that respondents interpret that as vindication of their conduct; some individuals commented that staff are too protected under their union contract. We received consistent feedback that additional training was needed to educate the campus community about IEC and its jurisdictional constraints, and that additional professional development programming was also needed.

San Bernardino does not have a bias incident reporting mechanism. We learned that within Student Affairs there is a Bias Response and Advisory Council that reports to the Vice President of Student Affairs. The Council was created in 2021 and meets once per semester to discuss DEI education and general climate-related issues (e.g., the war in Ukraine, race relations issues, etc.) that may affect campus culture for students. The body is not intended as a reporting or intervention-based mechanism. Additionally, the aforementioned Ombuds Office can serve as a conflict resolution mechanism.

During our campus visit, we learned that, in spring 2020, San Bernardino engaged an external professional to review the university's diversity, equity, and inclusion (DEI) efforts, bring a strategic focus to DEI activities, and make suggestions for increasing effectiveness of efforts. This effort resulted in the appointment of three co-Chief Diversity Officers and the creation of a DEI Board with a 10-member steering committee, a 17-member executive committee, and six subcommittees which each have 8 to 11 members. The 6 subcommittees have the following areas of focus:

- Student Recruitment, Retention and Graduation
- Curriculum and Student Learning
- Staff Recruitment, Retention and Development
- Alumni and Community Outreach
- Faculty Recruitment, Retention and Development
- Programming

Under the current design, IEC reviews all reports of conduct that is reported to constitute a potential violation of the Nondiscrimination Policy. If IEC learns that the conduct is not alleged to be based on a protected status, or if it is found not to rise to the level of a potential policy violation, IEC refers the matter to the appropriate campus partner. If the conduct is not alleged to be based on protected status – for example, if it is a complaint of unprofessionalism, inappropriate supervisory practices, or mistreatment directed at others regardless of identity – then the conduct may be referred to the supervisory/disciplinary unit for the respondent based on their status as student, faculty, or staff. Student cases involving *other conduct of concern* is referred to SCED or, if they occur in the Residence Hall, to Housing and Residential

Education. Faculty and staff matters are referred to Human Resources or Faculty Affairs and Development, the individual's supervisor, and/or the dean or department chair for faculty. Other than the definitions in the Nondiscrimination Policy, there are currently no written criteria to guide the Title IX Coordinator/DHR Administrator in evaluating whether conduct constitutes discrimination or harassment on the basis of protected status. This gap is explored more thoroughly in the systemwide report. If the conduct is because of a person's protected status but, upon further evaluation through an investigation, is found not to be sufficiently severe, pervasive, and objectively offensive such that it constituted Sexual Harassment (the Title IX regulatory definition used in Track 1 cases) or found not to be sufficiently severe or pervasive such that it constituted Harassment; and/or not sufficiently severe, persistent, or pervasive such that it constituted Sexual Harassment (the broader definitions used in Track 3 cases), then there is no consistent established process at San Bernardino for an institutional response. At times, those cases are referred to the supervisory/disciplinary unit for the respondent based on their status as student, faculty, or staff, but there is no formal structure for ensuring that they are referred.

As discussed more fully below, we recommend implementing a structure to evaluate reports, identify appropriate resolution pathways, and provide impacted parties and university administrators with options through use of a suite of tools and services designed to address *other conduct of concern*.

X.   Recommendations

In the Systemwide Report, we provide detailed recommendations for enhanced Chancellor's Office oversight and coordination of university Title IX and DHR programs. The Systemwide Report also highlights the need for collaboration between Chancellor's Office personnel and university-level Title IX and DHR professionals to ensure accountability for the effective implementation of informed and consistent frameworks. These recommendations must be read together with the recommendations set forth in the Systemwide Report.

Unless otherwise specified, the below recommendations are directed toward the university as a whole. We recommend that the Title IX Coordinator/DHR Administrator and the Campus Implementation Team work with the Chancellor's Office to map and calendar an implementation plan.

A.   Infrastructure and Resources

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

1. Work with the Chancellor's Office to develop a project plan for addressing gaps and implementing recommendations

2. Share existing budget line information with the Chancellor's Office, including historic and anticipated annual fees for external investigators, hearing officers, and other Title IX/DHR related resources, as well as budget line information related to the confidential campus advocates, prevention and education specialists, and respondent resources (recognizing that these resources are typically outside of the Title IX/DHR budget)

3. Map functions within the Title IX/DHR program 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

4. Based on benchmarking and recommendations from the Chancellor's Office, identify recurring baseline (or line item) funding (both source and amount) for the Title IX/DHR program

5. Work with the Chancellor's Office to implement an enterprise-level case management system and develop protocols for consistent collection and retention of data

   5.1. While IEC is in the process of transitioning to Maxient, IEC should evaluate the need for external tracking tools to monitor initial outreach, ongoing communications, reasonably prompt timeframes in investigations and informal resolutions, patterns and trends across cases, and delays and communications about good cause reasons for any extensions or delays during the grievance process

   5.2. While the university transitions to a unified records management system, key partner offices at the university should undertake an evaluation of their own recordkeeping system, including understanding where records are kept; how they are secured; whether there is a records retention policy and, if so, who oversees compliance; whether records are kept in paper or electronic form; how records are organized; and whether records are indexed/searchable. This is a particular priority for faculty personnel records which were reported to be maintained in different places including at the department and college level, sometimes in paper form, and not centrally searchable.

6. Ensure an adequate supervisory model that includes a routine cadence of supervisory meetings, guidance about how to ensure effective oversight and accountability measures, an appropriate level of detail for review, development, integration and tracking of decision-making frameworks, and balancing implementers' independence and autonomy with the need to identify and elevate critical issues and concerns about safety/risk

7. Commit to the consistent investment in professional development and continuous learning for Title IX and DHR professionals and senior leaders who oversee the Title IX/DHR program (CLEs, conferences, system training, etc.)

8. Identify a sustainable model to provide respondent support services

      B.   **Strengthening Internal Protocols**

We offer the following recommendations to promote accountability and strengthen internal protocols within the Title IX/DHR program:

1. Coordinate with the Regional Director, Systemwide Title IX/Civil Rights Division, and subject matter experts to:

    1.1. Map the case resolution process from reporting and intake through to investigation and resolution process

        1.1.1.   Compare the current process against standard practices and identify any concerns related to timeliness, conflicts, gaps in communication, or gaps in consistent process

        1.1.2.   Identify, map, and reconcile intersections with faculty/staff grievance and disciplinary processes

    1.2. Develop robust intake, outreach, and case management protocols for supportive measures and resources

        1.2.1.   Develop internal protocols and written tools (e.g., templates and checklists) for intake and outreach, oversight of supportive measures, and decision-making regarding emergency removal or administrative leave

        1.2.2.   Seek to hold an intake meeting with all individuals who make a report of conduct that would potentially violate the Nondiscrimination Policy

        1.2.3.   Develop protocols for notifying and coordinating with the confidential advocate at the intake meeting, if possible

        1.2.4.   Develop or update protocols for information sharing to ensure that the Title IX/DHR Office can fulfill its responsibility of documenting all supportive measures offered, requested, implemented, and if denied, the reasons for the denial

        1.2.5.   Create a feedback loop to acknowledge responsible employee reports and confirm receipt of the report and next steps

        1.2.6.   Establish standardized protocols for outreach to complainants that involve multiple modalities, systems to document outreach, and a protocol for how and when to make additional outreach in cases with non-responsive complainants, including the potential for outreach through a third-party or a responsible employee

    1.3. Develop integrated, written processes for initial assessment designed to evaluate known facts and circumstances, assess and implement supportive measures, facilitate compliance with Title IX and Clery responsibilities, and identify the appropriate institutional response after triaging the available and relevant information; as part of the initial assessment, the Title IX Coordinator/DHR Administrator should:

1.3.1. Take steps to respond to any immediate health or safety concerns raised by the report

1.3.2. Assess the nature and circumstances of the report to determine whether the reported conduct raises a potential policy violation and the appropriate manner of resolution under the Nondiscrimination Policy

1.3.3. 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

1.3.4. Provide the complainant with both oral and written information about on- and off-campus resources (including confidential resources), supportive measures, the right to contact (or decline to contact) law enforcement or seek a civil protection order, the right to seek medical treatment, the importance of preservation of evidence, the right to be accompanied at any meeting by an advisor of choice, and an explanation of the procedural options available

1.3.5. Refer the report to appropriate campus officials to assess the reported conduct and determine the need for a timely warning or other action under the Clery Act

1.3.6. Assess the available information for any pattern of conduct by respondent

1.3.7. Discuss the complainant's expressed preference for manner of resolution and any barriers to proceeding (e.g., confidentiality concerns)

1.3.8. Explain the policy prohibiting retaliation and how to report acts of retaliation

1.3.9. Determine the age of the complainant, and if the complainant is a minor, make the appropriate report of suspected abuse consistent with state law

1.3.10. Evaluate other external reporting requirements under federal or state law or memoranda of understanding

1.3.11. Develop, and follow, a comprehensive written checklist/form to ensure that all required actions are taken under state and federal law

1.3.12. Develop checklist of factors to consider in determining whether to move forward without a complainant or whether informal resolution is appropriate and ensure sufficient documentation of the determination

1.3.13. 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

1.4. Separate support/advocacy functions from investigation to avoid role confusion and ensure clear demarcation between the individuals who provide supportive measures to a complainant, respondent or other individual in need of assistance, and the investigator

1.5. Strengthen campus collaboration and information-sharing through a multidisciplinary team (MDT) model

    1.5.1.   The Title IX Coordinator/DHR Administrator, in conjunction with the Chancellor's Office, should identify essential university partners to serve on the MDT and set standards for meeting goals and sharing real time information. MDT members may include representatives from Student Affairs/Student Conduct, Faculty/Academic Affairs, Human Resources, UPD, Title IX Coordinator/DHR Administrator, Clery Coordinator, and University Counsel

    1.5.2.   The MDT should meet regularly and at a minimum, weekly, to review all new reports

    1.5.3.   The MDT should ensure that all known and available information about the parties and the reported incident is shared with TIX/DHR to inform TIX/DHR's initial assessment and any steps it determines to take in response (including information maintained outside of Title IX/DHR's recordkeeping systems and information that may only be known to another unit or individual)

    1.5.4.   The Title IX Coordinator/DHR Administrator should follow a protocol for securely sharing parties' university ID numbers or names and basic information about the reported incident in advance of MDT meetings to enable all participants to query their records systems and bring forward any relevant information

    1.5.5.   The Title IX Coordinator/DHR Administrator should ensure that the MDT is trained to treat information confidentially, with sensitivity, and consistent with state and federal privacy laws

    1.5.6.   The MDT should engage in consultation to inform decisions, including those about emergency removal, administrative leave, the reasonable availability of supportive measures, and questions about the scope of the university's education program or activity

    1.5.7.   The MDT meetings should serve as natural opportunities for documenting the factors considered in reaching key decisions and documenting what information was known, when it was known, by whom it was known, and what impact it had on the Title IX Coordinator/DHR Administrator's analysis

    1.5.8.   The MDT should facilitate the development of shared fluency and knowledge among key university partners related to the legal and regulatory requirements, policy frameworks, and considerations related to care and informed and equitable processes

1.6. Develop tools for consistent, informed, effective documentation and case management

    1.6.1.   For quality control, develop a case opening and closing checklist to ensure that all relevant documents, correspondence, and information are captured and preserved electronically

    1.6.2.   To the extent feasible, seek to maintain data in a usable and searchable electronic format for efficient decision making, analysis and review

  1.6.3. Migrate all historical DHR reports and Title IX reports into the enterprise-level case management system, if not already included

  1.6.4. Develop periodic reviews for quality assurance

 1.7. Oversee investigations for quality and consistency of prompt and equitable processes

  1.7.1. Establish a protocol to ensure the timeliness of investigations, with routine quality control mechanisms throughout investigation process

  1.7.2. Develop quality control processes for monitoring active investigations for thoroughness and timeliness and ensure timely communications to parties throughout the investigative process (e.g., calendar internal 30-day, 60-day and 90-day alerts to prompt the investigator or case manager to make outreach to the parties)

  1.7.3. Ensure each report has sufficient review by the Title IX Coordinator/DHR Administrator and University Counsel (for legal review of sufficiency and adherence to policy)

2. Continue to evaluate barriers to reporting and engagement at the university level, with aggregation of data and advice and guidance by the Chancellor's Office

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

 3.1. Update the existing [online reporting form](#), as follows:

  3.1.1. Modify the existing online reporting form to clarify that it can be used for either Title IX or DHR reports

  3.1.2. Revise language regarding the non-confidentiality of a Title IX report to capture the difference between confidentiality and privacy and to accurately describe IEC's role as a resource that, while not confidential, maintains privacy and treats all information with sensitivity and care

  3.1.3. Update the name and contact information of the Survivor Advocate

  3.1.4. On the form itself, insert a reminder that any person (student, staff, faculty, or third-party) may report directly via email, phone call, appointment, walk-in, or incident reporting form and that they may fill out as much of the reporting form as they would like

  3.1.5. If maintaining the "Is Anonymous" checkbox, clarify the effect of checking that box. It is not clear that, if a person checks that box, IEC will not know their identity, will not be able to contact them to discuss the report they made, and – depending on the level of information given and other attendant facts – may not be able to address their report

  3.1.6. Remove the "required" designation for all fields or add a caveat so that, for example, a person is not discouraged from reporting if they do not know the date of the incident

  3.1.7. Add instructions for responsible employees who use the online form to make reports, noting that the responsible employee must input all known information including the

identity of the complainant, the nature of the reported conduct, and the date and location, if known

3.2. Review template communications and consider input from faculty, student, and staff representatives regarding clarity, brevity, tone, and format.

4. Review the current post-Title IX/DHR disciplinary processes for faculty and staff to ensure promptness, equity, and informed communication

4.1. Ensure the Title IX Coordinator/DHR Administrator remains engaged in any disciplinary processes, including sanctions and appeals, until final

4.2. Ensure that decisions about negotiated settlements are supported by a careful and coordinated review by all relevant campus and system level administrators

5. Develop and implement a process to routinely collect post-resolution feedback from the parties and all impacted individuals

C. Communications

We offer the following recommendations to improve awareness of the Title IX/DHR Office, strengthen campus communications, and address the trust gap:

1. Ensure distribution of a clear and consistent communication plan each semester that includes, at a minimum:

1.1. Dissemination of the Notice of Non-Discrimination

1.2. Dissemination of the Nondiscrimination Policy

1.3. Information about reporting and resources

2. Develop an intentional marketing campaign to raise awareness about the role of the Title IX/DHR program, available resources, and resolution options

2.1. Prioritize the messages of care, supportive measures, and resources

2.2. Differentiate and educate about the difference between confidential resources and reporting options

2.3. Partner with campus communications professionals to create and promote effective marketing materials, including through the use of professional branding that can be used across platforms (print, web, social media, imprinted on giveaway products)

2.4. Develop several stock presentation types to enable IEC staff to deliver presentations with handouts and slide decks. The presentation types would include separate full-length training programs for students, staff, faculty, and administrators, and shorter "press tour" awareness presentations designed to introduce IEC to key groups

2.5. Create a series of videos for the website and/or social media, including IEC staff discussing their work, first-person accounts from students about inclusion and belonging, first-person accounts from faculty and staff about the importance of preventing discrimination and harassment, and the like

3. Improve the IEC website and other external-facing communications

3.1. Review and revise web content, across all relevant webpages, for clarity, accuracy, and accessibility

3.2. Ensure that web content includes: photographs and contact information for Title IX/DHR staff, notice of non-discrimination, a link to the Nondiscrimination Policy, an overview of procedural and resolution options (with accessible graphics), how to make a report (to Title IX/DHR or UPD), on and off campus confidential resources, the difference between confidentiality and privacy, supportive measures, employee reporting responsibilities, an FAQ, prevention and education programming

3.3. We recommend the following with respect to improving the IEC website:

3.3.1. Map the current IEC website including all pages and sub-pages

3.3.2. Streamline and update the website's landing page. Front and center on the landing page is information relating to the federal Title IX regulations promulgated by the Department of Education in May 2020. The website describes these as the "new federal regulations," even though they were released over three years ago, which reflects that the webpage is in need of an update. Additionally, the landing page is text-heavy and dense, and could be streamlined to make it more inviting and approachable.

3.3.3. Rethink the navigation tabs to make navigation of the website more intuitive and user-friendly. At present, information is not always included under self-explanatory headings/tabs. For instance, an explanation about Title IX is located under the "Home" tab whereas an explanation about DHR is located under the "Complaint Process" tab. Similarly, there are instructions about filing Title IX and DHR incident reports both under the "Home" tab and the "Complaint Process" tab.

3.3.4. Make the online reporting tool more visible and pronounced throughout the website. A link to the reporting tool is available on the right-hand side of every IEC webpage, but it is easy to miss.

3.3.5. Consolidate some of the information about IEC's mission, role, and services. This information is available in multiple places on the website, including IEC's landing page, the What We Do webpage, the IEC Brochure, and the IEC Overview PDF.

3.3.6. Revise the Complaint Process landing page to include information about DHR. Currently, the page only includes information about Title IX.

3.3.7. Update the "IEC Brochure" so that it contains information about Title IX *and* DHR, or make clear that it is a Title IX brochure only

3.3.8. Update the "IEC Overview" to fix grammatical errors, typos, and substantive inaccuracies

3.3.9. Create and update process flowcharts. The website contains one process flowchart for Title IX investigations and hearings. Similar flowcharts would be useful for each of the "three tracks" of the CSU Nondiscrimination Policy.

3.3.10. Include Survivor Advocacy Services on the Resources webpage

3.3.11. Remove broken website links and update outdated information

3.3.12. Revise language regarding how a person can file a Title IX or DHR report, including that anyone (student, staff, faculty, third-party) may make a Title IX or DHR report directly via email, phone call, appointment, walk-in, or incident reporting form and that they may fill out as much of the reporting form as they would like

3.3.13. Consider a FAQ webpage on the IEC site that provides information about Responsible Employee reporting, availability of supportive measures, what happens after a Responsible Employee reports a matter to IEC, differences between a report and formal complaint, differences between formal and informal resolution, and so on

3.3.14. Develop consistent branding for all resources

3.3.15. Ensure that the Athletics website links to the Notice of Nondiscrimination and that it provides a portal into IEC, as do all campus-based websites

3.4. Gather, evaluate, and update all existing informational materials, web resources, posters/flyers, social media information, and other public-facing communications about the Title IX/DHR program to ensure that those materials:

3.4.1. Reflect the current staffing and structure of the office, the current CSU Nondiscrimination Policy and resolution processes, and current information about on- and off-campus resources including confidential resources

3.4.2. Are written in clear language, accessible (from both a disability perspective and a reading comprehension perspective), and consider strategic placement of newly developed print materials in areas frequented by students, staff, and faculty

3.5. Use standardized email addresses and/or materials that are able to be updated quickly (e.g., use of QR codes that point to dynamic webpages that can be updated; using, for example, "TitleIX@[name of university].edu," so that print materials do not become outdated if there is a personnel change, etc.)

4. Develop an expanded annual report with meaningful information/data

5. Develop standing committee of representative student, faculty and staff ambassadors to support and facilitate institutional efforts to more effectively communicate with campus constituents

6. Identify and prioritize opportunities for in-person engagement with Title IX/DHR staff (e.g., pop-up events, tabling at an information fair, open houses in various central locations, routine scheduled short presentations to key audiences, and/or sponsored or co-sponsored events)

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

We offer the following recommendations to promote legal compliance with the VAWA provisions of the Clery Act and consistent attention to prevention and education programming, training, professional development and awareness:

1. Allot sufficient budget lines to ensure consistent, baseline funding for personnel, legally-required programming, and technology/learning management systems

2. Proactively coordinate with system-level subject matter experts to assist with education, training, materials and communications related to complex and difficult issues facing all CSU institutions

3. Designate one individual with specific oversight of all university prevention and education planning and programming, preferably a full-time role without other job responsibilities

    3.1. This coordinator should be tasked with oversight of and responsibility for all legally-required programming under Title IX, the Clery Act, and California law

4. Convene a university-wide Prevention and Education Oversight Committee to coordinate and align programming across the university

    4.1. The Committee should include all departments who provide training, prevention and education, including, at a minimum, representatives from the Title IX/DHR program, the confidential advocate, student affairs, student health, counseling, UPD, athletics, fraternity and sorority life, residential life, human resources and employee labor relations, academic/faculty affairs, DEI professionals, identity-based affinity centers, university subject-matter experts, and staff, faculty, and student representatives

    4.2. The Committee should include subcommittees, as determined by the Committee. Committees may focus on the needs of various constituencies (undergraduate students, graduate students, staff, administrators, and faculty) or the types of programming (compliance, professional development, prevention and education, bystander intervention, etc.)

    4.3. The Committee should be charged with reviewing prevention program content, evaluating proposed programming or speakers, ensuring that prevention-related communications are reaching all constituents, and developing and implementing a mechanism for assessing effectiveness including by monitoring participation levels and measuring learning outcomes

5. With assistance from the Chancellor's Office, develop a strategic plan for university programming that identifies all training requirements under federal and state law and CSU policy, all constituencies and constituent groups in need of training, and all potential university partners that can collaborate to deliver content

5.1. Constituent groups subject to required training 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); and campus partners who assist in the implementation of Title IX/DHR

5.2. Identify all university partners who provide programming, including affinity and identity-based centers and student affairs personnel

5.3. Identify opportunities for virtual and in-person engagement

5.4. Develop core principles and standards for content development

5.5. Build a university calendar that includes online modules, social norm campaigns, orientation for students and employees, recurring opportunities for programming, and awareness events

6. Facilitate a consistent communication plan each semester that includes dissemination of the policy, notice of nondiscrimination, reporting options and resources

7. Ensure that programming is coordinated, communicated and tracked

8. Develop a university website dedicated to prevention and campus programming that is kept current, facilitates distribution of prevention and education materials, and incorporates the opportunity for feedback and recommendations

9. Identify social media platforms and other vehicles for distributing programming information on a regular basis

10. 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

10.1. 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*

11. Create routine training, education, and professional development opportunities to cultivate competencies in navigating difficult conversations, bridging differences, and modeling respect and civility

12. Evaluate the potential opportunities for curricular or course-based programming credential-based options

13. Incorporate information about the Nondiscrimination Policy, reporting options, and confidential resources in syllabi statements

14. Commit to providing programming regarding bystander engagement

15. Participate in national conferences, listservs, networking events and other opportunities to coordinate with other professionals dedicated to prevention

16. Engage students in the development and delivery of programming through peer educator/peer advocate programs

17. Identify student leaders who can serve as ambassadors/promoters of this work

18. Develop consistent on-campus opportunities to be visible and present in the community

E.   Responding to Other Conduct of Concern

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

1. In conjunction with the Chancellor's Office and CSU's Office of General Counsel, 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 protected speech

2. Reinforce CSU values and expectations about respect, tolerance, and professionalism through programming and opportunities for in-person engagement

3. Strengthen and expand available 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, deans and department chairs by providing expanded training and professional development to meet the needs of assigned roles

    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 the new and available conflict resolution suite of resources through web content, annual training, and awareness campaigns

    3.6. Invest in education and training about conflict resolution

4. Create a centralized reporting mechanism that includes the option for online and anonymous reporting

   4.1. Ensure that the landing page for the anonymous reporting option includes appropriate caveats about the university's limited ability to respond to an anonymous report

5. Build a triage model/review process to ensure that all reports are assessed by Title IX and DHR professionals (and a subset of the Title IX/DHR MDT) 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, and

   5.4. Identify appropriate community remedies, if any

6. The reporting and resolution processes must ensure sufficient documentation system to track responsiveness, patterns and trends

7. This information should be tracked and analyzed on at least an annual basis to inform the need for remedial actions regarding culture and climate, targeted prevention and education programming, and ongoing issues of concern

Appendix I
Metrics: Campus Demographics and Population[34]

The below chart reflects key metrics and demographic information for San Bernardino.

California State University San Bernardino			
Location Information			
Location: San Bernardino, CA (pop. 220,328)[35]		**County:** San Bernardino County (pop. 2,193,656)[36]	**Locale Classification:** Midsize City[37]
University Information			
President: Tomás D. Morales Ph. D. (May 2012-present)			
Designation: Hispanic Serving Institution (HSI)[38]			
Students – Enrollment Data[39]			
Total Number of Students		**19,812**	
State-Supported		**Self-Supported**	
Undergraduates	16,813	Undergraduates	175
Grad & Post Bac Students	2,654	Grad & Post Bac Students	170
Student Ethnicity[40]			
Overall (includes State- and Self-Supported)			
Hispanic / Latino		69%	
White		11%	
Asian		6%	
Black / African American		5%	
International Student		3%	
Race and Ethnicity Unknown		3%	
Two or More Races		2%	
Native Hawaiian / Other Pacific Islander		<1%	
American Indian / Alaska Native		<1%	
State-Supported (19,467 students)		**Self-Supported** (345 students)	
Hispanic / Latino	69%	Hispanic / Latino	51%
White	11%	White	23%

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[34] Unless otherwise noted, Cozen O'Connor obtained data concerning CSU San Bernardino's demographics, populations, Title IX and DHR staffing, operations and caseload from California State University and CSU San Bernardino sources. This report will be updated to reflect material inaccuracies brought to our attention on or before September 15, 2023.

[35] United States Census Bureau, https://www.census.gov/quickfacts/fact/table/sanBernardinocitycalifornia/PST045221, population estimate as of July 1, 2021.

[36] United States Census Bureau, https://www.census.gov/quickfacts/fact/table/sanBernardinocountycalifornia/PST045221, population estimate as of July 1, 2021.

[37] Defined as a territory inside an urbanized area and inside a principal city with population less than 250,000 and greater than or equal to 100,000. *See* National Center for Education Statistics, https://nces.ed.gov/programs/edge/Geographic/LocaleBoundaries and https://nces.ed.gov/surveys/annualreports/topical-studies/locale/definitions.

[38] 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

[39] California State University Enrollment Data, Fall 2022, Cal State San Bernardino: https://tableau.calstate.edu/views/SelfEnrollmentDashboard/EnrollmentSummary?iframeSizedToWindow=true&%3Aembed=y&%3AshowApp Banner=false&%3Adisplay_count=no&%3AshowVizHome=no For purposes of this table, "state-supported" refers to students for whom the State of California underwrites some or all of their educational expenses and "self-supported" refers to students whose educational expenses are not underwritten by the state. Across the California State University system, with some exceptions, self-supported degree seeking students are generally those enrolled in programs administered by professional and continuing education programs.

[40] *Id.* This data includes students at the undergraduate, graduate, and post-baccalaureate levels.

Asian	6%	Black / African American	8%
Black / African American	5%	Race and Ethnicity Unknown	7%
International Student	3%	Asian	6%
Race and Ethnicity Unknown	3%	Two or More Races	3%
Two or More Races	2%	International Student	<1%
Native Hawaiian / Other Pacific Islander	<1%	Native Hawaiian / Other Pacific Islander	<1%
American Indian / Alaska Native	<1%	American Indian / Alaska Native	<1%

Other Student Demographics[41]	
Overall (includes State- and Self-Supported)	
First in Family to Attend College	42%
% students who are traditionally underrepresented[42]	74%
% of undergrads who were Pell Grant recipients[43]	59%
% of students who live on campus[44]	4%
% undergrads who are in a fraternity or sorority[45]	6.5%
4-year graduation rate for first-time FT freshmen[46]	25.4%

State-Supported (19,467 students)		**Self-Supported** (345 students)	
Average Age	24	Average Age	32
Sex[47]	63% F; 37% M	Sex[48]	64% F; 36% M
First in Family to Attend College	42%	First in Family to Attend College	35
% traditionally underrepresented[49]	74%	% traditionally underrepresented[50]	59%

Instructional Faculty[51]	
Total # of faculty	1,101.00
Tenure-track	41.2%
Lecturer	58.8%
% full-time[52]	49.18%
% part-time	50.82%
Leadership body	Faculty Senate[53]

Staff[54]	
Total # of staff	957

[41] *Id.,* except where noted otherwise. This data includes students at the undergraduate, graduate, and post-baccalaureate levels.

[42] For purposes of this table, "traditionally underrepresented" refers to students with ethnicity of Hispanic, Black/African American, or Native American/Alaska Native.

[43] Pell Grants are federal grants that are usually awarded only to undergraduate students who display exceptional financial need. *See* U.S. Department of Education, Federal Student Aid, https://studentaid.gov/understand-aid/types/grants/pell. This data is for 2021 as 2022 data is not yet available.

[44] California State University, 2022 Systemwide Housing Plan, Figure 7, p. 20: https://www.calstate.edu/impact-of-the-csu/government/Advocacy-and-State-Relations/legislativereports1/Legislative-Report-CSU-Systemwide-Housing-Plan.pdf

[45] *See* https://www.calstate.edu/dev/campuses/san-bernardino/Pages/student-life.aspx (Data as of: 6/1/2022).

[46] California State University, Graduation & Success Dashboards, with link to Graduation Dashboard, selecting the Summary Overview tab, and with Cal State San Bernardino selected in drop-down menu. *See* https://www.calstate.edu/data-center/institutional-research-analyses/Pages/graduation-and-success.aspx. This data reflects the four-year graduation rate for first-time full-time freshmen entering CSUF during the Fall 2018 (most recent complete 4-year term available).

[47] Data does not capture number of students who do not identify on the sex/gender binary.

[48] *Id.*

[49] For purposes of this table, "traditionally underrepresented" refers to students with ethnicity of Hispanic, Black/African American, or Native American/Alaska Native.

[50] *Id.*

[51] California State University, CSU Faculty, Fall 2022. *See* https://www.calstate.edu/csu-system/faculty-staff/employee-profile/csu-faculty, except where noted otherwise.

[52] California State University, CSU Workforce, Fall 2022. *See* https://www.calstate.edu/csu-system/faculty-staff/employee-profile/csu-workforce/Pages/default.aspx *See* "Headcount/FTE by Campus" tab.

[53] Cal State San Bernardino Academic Senate. *See* https://www.csusb.edu/faculty-senate

[54] California State University, CSU Workforce, Fall 2022. *See* https://www.calstate.edu/csu-system/faculty-staff/employee-profile/csu-workforce/Pages/default.aspx *See* "Headcount/FTE by Campus" tab.

% full-time	98.43%
% part-time	1.57%
Collective Bargaining Units	
Unit 1	Cal. Fed. of American Physicians and Dentists (UAPD)
Units 2, 5, 7, 9	California State University Employees' Union (CSUEU)
Unit 3	California Faculty Association (CFA)
Unit 4	Academic Professionals of California (APC)
Unit 6	Teamsters, Local 2010 – Skilled Trades
Unit 8	Statewide University Police Association (SUPA)
Unit 11	Academic Student Employees (UAW)
Athletics[55]	
NCAA Division	II
NCAA Conference	CCAA[56]
Number of sponsored sports for '22-'23 academic year	10
Number of student athletes[57]	212

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[55] NCAA Directory, https://web3.ncaa.org/directory/orgDetail?id=93, except where noted otherwise.

[56] All sports are in the California Collegiate Athletic Association.

[57] *See* U.S. Department of Education, Equity in Athletics Data Analysis, at https://ope.ed.gov/athletics/#/, data for California State University San Bernardino. Number of student athletes equals the sum of the Unduplicated Count of Participants for Men's Teams plus the Unduplicated Count of Participants for Women's Teams.

Appendix II
Feedback from Survey

In December 2022, we asked each campus President and the Chancellor's Office 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 across the system participated in the survey. We used a third-party vendor to host the survey, which was designed by Cozen O'Connor.

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. The purpose of the surveys was to ensure that all campus 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 do not 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, their individual university and the system as a whole.

The systemwide survey, which was customized for each university, provided the opportunity to provide anonymous responses 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 with respect to 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 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, share their perspective whether complaints were handled 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.

We received feedback from students, faculty, staff, and administrators in the form of survey responses. In total, we received 758 responses[58] to the survey from San Bernardino students, faculty, staff, and administrators, as follows:

Constituency	Number of Responses
Undergraduate students	346
Graduate students	111
Staff	174
Administrators/Managers	48
Faculty	132
Other	26

An important part of this engagement was to provide the opportunity for community voices to be heard, as is, and we share that aggregate feedback here. We recognize that the information, perceptions, and insights shared by university constituents and stakeholders reflect individual perspectives and experiences that may not be universally held, or in some instances, supported by objective review of specific cases or incidents. We accept those perceptions as valid and do not seek to test the foundation of the perceptions. Our goal in seeking broad feedback was to identify aggregate themes by synthesizing information gathered, which we could then review and factor into the context of our own observations of policies, procedures and practices. The aggregate themes from the survey are as follows:

- Turnover and responsiveness. The most common feedback for the Title IX and DHR offices was that there was high turnover and, as a result, cases were not resolved timely and in some instances were not investigated at all.

- Information sharing. Many survey respondents stated that they did not know the purpose of the Title IX and DHR offices, and had no idea who the Title IX coordinator was at any given time. Many survey respondents requested additional outreach and information posted throughout campus with this information.

- Accessibility. Several survey respondents noted that the website was not accessible to them, particularly individuals with language based learning differences such as dyslexia. These individuals also noted that the website was challenging to navigate and the Policy was too dense.

- Role of Title IX and institutional protection. Many survey respondents stated that they did not believe that these offices had their interests in mind, and were instead there to protect the institution.

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[58] Some individuals identified as two or more categories (e.g. graduate student and staff).

- *Other conduct of concern*. Some survey respondents stated that they did not report objectionable behavior because they did not believe that it was serious enough to rise to the level of a policy violation, despite the fact that it made them uncomfortable.

- CAPS waiting periods excessive. Several survey respondents stated that CAPS had no walk in availability and that wait times were excessive. To the extent these resources are intended to be available for emergencies, there appears to be a diminishing trust that they can serve that need.

- Confidentiality and communication. Survey respondents did not trust that many resources on campus were confidential, including the ombuds.

- Resignation in lieu of discipline. Many survey respondents noted that they had experienced or witnessed scenarios in which accused faculty members were permitted to retire in lieu of disciplinary action.

- Active Shooter Preparedness. In response to questions about safety, survey respondents were concerned about active shooter incidents.

- Distrust in the President's Office. Survey respondents expressed distrust in the President's office as it relates to Title IX reports.

Appendix III
Title IX Metrics (Title IX Annual Reports)

I.   **Approach to Metrics: Review of Annual Title IX Reports**

As part of our review of the Title IX program at San Bernardino, we reviewed the university's annual Title IX reports for four academic years: 2018-2019 through 2021-2022. These annual reports are posted online on IEC's website. The annual reports provide data regarding the reports of Sexual Misconduct/Sexual Assault, Dating and Domestic Violence, Stalking, and, as of 2021-2022, Sexual Exploitation and Sexual Harassment, made to IEC each year. The annual reports reflect the number of reports received, disaggregated by the type of conduct and the role of the respondent (student, employee, third-party, unknown, or unidentified). Beginning in 2019-2020, the annual reports also reflect procedural outcomes, including:

- the number of reports that resulted in investigations with findings of a policy violation or no policy violation;
- informal resolutions reached before or during an investigation;
- requests from the complainant for resources supportive measures only;
- no response from the complainant to the Title IX Office's outreach and insufficient information to move forward;
- insufficient information to move forward with an investigation, but sufficient information to take other remedial action;
- an inability to send outreach to the complainant because the Title IX Office did not know their identity; and
- other types of outcomes as specified by the university.

The annual reports provide information about sanctions imposed upon findings of responsibility and through informal resolution. Finally, the annual reports also provide information about the number of open reported matters as of the beginning and end of the reporting period.

II.   **Caveats Regarding Interpretation of Data**

In evaluating this data, we note that the CSU system currently lacks sufficient tools, processes, and practices to support consistent and reliable data-gathering across CSU individual universities. As currently structured, the data-gathering system has significant challenges: it is reliant on self-reporting by Title IX staff at the university level based on the nature and manner in which they keep documentation; across the system, the CSU universities do not use consistent documentation and recordkeeping systems and practices to maintain their university's 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 universities, such as number of students and employees and number of residential versus commuter students.

Importantly, the annual Title IX reports do not reflect the full breadth of work being performed by Title IX Offices, 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. The data currently requested also does not capture key metrics such as the numbers and types of reports of Sex- or Gender-based Discrimination, Retaliation, and Discrimination or Harassment on the basis of other protected statuses covered by the Nondiscrimination Policy. In addition, as noted above, until the 2021-2022 academic year, the annual Title IX reports did not include data regarding reports of Sexual Exploitation or Sexual Harassment. For the above reasons, under the current process for systemwide data-gathering, it is difficult to draw precise conclusions about university Title IX functions or make meaningful comparisons with other CSU universities from the data alone. That being said, we have confidence that the data, while imperfect, provides sufficient reliability to extrapolate key themes and observations.

In presenting the below data, we note that some universities identified challenges with accuracy or completeness in their data. We have attempted to reconcile that data where possible, recognizing that some CSU universities have provided data prepared by individuals who are no longer employed by the university. Before publishing this report, we sent outreach to all Title IX Coordinators to request that they verify the accuracy of their 2021-2022 annual Title IX report. CSU San Bernadino verified the accuracy of the 2021-2022 annual Title IX report via email on April 27, 2023.

Finally, we recognize the significant impact of the global pandemic on colleges and universities across the country, including CSU San Bernadino. While we cannot know the precise impact that the pandemic had on incidence rates, awareness of campus resources, barriers to reporting and other relevant factors, we are careful not to draw firm conclusions about trends over the past three years due to the obvious but unquantifiable differences in pre- versus post-pandemic conditions.

III. Historical Data: Annual Title IX Reports (2018-2019 through 2021-2022)

The below charts reflect the number of reports of Sexual Misconduct/Sexual Assault, Dating/Domestic Violence, and Stalking that IEC received each per year; the procedural outcomes of those reports; and the number of reports involving student respondents, employee respondents, third-party respondents, and unknown or unidentified respondents.

A. Types of Reported Conduct[59]

	2018-2019	2019-2020	2020-2021	2021-2022
Reports of Sexual Misconduct/Sexual Assault	7	17	2	8
Reports of Dating/Domestic Violence	11	4	2	12
Reports of Stalking	7	4	1	9
Sexual Exploitation*	-	-	-	0
Sexual Harassment*	-	-	-	15
Total # of Reports in Above Categories	**25**	**25**	**5**	**44**
* This data was not requested by the Chancellor's Office prior to the 2021-2022 academic year.				

B. Respondents' Roles[60]

The below data, prior to the 2021-2022 Academic Year, relate to the numbers of reports of Sexual Misconduct/Sexual Assault, Dating/Domestic Violence, and Stalking only. Sexual Exploitation and Sexual Harassment Claims are included in 2021-2022.

	2018-2019	2019-2020	2020-2021	2021-2022
Reports in which the Respondent is a student	9	13	3	17
Reports in which the Respondent is an employee	1	1	0	8
Reports in which the Respondent is a third-party	14	8	2	11
Reports in which the Respondent is unknown	1	3	0	5
Reports in which the Respondent is unidentified	-			3
Total # of Reports in Above Categories	**25**	**25**	**5**	**44**

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[59] This data does not include reports of incidents that fail to meet the threshold of Title IX misconduct.

[60] Respondent Role totals may differ from Reported Conduct totals due to multiple allegations for one Respondent.

C.   Case Outcomes[61]

The below data reflect the collective outcomes of reports to IEC.[62]

	2018-2019	2019-2020	2020-2021	2021-2022
Reports in which the Complainant did not respond to outreach and there was insufficient information to move forward		4	1	1
Reports in which the Complainant's identity was unknown to the Title IX Office	17	1	0	0
Reports in which the Complainant requested supportive measures or resources only		4	2	2
Reports that resulted in other outcomes (except formal investigation)		8	4	4
Reports that resulted in a formal investigation*	6	3	2	2
* We learned through this review that this category is not an accurate indicator of the total number of investigations, in part because of how the question was narrowly framed by the Chancellor's Office. This number does not capture investigations that were open at the end of the reporting period. It also does not capture investigations that were substantially completed, but discontinued at the request of the complainant, because the case was otherwise resolved, or because the matter was dismissed based on mandatory/discretionary grounds under Title IX and university policy.				

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[61] Case Outcome totals may differ from Reported Conduct totals depending on exclusion of pending cases at the time of the annual report and inclusion of resolved open cases from previous years.

[62] As a reminder, in 2021-2022, the data included Sexual Exploitation and Sexual Harassment, which were not included in earlier years. Because of the manner in which data was gathered by the Chancellor's Office, it is unclear how the addition of these two categories of conduct impacted the percentage of outcomes.