

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

The California State University

The Institutional Response Group
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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 Our work involved 24 separate and distinct assessments, one for each of CSU's 23 universities, as well as the Chancellor's Office headquarters. 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. We are grateful to the Chancellor, the Board of Trustees, the university presidents, and all faculty, staff, administrators, and students across the CSU for entrusting us with this critically important endeavor.

The CSU is unique in its social justice mission and commitment to civil rights, the transformative impacts of education for the students it serves, and its astonishing ability to do so in the context of historically limited resources. Throughout this engagement, we had the opportunity to interact with hundreds of students, staff, administrators, and faculty, and to learn from the nearly 18,000 university community members who participated in a systemwide survey issued as part of the assessment. We were heartened by the level of participation and engagement, and our assessment was shaped by the countless individuals who shared their experiences, insights, perspectives, hopes, and fears with us.

We also had the privilege of observing the passion, dedication, and tireless efforts of many individual employees. At the Chancellor's Office and at every university, we observed positive examples of innovation, collaboration, and individual and communal contributions to student welfare and academic growth. We were particularly impressed with programs that identified and sought to provide care for students' basic needs, including food, housing, and emergency support. Campus CARE Teams also served to leverage campus resources, create information-sharing channels, and provide opportunities for collaboration to support students of concern. We know these efforts actively remove barriers to education and promote retention, graduation, engagement, and belonging.

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).

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](#).

Our observations and recommendations are detailed in a Systemwide Report and university-specific written reports (University Report), which are available here: [The CSU's Commitment to Change | CSU \(calstate.edu\)](#).² The Systemwide and University Reports provide a distillation of the core themes and observations across all 23 universities, as well as the evidence base and support for urgent and critical recommendations for the CSU system. This Summary Report provides a high-level discussion of the core findings and observations, with references to the more detailed discussions in the full Systemwide Report.

II. Scope of Engagement

A. The Institutional Response Group

This review was led by Gina Maisto Smith and Leslie M. Gomez, co-chairs of the Institutional Response Group at Cozen O'Connor. The Institutional Response Group comprises a diverse group of professionals dedicated to designing, implementing, and improving institutional responses to sexual and gender-based harassment and violence, child abuse, protected class discrimination and harassment, and other forms of interpersonal violence.³ The Institutional Response Group does not engage in civil litigation – either for or against educational institutions. Instead, we focus on providing advice for the successful design and implementation of policies and procedures that integrate the federal and state legal and regulatory framework; a nuanced understanding of the dynamics of trauma and the impacts of discrimination, harassment, and sexual and gender-based harassment and violence; and an educational institution's

² We recognize that each of the 23 CSU entities is an independent university, rather than a regional campus. For ease of reference throughout the Systemwide Report, the Summary Report, and the University Reports, we use the term university and campus interchangeably.

³ In addition to Gina Maisto Smith and Leslie Gomez, Institutional Response Group team members who participated in campus visits and assessments included attorneys Devon T. Riley, Maureen P. Holland, Adam Shapiro, Cara Sawyer, and Dylan Davison. Our work was also supported by attorneys Jeff Bourgeois and Kendyl Gilmore, as well as administrative and legal support staff, Mary Sotos, Megan Lincoln, Mary Beth McAndrews, Lauren Smith and Jeanmarie McDonald.

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

unique mission, climate, culture, personnel, resources, and context. In our work with the CSU, we were given full autonomy and independence in determining how to conduct the assessment, what documents to review, and whom to interview. Our observations, findings, and recommendations are wholly our own, reached without interference or direction by the CSU.

B. University Assessments

Our work began in earnest in the summer of 2022. At the CSU, each of the 23 universities is part of a broader system, governed by one Chancellor, a Board of Trustees, and one systemwide policy, the [CSU Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking, and Retaliation](#) (Nondiscrimination Policy), that addresses all forms of protected class discrimination, harassment, and retaliation for students, staff, and faculty.

Our work evaluated the strengths, challenges, and resources at each of the 23 CSU universities, as well as the Chancellor's Office headquarters. We conducted a comprehensive assessment of infrastructure and implementation of CSU policies and procedures at the system and individual university levels, including an assessment of the systemwide opportunities for coordination, alignment, oversight, and efficiency. At 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 class discrimination and harassment, and *other conduct of concern*.⁴

Each university assessment involved:

- intensive engagement with employees or external professionals who perform various functions as part of prevention and education, and/or the institutional response, investigation, or resolution of reports;
- a comprehensive review of policies, prevention and education materials, Title IX and DHR records, template communications, and written resources;

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

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

- multiple opportunities for student, faculty, and staff engagement, including through in person or Zoom meetings and through a systemwide survey issued at each university and the Chancellor's Office; and
- a careful synthesis of all information gathered to inform a fair and balanced assessment.

We requested and reviewed documents from each of the 23 universities and the Chancellor's Office. Additionally, we interviewed current and former administrators at the Chancellor's Office headquarters, and, for each of the CSU's 23 universities, we conducted a 3-day site visit as well as extensive follow-up Zoom meetings. Where possible, the campus site visits occurred in person. The site visits consisted of meeting with as many relevant stakeholders and constituents as possible, including the campus administrators and individual employees most directly involved in prevention and education, campus resources, and campus investigation and resolutions (sometimes referred to as implementers).⁵ Relevant de-identified and aggregated information from the interviews has been integrated into the Systemwide and University Reports.

C. Community Engagement

To understand the effectiveness of the CSU's Title IX and DHR programs, issues related to culture and climate on each campus, and constituent experiences and perceptions about engagement with campus resources, we sought community engagement from students, staff, and faculty through multiple modalities. We met with constituent groups across the system to provide information about the assessment and to seek input and feedback from a wide range of campus constituents about the issues under review in the assessment. Throughout the engagement, we also met routinely with members of the Chancellor's Office as part of our assessment of the Chancellor's Office headquarters and the Systemwide Title IX and DHR Office (related to systemwide collaboration and oversight).

In October 2022, we created a dedicated email address, calstatereview@cozen.com, to allow campus community members to contact us directly to share information, raise questions, or request the opportunity to meet during a campus visit or by Zoom. In total, more than 160 individuals used this option to share information.

In December 2022, we asked each campus president to disseminate an invitation to all community members to participate in an online survey, created by Cozen O'Connor, to share their experiences, perspectives, and insights. Through this survey, we sought qualitative rather than quantitative

⁵ We use the term implementers to refer to those administrators who are directly involved in and responsible for implementing Title IX/DHR programs. This term should not be confused with members of the Implementation Team.

information about rates of incidence or prevalence. Nearly 18,000 students, staff, administrators, and faculty participated in the survey. Members of the CSU community were able to respond anonymously to the survey, which ensured that all campus community members had the opportunity to participate in the review in a manner that reduced barriers and allowed for candid participation without fear of retaliation.

III. Context

This assessment represents a snapshot – or in some instances, multiple snapshots – of the CSU’s Title IX and DHR programs at a particular moment in time. Our review occurred as universities across the country continued to address the ongoing impacts of the COVID-19 pandemic; reconfiguring Title IX processes in response to significant legally required changes to the Title IX legal framework;⁶ and reflecting upon the role and capacity of higher education to address racial, economic, and other systemic injustice issues. Our review also occurred during a time of heightened and – at times – highly polarized dialogue and activism about equity issues including systemic racism and injustice, trans rights, abortion, immigration, and economic justice.

The impetus for our engagement involved serious incidents at both the Chancellor’s Office and at individual CSU universities related to sexual and gender-based harassment. While we were not tasked with investigating campus and Chancellor’s Office responses in those matters, we reviewed investigative reports and campus task force reports that sought to understand and assess the institutional response to specific incidents or issues. In some instances, the CSU, through internal and external reviews, has already taken steps to address the concerns publicly identified. For example, in July 2022, the Board of Trustees adopted new policies on retreat rights and recommendations. And, as detailed in the accompanying University Reports, many of the 23 universities have used the 2022-2023 academic year to strengthen their Title IX and DHR programs during the course of this assessment. Despite swift action by the CSU to address gaps identified in institutional responses to particular incidents, however, there is still significant

⁶ Often, these changes in federal and state law have not come with sufficient time for large and complex institutions to effectively adapt existing legal obligations, policies, practices, and trainings to new legal requirements. Importantly, the legally required changes to the federal Title IX framework have not accounted for challenges in imposing institutional change in such short order, nor have they accounted for the extensive community and constituent engagement necessary for implementation in light of shared governance and contractual obligations under collective bargaining agreements. And, while the federal and state changes require significant investment of additional resources, they have not been supported by funding streams to carry out the responsibilities, which have required more and uniquely trained personnel in light of the increasing complexity in the tasks required. As a result, campuses – particularly in the CSU – have had to do more with less, which inhibits responsiveness, effectiveness, and legal compliance, and consequently creates distrust.

work to be done. Our recommendations include steps to address some of the concerns identified in these external reports, including issues related to barriers to reporting or participating in a campus investigation or resolution process; concerns about retaliation; and challenges in the accountability processes for employees under contractual and statutory processes. These issues have shaped community members' perspectives of systemwide and campus leadership and CSU's Title IX and DHR programs. Consistent themes that we heard from all participating constituents included institutional betrayal and grave disappointment in response to these incidents.

This moment in time is important.

While the CSU is taking actions to address gaps in policies, practices, and training, and to provide remedies, the system can only move forward in a meaningful manner if the changes are anchored in an understanding of how those gaps impact individuals, communities, and institutional culture.

IV. Findings and Observations

As we synthesized and aggregated information learned at each of the 23 CSU universities, we identified a number of common themes across most universities. We also identified the need for more centralized and robust oversight of campus Title IX/DHR programs. Our systemwide findings, observations, and recommendations fall into six core areas: systemwide oversight and coordination; infrastructure; prevention and education; responding to *other conduct of concern*; addressing the trust gap and accountability.

A. Systemwide Coordination and Oversight

We observed a need for greater coordination, oversight, accountability measures, and support to be provided by the Chancellor's Office to the 23 university Title IX/DHR programs. We recommend that the Chancellor's Office shift its model from advisory to a deliberate oversight role designed to drive effective collaboration, leadership, advice, and tiered accountability. This will be a paradigm shift for the Chancellor's Office and will require investing in additional personnel, developing a sustainable oversight model, modifying the current philosophy, expanding the manner of engagement, and communicating its new role, leadership, and resources to the CSU community.

To address the challenges described below, we recommend: creating an Associate/Assistant Vice Chancellor for Title IX and Civil Rights position to lead a restructured Systemwide Title IX/Civil Rights Division; centralizing oversight and accountability processes for campus Title IX/DHR programs in the Title

IX/Civil Rights Division; establishing a Center for Investigation and Resolution; developing or procuring an enterprise-level case management system; developing a robust web presence for the Systemwide Title IX/Civil Rights Division; and, expanding staffing in the Office of General Counsel.

1. Title IX/Discrimination, Harassment, Retaliation (DHR)

The Vice Chancellor for Human Resources has direct oversight of the Systemwide Title IX Officer & Senior Director, Title IX Compliance Services (Systemwide Title IX Officer), as well as the Senior Systemwide Director for DHR, Whistleblower, EO and Compliance Services (Sr. Systemwide Director for DHR). Currently, Title IX and DHR compliance services are two separate departments, although they are governed by the same systemwide Nondiscrimination Policy. The current approach to engagement with the campus Title IX/DHR programs is voluntary, consultative and advisory in nature, positioning the systemwide office as a support and resource, rather than oversight. This model is ineffective to ensure consistent and effective implementation of Title IX at each university given the highly technical, complex, and frequently evolving requirements of the federal and state legal framework, and the level of turnover and transition in many CSU university Title IX/DHR programs. The relationships between the Chancellor's Office and individual university implementers are varied with uneven levels of engagement – some seek assistance and support routinely, while others engage with the Chancellor's Office sporadically or not at all. Campus engagement has been *ad hoc*, upon request, and not tracked for systemwide consistency in advice and application of law and policy. The current level of staffing at the Chancellor's Office is insufficient to carry out the compliance, oversight, and support functions required to ensure that the system – and all universities within the system – are implementing their Title IX and DHR programs with fidelity to the law, policy and effective practices.

Currently, the systemwide Title IX and DHR Compliance Services, which we refer to jointly, although they are structurally distinct, are responsible for a wide range of tasks, including drafting systemwide policies and templates; conducting individual consultations with campus implementers; providing limited onboarding for Title IX Coordinators and DHR Administrators; reviewing and consulting with systemwide Learning and Development on systemwide online training modules; providing systemwide training and hosting an annual conference for Title IX Coordinators and DHR Administrators; collecting campus data for annual reports; engaging, coordinating and training external hearing officers, investigators, and university-appointed advisors; hearing Title IX/DHR appeals; responding to whistleblower complaints; overseeing and investigating reports involving certain members of campus senior leadership as set forth in the Nondiscrimination Policy; and much more.

However, there is currently no framework to provide the level of supervision that would help promote more consistent, effective practices across the system. We observed significant gaps in the current functions and resources provided to campuses by the Chancellor's Office systemwide Title IX and DHR Compliance Services. The following competencies and services are needed to fill gaps in current functioning:

- Provision of routine oversight of campus Title IX/DHR offices and auditing of campus programs to ensure consistent application of policy, timeliness of responses and processes, and effective responses to reports and formal complaints;
- Intentional, routine, structured, and ongoing relationships with campuses designed to elevate and standardize effective practices across campuses;
- Consistent support and guidance to all campuses and tracking of advice and guidance given across campuses for the benefit of other campuses;
- Expanded onboarding and ongoing, hands-on oversight of new Title IX Coordinators/DHR Administrators;
- Expanded training for Board of Trustees, Presidents, senior leaders, and supervisors over Title IX/DHR;
- Systemwide strategic planning regarding training, prevention, and education responsibilities;
- Mandated contemporaneous notification to the Chancellor's Office of reports and investigations that might have the highest impacts to students, faculty, and staff (e.g., repeat offenders, respondents in a position of power or authority);
- Systemwide, centralized online reporting structure, including for anonymous reports;
- A shared case/data management system across the system to provide visibility into campus cases, trends, effectiveness, and responsiveness;
- Routine analysis and dissemination of data gathered through campus climate surveys;
- Consistent collection of data to track patterns and trends; and
- Prioritized, informed, and robust web presence from the Systemwide Title IX and DHR Office to set effective and clear tone at the top.

2. Office of General Counsel

The [Office of General Counsel](#) (OGC), under the leadership of the Executive Vice Chancellor and General Counsel, provides, manages, and coordinates all legal services for all 23 universities, the Chancellor's Office, and the Board of Trustees. In addition to the General Counsel, OGC leadership includes an Associate Vice Chancellor & Deputy General Counsel; Assistant Vice Chancellor and Chief of Staff; and six Assistant Vice Chancellors & Chief Counsel, who each carry an individual workload and lead a practice team that advises the systemwide division associated with their designated area (Academic & Student Affairs, Business & Finance, Civil Rights, External Affairs, Human Resources, and Litigation). Each of the 23

universities is assigned one OGC attorney (University Counsel) to advise, manage and coordinate *all* campus legal matters. In addition to the campus-specific role, each University Counsel is also assigned specific specialty areas for which they are expected to be a resource to the CSU system and to other OGC attorneys. The OGC also includes a team of five litigators who handle caseloads in federal and state courts, arbitrations, the State Personnel Board, and other administrative hearing venues, as well as two additional attorneys who do not have a campus assignment. Those two attorneys provide specialized legal advice, counsel and support (one on Title IX, DHR and whistleblower matters, and the other, on real estate, land use, and environmental matters). Each university is expected to consult heavily with their assigned counsel on all Title IX and DHR matters, from intake to final resolution, and many systemwide Title IX and DHR administrators work closely with OGC civil rights and Title IX/DHR specialists on behalf of the CO and all 23 universities. This level of legal staffing – especially having only one attorney assigned to each university and all attorneys carrying multiple specialties and administrative/management duties – is woefully deficient in light of the complexity of legal issues and is significantly below legal staffing levels at other major public university systems.

3. Data and Document Management

The ability to maintain and track data is a critical component of an effective program to prevent discrimination and harassment. It is also a required compliance element of Title IX and the Clery Act, both of which require records related to reports and institutional responses to be retained for 7 years. Currently, there is a wide range of documentation practices within the Title IX/DHR programs across the 23 universities. The lack of uniformity in practices substantially hinders the ability to track data across the system in a meaningful way. This lack of uniformity is aggravated by the absence of any enterprise-level records management system at the Chancellor's Office that would allow for real-time access to data. Even allowing for disparate and varied systems across the 23 universities, there are no consistent governing standards across the system that provide guidance about how data should be maintained and who should have access to data. Instead, each university has customized its own fields, categories, and dissemination practices for their chosen mode of tracking (ranging from shared drives and spreadsheets to electronic databases), which obscures institutional lines of sight, compromises informed responses, and inhibits the ability to centrally gather, track, or compare data across universities.

Based on our review of available data, the CSU system currently lacks sufficient tools, processes, and practices to support consistent and reliable data-gathering across campuses. As currently structured, the data-gathering process relied upon by the Chancellor's Office has significant challenges. The downsides

of the gaps in documentation and records management systems are plentiful. Campuses are not positioned to allocate sufficient resources based on documented and substantiated needs; to respond to patterns or trends within a particular location, setting, or department/program, or in some instances, by a single respondent; to track the effectiveness of supportive measures and other remedies to address harassment or discrimination; to adjust prevention and educational programming to incorporate university-specific information that would inform content; and, to understand the lessons that can be learned from studying the data as it relates to questions of prevalence, potential bias, or system improvements.

B. Infrastructure Insufficient as Designed

Across the system, the infrastructure for effective Title IX and DHR implementation is insufficient *as designed* to carry out care and compliance responsibilities. In other words, the current organizational structure on most campuses simply does not include enough positions to carry out the Title IX and DHR responsibilities, which include prevention and education, awareness events, and training; intake, initial assessment, and oversight of supportive measures; investigation, hearings, sanctioning, and informal resolution; record keeping and documentation; proactive efforts to address culture and climate concerns; remedial efforts to address patterns and trends; collaboration with campus partners; and, campus communications through web content, annual reporting, and ongoing outreach. These myriad responsibilities, the complexity of those responsibilities, the high-touch nature of tending to impacted individuals, and the complex environment of shared governance in higher education require dedicated, skilled, and experienced leadership and personnel, systems of checks and balances, and robust document management systems. As described throughout this report, the gaps in infrastructure permeate every aspect of effective responses, from the provision of confidential survivor advocacy services, to the delivery of robust prevention and education programming, to adjacent campus resources like counseling, identity-based centers, and campus care teams. In sum, on most campuses, the deficiencies in infrastructure have created a situation where implementers are unable to effectively carry out all of the required functions under the federal and state legal and regulatory frameworks, and instead are working in a constant state of overload accommodation.

To address the infrastructure challenges at the system and individual campus level, we recommend: assessing and allocating sufficient budgetary resources; identifying a model for supporting campus resources for confidential advocates and respondent support; expanding staffing in systemwide Title IX

and DHR Compliance Services and the Office of General Counsel; and, ensuring adequate supervisory models on each campus.

1. Title IX/DHR Personnel

On 19 of the 23 CSU campuses (and the Chancellor's Office headquarters), the Title IX and DHR functions are combined into one office. This combined approach is aligned with the structure of the current Nondiscrimination Policy, which addresses all forms of discrimination and harassment on the basis of all protected statuses, including sex discrimination and sexual harassment under Title IX, as well as retaliation related to a report of discrimination or harassment. On the remaining four campuses, the Title IX and DHR functions are led by separate offices (and separate administrators). We observed great variation in reporting structures. Currently, five universities have Title IX Coordinators that do not currently report to a vice-president or higher as required by Attachment B to the Nondiscrimination Policy (although two of the five have a dotted line to the President).

We also observed variation in the subject matter expertise and competencies of individual supervisors. Given the disparate skillsets of Title IX Coordinators across the 23 universities, the high rate of turnover-related transition on many campuses, and the deficiencies in records management systems, we observed a need for greater training and education for supervisors, the articulation of specific goals and objectives in the supervisory relationship, and the development of checks and balances to be able to troubleshoot and identify concerns before they escalate. Within the Title IX/DHR programs, the staffing levels on each of the campuses vary significantly. On nearly every campus, we heard a plea for more resources to be able to carry out the essential functions. Staff routinely shared their frustrations about limited resources, describing how it impacted their ability to carry out their core responsibilities. Title IX Coordinators and DHR Administrators uniformly described an inability to engage in proactive, strategic work to address culture and climate because of the need to triage incoming reports and manage ongoing tasks related to supportive measures, investigations, and case management.

Given the overwhelming nature of the workload, we heard significant concerns about burnout and resulting turnover. While a handful of campuses have had longstanding Title IX Coordinators, most have experienced more frequent transition, both at the coordinator level and with other positions within the office. The resulting vacancies and instability have impaired effective functioning and contributed to the trust gap on campuses. The impact of turnover has been exacerbated by gaps in records management systems and documentation practices, as well as a lack of routine protocols and practices for coordination with campus partners, which leads to a loss of institutional history.

The staffing gaps and turnover have hindered campus professionals' ability to consistently demonstrate care and implement core functions effectively. We observed and heard concerns about a lack of response or delays in responsiveness to reports and other communications; significant delays in completing investigations, with many investigations spanning more than a year; ineffective evaluation of cases upon intake and triage; ineffective escalation of issues for collaboration and application of proactive campus efforts; an inability to identify, track or monitor patterns; and, the inability to do campus-wide prevention, education, and proactive, strategic work to drive culture change and growth because of the focus on individual cases. These deficiencies have diminished trust in the system, university, office, and administrators, which has had the effect of increasing barriers to reporting and disengagement from the process.

2. Documentation and Records Management Systems

In addition to the personnel challenges, we observed great variation in the quality and consistency of documentation and records management across the system. Our recommendations recognize the need for consistent, reliable data-management systems and protocols that ensure a consistent approach across universities (that require additional personnel with sufficient time to enter, track, and analyze data). These systems would effectively capture all critical work being performed; track key metrics; and provide the ability to track patterns, trends, volume, timeliness, and responsiveness at the campus and system level. There is also a need for governing protocols, tools and/or checklists to ensure that each university seeks and records consistent categories of information that will best position the CSU to analyze and learn from the data it collects.

3. Campus Resources for Complainants and Respondents

In 2015, in compliance with California state law, the CSU first issued a policy requiring that each campus designate at least one campus victim advocate to provide confidential advocacy for victims/survivors of sexual assault. Almost every CSU campus currently has either one or two confidential advocates. Across the system, we learned that many campus advocates, even those provided by external agencies, have responsibility for both direct advocacy and prevention programming, a balance many campuses have trouble maintaining. Almost uniformly, we heard that direct advocacy understandably takes priority over more proactive prevention efforts, and that advocates on campuses with only one advocate feel overwhelmed by their range of responsibilities. For campuses that rely on agreements with external agencies, we heard concerns about the high rate of turnover, which affected continuity of services to students, faculty and staff.

While we heard positive feedback about the cross-campus support provided by networking with other campus advocates, as well as positive feedback about support provided in systemwide calls for all advocates led by the Chancellor's Office, we also heard a clear articulation of the need for greater oversight, more clinical supervision, more consistent training and professional development opportunities, and consistent tracking of data and functions by the campus advocates.

We also had the opportunity to meet with individuals who provide support to respondents, albeit not in the same privileged manner that California permits for sexual assault advocates. There is no parallel system policy requiring campuses to provide dedicated resources to respondents, nor does federal law require parity in this regard. Most campuses do not provide any dedicated resources for student respondents, although represented employees often rely upon their union representatives to serve as their advocate or advisor. The gap in respondent resources, described in greater detail in the Systemwide Report, is similar to practices nationally as most colleges and universities do not have dedicated respondent resource positions.

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

We observed significant opportunity and need, at most universities, to strengthen and expand their prevention and education programming, professional development, training, and awareness initiatives. While each university requires participation by students and employees in online modules, these modules are not effective modalities to set expectations about campus values, introduce policies and campus resources, and shift culture and climate. Beyond these online modules, on most campuses, there were significant gaps in primary prevention and awareness programming required by federal and state law. These gaps represent a significant opportunity to engage in coordinated, strategic, and intentional campus programming designed to prevent discrimination and harassment, including sexual and gender-based violence, such as sexual assault, dating violence, domestic violence, and stalking. We observed similar opportunities to expand professional development and training to ensure that managers, department chairs and other administrators are prepared for their roles related to the oversight of employees, the response to conflict and interpersonal concerns, and their obligations under the Nondiscrimination Policy.

Consistent with the infrastructure challenges in campus Title IX/DHR programs, the infrastructure to provide prevention and education programming on most CSU campuses is insufficient to carry out effective prevention and education programming. We observed significant variation across campuses regarding the provision of primary prevention and awareness programs required under the VAWA amendments to the Clery Act. Across the CSU, prevention and education programming is primarily led by

confidential victim advocates, sexual violence educators who also serve as advocates, and health promotion educators, although oversight responsibility for prevention and education programming rests with the Title IX Coordinator. While a handful of campuses have engaged in significant programming, most have struggled to provide consistent, strategic programming beyond the online modules. Universally, we heard agreement that post-COVID, all 23 campuses needed to reprioritize and revitalize campus prevention and education programming. The CSU is challenged by the same significant structural concern that plagues prevention and education programming nationally: the need for dedicated infrastructure, policy, personnel resources, and cross-campus collaboration to facilitate successful prevention and education programs.⁷

At most universities, the prevention and education programming that occurs is not coordinated or part of a broader intentional, strategic prevention plan. Instead, we observed on many universities that the prevention and education efforts were *ad hoc*, diffuse, and not part of an intentional, holistic, or strategic approach that integrates concepts of wellness, violence prevention, mental health, and safety. Moreover, this organic development of prevention and education programming does not effectively communicate to students, staff, and faculty the system's institutional values and commitment to fostering an environment free from discrimination and harassment.

To promote legal compliance with the VAWA provisions of the Clery Act and consistent attention to prevention and education programming across all 23 campuses, we recommend:

- creating at least one full-time position at the Chancellor's Office dedicated to the oversight, development and coordination of prevention and education programming;
- developing additional programming for all university-level senior leaders, deans, department chairs, and managers;
- requiring all campuses to adopt a common learning management system;
- allotting sufficient budget lines to ensure consistent, baseline funding for personnel, programming, and technology/learning management systems;
- at the campus level, designating one individual with specific oversight of all campus prevention and education planning and programming;
- convening a campus-wide prevention and education oversight committee to coordinate and align programming across campus; and

⁷ See, Dills J, Fowler D, Payne G. *Sexual Violence on Campus: Strategies for Prevention*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 2016. <https://www.cdc.gov/violenceprevention/pdf/campusvprevention.pdf>.

- developing a strategic plan for campus programming.

D. Other Conduct of Concern

At each of the 23 universities, we heard significant concerns from students, staff, and faculty about the institutional response to forms of conduct that may fall outside of the Nondiscrimination Policy, but are nonetheless disruptive to the living, learning, and working environment. While there is no universal term to capture the wide range of behaviors that may fall within this category, we refer to these behaviors as *other conduct of concern*.⁸ We heard universally that *other conduct of concern* can be deeply impactful, both to individuals and to the campus climate and culture more broadly. To this end, we observed a great need to acknowledge the prevalence of this conduct, to set expectations about forms of conduct that are disruptive to campus culture and climate, and to develop specific processes for reporting, responding to, and tracking *other conduct of concern*. During our review, we identified issues related to *other conduct of concern* as a significant driver of culture and climate, particularly when coupled with gaps in training and professional development described above.

To address the challenges discussed below, we recommend that the CSU develop policy, infrastructure, systems, and training to address *other conduct of concern* at the system and individual campus level by:

- Developing a written policy, document, or statement by senior leadership to establish expectations, guidelines, and/or definitions of conduct;
- reinforcing CSU values and expectations about respect, tolerance, and professionalism through programming and opportunities for in-person engagement;
- strengthening and expanding available campus competencies regarding conflict resolution, navigating interpersonal conflict, restorative justice, and other forms of remedial responses;
- creating a centralized reporting mechanism at the campus level that includes the option for online and anonymous reporting; and
- building a triage model/review process to ensure that all reports are assessed by core campus implementers to evaluate potential avenues for resolution.

1. Process Gaps

On many campuses, we learned that there is no articulable or formal process for responding to reports of *other conduct of concern*. While *other conduct of concern* is most frequently reported to the Title IX/DHR

⁸ See footnote 4. Examples of such conduct may include identity-based harm, microaggressions, bias incidents, acts of intolerance, unprofessional conduct, abusive conduct, bullying, and harassment.

program, in most instances, the conduct is then referred to another university office (typically human resources, faculty affairs, student conduct, or to the chief diversity officer/inclusive excellence) because, even if proven, it would not meet the threshold for a policy violation. On most campuses, there is no consistent, coordinated, documented process for addressing the hand-off, and the responses were generally ad hoc in nature, with no written policy or established practice to follow for consistency and documentation. As a result, we repeatedly heard perceptions that “nothing happens” when such a report is made, that the bar is too high for an individual to bring a complaint, and that the university “doesn’t care.”

2. Ability to Discipline

Depending on the nature of the conduct, there may be little recourse for the impacted party and the university may be limited in its ability to take disciplinary action. In some instances, the conduct may involve free speech or academic freedom considerations, and in other instances, the conduct may not implicate university policy. In those instances, the only available responses may be individual supportive measures or community remedies, such as proactive dialogue or communication. We recognize that responding to *other conduct of concern* is a fraught area, particularly given considerations of free speech and academic freedom. We learned that prior efforts on individual campuses and at the system level to respond to such conduct have been stymied or stalled by the belief that the conduct was too difficult to define with sufficient clarity, or that the issues tied to free speech and academic freedom were too contentious.

3. Factors Inhibiting Effective Responses

We consistently heard about the following factors that inhibited the ability of CSU campuses to respond effectively to *other conduct of concern*:

- There is no written policy or formal communication that would help to set expectations about conduct (what is acceptable, what is not, and what is discouraged, particularly in the context of free speech and academic freedom).
- There is insufficient training and professional development to prepare managers, department chairs, associate deans, and deans to provide early intervention and resolution.
- There are limited options on most campuses for conflict resolution or other informal responses to concerns, such as through an ombuds, employee relations function, or adaptive dispute resolution processes.

- The focus on traditional employee relations functions at the CSU has shifted to the management of grievances. Traditional employee relations functions have atrophied as a result of the use of grievance processes as a first resort, resource constraints, and understaffing.

As a result of these factors, many of the 23 CSU universities lack the suite of conflict resolution services, core competencies and skills, fluency in effective responses and other resources to respond in a timely and effective manner to emergent issues. This is aggravated, as with all other issues identified in this report, by staffing and infrastructure challenges in student affairs, human resources, and faculty affairs. As a result, responding to *other conduct of concern*, often thought of as less serious in nature, is not prioritized. The lack of articulable process, training and education, sufficient resources and staffing all limit the ability to engage in consistent, informed, and coordinated responses. These deficiencies also limit the ability to track and identify repeated or escalated patterns of conduct, and hinder the opportunities to proactively intervene and respond effectively.

E. Trust Gap

We had the opportunity to engage with or hear from approximately 20,000 campus constituents across the system, including students, faculty, staff, administrators, and senior leaders. Distrust is the most common concern we heard across all constituents, including distrust of the Chancellor's Office, distrust of senior leadership, and distrust of other university constituent groups. While it is not uncommon to observe trust gaps at colleges and universities across the country, we were struck by the breadth and depth of distrust across the CSU and the potential disruptive impacts of that trust gap on the effectiveness of campus Title IX/DHR programs.

We recognize that the trust issues are particularly acute at this moment in time. We received a significant number of survey and interview responses from university constituents that referenced distrust of people, processes and systems following the high-profile concerns that arose after a number of serious incidents both at the Chancellor's Office and at individual CSU universities.

At the most basic level, some of the trust issues arise simply from lack of awareness of campus policies, resources, and the complex requirements of federal and state law, including the privacy safeguards that restrict sharing of personally identifying information. For example, students uniformly shared a lack of awareness of the specific campus resources available to them, as well as the misperception that the sole

purpose of Title IX/DHR programs is to investigate or adjudicate, with far less awareness of the availability of supportive measures and other campus resources.⁹

Separately, across the CSU – and across the country – a common perception is that individual campus administrators act to protect the interests of the institution instead of protecting students, faculty, and staff. That perception of institutional bias was palpable across the CSU, and some individuals expressed skepticism that the system or individual campuses would ever hold people in positions of power or authority accountable. Others shared their perspective that the system adopts an overly conservative and risk adverse approach driven by a fear of litigation.

Some of the trust gap is driven by factors not tied to the integrity of institutional responses, but rather, the impacts of protracted processes required by law and delays in responsiveness and time frames caused by insufficient staffing and resources. We observed how insufficient attention to care and communication creates a gap that gets filled with negative inference. We heard specific concerns about the responsiveness of Title IX/DHR professionals and the impacts of lengthy processes required under federal law. We also heard extensive concerns that centered around the perceived unfairness of university processes and sanctions, with many sharing their perception that outcomes depended on one's status or title rather than a neutral application of policy and process. In addition to the distrust caused by perceptions of the process itself, we also learned of pervasive concerns about the potential for retaliation by peers, colleagues, or the university.

Finally, we heard from many individuals who were quick to judge others' intentions, often presuming bad intent, rather than good faith. This entrenched thinking led to divisions rather than consensus building through dialogue with an earnest intent to understand. We urge the members of the CSU community to resist this default to distrust, and to instead be open to other explanations that may account for negative experiences and outcomes, including those tied to infrastructure, resources, inexperience, and legal frameworks.

The trust gap, and resulting negative perceptions about Title IX and DHR programs, increases barriers to reporting and directly impacts the CSU's ability to respond to conduct that may violate the Nondiscrimination Policy. While barriers to reporting sexual and gender-based harassment and violence

⁹ These issues were exacerbated on campuses with a high level of transition in staffing. The turnover in the Title IX Coordinator or DHR Administrator role inhibited the ability to develop awareness or interpersonal relationships that would support trust.

exist across the nation, it is incumbent on the CSU to identify and remove barriers that may be CSU-specific – including, for example, lack of awareness of resources, responsiveness, and the timeliness of resolution processes. These barriers to reporting and participating lead to unaddressed conduct (or misconduct) on campuses, which negatively impacts morale, undermines confidence in the institution, and impacts the university’s core educational mission. We recommend that the CSU, and individual universities, take action to close the trust gap through informed, consistent, and frequent communication (even when the communication is limited to explaining the constraints on transparency).

We recommend addressing the trust gap through enhanced communications and constituent engagement, as detailed more fully in the Systemwide Report.

F. Accountability Frameworks

Across the system, we observed a need for greater accountability, both for individual actors who violate university policy and for university administrators charged with the further development and maintenance of legally compliant, effective Title IX/DHR programs. The issues we have outlined throughout this report all contribute to accountability gaps. As detailed in the sections on infrastructure, prevention and education, and the trust gap, there are structural, organizational, and cultural factors that impede accountability. The factors in each of these areas, combined with accountability challenges, contribute to increased reluctance to report, decreased participation in campus processes, and limited ability for the university to take action against individuals who violate university policy. This lack of accountability allows potential misconduct to continue unabated – or to escalate – and the unaddressed conduct directly and negatively impacts culture. A foundational goal of this assessment was to identify opportunities to transform culture and climate; moving towards increased accountability is an important aspect of that work.

In the Systemwide Report, we make a number of recommendations at the system and campus level to promote accountability – both at the individual and programmatic level. Those include:

- continuing to evaluate barriers to reporting and engagement at the campus level;
- identifying and reconciling conflicts between CBAs, state statutory rights, and other state and federal requirements;
- documenting, tracking, and assessing the effectiveness of Title IX/DHR programs;
- coordinating with the Systemwide Title IX/Civil Rights Division to strengthen campus programs; and

- reviewing the current disciplinary processes for faculty to promote prompt and equitable processes.

1. Individual Accountability

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

Each University Report includes publicly available data provided by the campus to the Chancellor's Office. That data reflects relatively low reporting rates across most, but not all, CSU campuses. Barriers leading to underreporting within the CSU include the lack of awareness and visibility of campus resources; the negative perceptions of campus Title IX/DHR programs described above; the general distrust of administrative or enforcement authorities; concerns about potential retaliation; concerns about the protracted and overly legalistic nature of the current policies and procedures; and, as we heard pervasively, the fear that reporting is futile.

Nationally, we have observed a pattern within Title IX/DHR programs that holds true across most campuses, including at the CSU: only a small percentage of reports proceed to a formal investigation.¹⁰ Common reasons include: the complainant not responding to outreach from the Title IX/DHR program; the complainant seeking supportive measures only, and not wishing to pursue an investigation; the complainant and respondent agreeing to an informal resolution; and/or the reported conduct not meeting the threshold requirement for a potential policy violation. Some reports also involve unknown respondents or respondents who are not affiliated with the CSU. Under the current Title IX framework, as well as the requirements for a live hearing under California law in certain circumstances, it is difficult, if not impossible, to proceed to a formal investigation without a complainant's willingness to participate in a complex process.

In the full written reports, we discuss additional considerations related to intake, initial assessment, and response to a report or formal complaint that may help support the continued participation of

¹⁰ In each of the University reports, we include publicly available data provided to the Chancellor's Office by the campuses. As described more fully in the written reports, there are challenges in the accuracy and reliability of the data, and the way it is stored and gathered makes it difficult to conduct a comparative analysis of the data from campus to campus. That said, the data does have sufficient reliability to reflect that a very small percentage of reports proceed to a completed formal investigation.

complainants in lengthy investigative and resolution processes. That being said, while respecting individual agency and autonomy is crucial, the burden should not solely rest on the complainant to seek accountability. Nationally, low numbers of formal complaints are somewhat common, but it is incumbent on the CSU to better understand and evaluate the barriers to reporting, engagement, and participation. The system must take steps internally to review every aspect of its process to ensure it is understandable and accessible. This includes reporting options, the tone and nature of interactions and engagement with the Title IX/DHR program, reducing timeframes, enhancing communications, and understanding the experience of those who intersect with the Title IX/DHR program. It also includes raising the visibility and awareness of campus resources and taking steps to restore and build trust through expanded communications and programming.

Concerns about accountability are particularly pronounced in employee sanctioning. Under both statutory and contractual requirements, the disciplinary processes for employees are protracted and involve a practical rehashing of underlying investigative findings, which detracts from the finality, credibility, and integrity of campus Title IX/DHR processes. With respect to Title IX and the Clery Act in particular, the post-finding disciplinary processes, as implemented, are not aligned with federal requirements. We understand, given the timing and complexity of negotiating collective bargaining agreements, that the challenge to conform certain disciplinary processes to the ever-evolving Title IX legal landscape is ongoing. Nonetheless, the current processes must be addressed to ensure that the CSU is able to meet the prompt and equitable requirements, as well as the training and notice requirements (including of panel arbitrators and administrative law judges), for responding to sexual harassment, sexual assault, dating violence, domestic violence, and stalking under Title IX and the Clery Act.

We heard uniformly across all campuses that the sanctioning processes under state law and some collective bargaining agreements – which allow for a *de novo* (new) review of the facts but without all of the procedural safeguards required under Title IX – are protracted, complicated, and burdensome for the parties. Because the sanctioning determination is not limited to the appropriateness of the sanction, the University must essentially prove the facts again as if the underlying finding had not been reached; this effectively requires the complainant and witnesses to participate in another hearing after the already completed Title IX adjudication, and sometimes more than a year after the initial report. If they are reluctant or decline to participate, the university might seek to settle the matter (by reducing the discipline) to avoid an adverse outcome before the arbitrator or State Personnel Board. In addition, the Title IX Coordinator/DHR Administrator, who is tasked with oversight of the prompt and equitable nature

of the process, is frequently not involved in these post-finding sanction processes. We have heard significant concerns about the training and approach of arbitrators and administrative law judges as it relates to required training under Title IX, the Clery Act, and California law. We learned of many credible and detailed accounts of campus findings that were overturned, where the recommended campus discipline was not only not carried out, but in many instances, where the respondent was ordered back to campus with their position reinstated and back pay awarded. This is a debilitating pattern that completely guts the outcome of the extensive investigative Title IX process and creates an untenable position for all who invested months (and, in some cases, years) and resources in a thorough and legal Title IX process.

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

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

In application, the protracted sanctioning processes ultimately do not serve either the complainants, the respondents, or, ultimately, the institution, if for no other reason than the significant length of time involved to get to resolution. Many findings of responsibility involving faculty members have been subsequently resolved by negotiated outcomes and settlements driven by the Chancellor's Office and campus leadership to ensure that the integrity of the underlying finding is upheld. Ironically, campus community members often criticize senior leadership and the Chancellor's Office for sanctions that appear to be less severe than warranted, when in reality, those final sanctions are often driven by external decision-makers, not the CSU.

2. Structures for Accountability

At every level, there is a need for checks and balances, quality control, quality assurance, and other structures for accountability to ensure administrative capability and accountability. We observed gaps in the effectiveness of the supervisory structure for some Title IX/DHR programs. There are no formal standards or processes for implementing the systemwide Nondiscrimination Policy or any standardized quality control or quality assurance mechanisms in place. The Systemwide Report addresses current practices and discusses effective practices in the following areas: coordination of information and personnel; intake, outreach, and initial assessment; investigations and hearings; and documentation.

Within the CSU, system level oversight is essential to meaningfully and effectively implement the key elements of informed and effective Title IX and DHR programs. Accountability is essential. Currently there are insufficient mechanisms to promote and assure accountability. Because of the complexity of federal and state laws, the significance of these issues to campus constituents, and the integrity of the institution, developing accountability systems at the system level is the most urgent need and the top priority for the system.

3. Recommendations for Strengthening Responses to Reports

In the written reports, we provide detailed discussions about opportunities for enhancing and strengthening campus responses to reports of discrimination, harassment, and retaliation. These include:

- shifting interactions of Title IX/DHR professionals with campus partners from an informal, *ad hoc*, and merely relational approach to a more formal process for coordination of information, personnel and institutional responses related to Title IX/DHR reports (or *other conduct of concern*);
- building a multi-disciplinary team as part of an initial assessment process to strengthen collaboration and coordination between Title IX/DHR professionals and campus partners;
- following written specific protocols and consistently documenting information to ensure accountability; and
- relying on checklists and other practice aides or tools, including an enterprise level software system.

Additional opportunities to incorporate effective practices and strengthen intake, outreach, and initial assessment protocols include:

- separating the intake function from the investigation function and establishing dedicated outreach, intake, and supportive measures personnel;
- consistently conducting and documenting intake meetings;

- arranging to have the confidential campus advocate available for each intake meeting with a complainant; and
- providing the complainant with a written overview of the proposed course of action at the conclusion of the initial assessment.

The 23 universities currently use a mix of internal and external investigators to conduct investigations under the Nondiscrimination Policy. Investigator positions on many campuses are entry level, and investigators are frequently learning on the job as they often have no significant Title IX experience prior to joining the CSU. Like many universities across the country, the CSU has had a difficult time finding experienced and qualified Title IX and DHR professionals. On many campuses, the investigator positions are those that have remained vacant for long periods of time, leaving the investigative responsibilities to the Title IX Coordinator or DHR Administrator (in addition to all other job responsibilities). This understaffing impacts the timeliness and quality of investigations, even with the relatively low number of investigations on many campuses.

There are opportunities for the CSU to improve the process for initiating an investigation. These include streamlining the process for a formal complaint and the notice of allegations, while still providing sufficient written notice to a respondent. This streamlining will presumably lessen the time to complete an investigation. In general, each campus will benefit from a process mapping exercise, which will help to identify areas of delay and the underlying reasons for the delay. During the investigation process, safeguards and checks and balances should be in place to allow the Title IX Coordinator/DHR Administrator and/or their supervisor(s) to monitor the investigative progress, ensuring that all steps are taken to move swiftly with as little delay as possible.

The most common concerns we heard about campus investigations were tied to the overly legalistic, procedurally based nature of the process, which is driven by the complexities of Title IX and California state law, and the length of time it takes to complete an investigation. Few campuses completed investigations within one semester, with many having investigations that lasted more than a year from the filing of the formal complaint to the finding, with subsequent time needed for sanction and appeal. The length of investigations was identified as a significant reason complainants or witnesses declined to participate or continue to participate in campus processes. Across the system, we saw the need for access to and the availability of trained, experienced investigators who provide high quality, comprehensive, and robust but efficient investigations according to consistent standards.

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

V. Conclusion

In the Systemwide Report, we provide our recommendations to address the challenges and opportunities outlined above. The recommendations fall into six general categories: recommendations to strengthen the Chancellor's Office oversight and supervision; recommendations to address infrastructure challenges; recommendations about prevention, education, training and awareness; recommendations to address *other conduct of concern*; recommendations to address the trust gap; and recommendations for enhanced accountability. Additional recommendations are set forth in the University Reports.

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