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

California State University, San Marcos

The Institutional Response Group

Gina Maisto Smith, Esq.

Leslie Gomez, Esq.

Dylan Davison, Esq.

COZEN O'CONNOR

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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 class 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

[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).

coordination in individual cases and strategic initiatives; document and data management protocols; timeliness of case resolution, and factors impacting timely resolution; informal 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 Marcos (San Marcos Report). The San Marcos review was led by Leslie Gomez and Dylan Davison. The San Marcos 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 Marcos 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.

Cal State San Marcos is located in San Marcos, California. It has a student population of approximately 15,000, 10% of whom live on campus, and a workforce of approximately 1,650 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, at each CSU university. 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 Cal State San Marcos, Cozen O'Connor conducted a three day in-person campus visit from October 25 to 27, 2022. We also held additional follow-up meetings via Zoom. In total, Cozen O'Connor conducted meetings with more than 40 administrators and other key campus 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
- Title IX/DHR Office
    - Title IX Coordinator/DHR Administrator
    - Deputy Title IX Coordinator/DHR Administrator
- Clery Compliance
    - Interim Clery Director
    - Associate Vice President, Administration
- Student Conduct
    - Dean of Students
    - Associate Dean of Students
    - Director of Student Conduct & Ethical Development
- Student Life
    - Vice President, Student Affairs
    - Associate Vice President, Student Life
    - Director, Student Leadership and Involvement Center
    - Coordinator of Fraternity and Sorority Life
- Residence Life/Housing
    - Interim Director of Residential Education
- University Counsel
- Human Resources/Faculty Affairs
    - Associate Vice President, Office of Human Resources
    - Senior Director, Office of Human Resources
    - Associate Vice President, Faculty Affairs
- Diversity and Inclusion
    - Chief Diversity Officer
    - Interim Deputy Chief Diversity Officer Provost / Vice Provost
- University Police Department
    - Interim Chief of Police
    - Detective
- Athletics
    - Athletics Director

  - Associate Director of Athletics
  - Senior Woman Administrator
- Student Health and Counseling Services
  - Director, Counseling and Psychological Services
  - Clinical Psychologist
  - Executive Director, Student Health and Counseling Services
  - Physician
  - Clinical Care Manager, Student Health and Counseling Services
- CARE Team
  - Director of Cougar Care Network & Senior Case Management Specialist
  - Director of Student Life and Involvement Center
  - Director of Disability Support Services
- Health Promotion/Education
  - Coordinator of Health Promotion/Senior Health Educator
  - Health Educator
  - Sexual Violence Prevention Educator and Advocate
  - Sexual Violence Prevention Educator and Advocate
- Identity Center/Affinity Group Leaders
  - Director, Cross-Cultural Center and Interim Director, Women and Gender Equity Center
  - Director, Pride Center
  - Director, Latinx Center
- Office of the Provost
  - Provost
  - Vice Provost
- External Consultant

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 and after our October 2022 campus visit, Cozen O'Connor engaged with approximately 40 students, staff, and faculty. Specifically, Cozen O'Connor twice met with representatives from the Academic Senate (six attendees in person and ten via Zoom), as well as staff and faculty union leaders (five attendees), the Associated Students, Inc. Board of Directors (eight attendees), the Sexual Harassment Task Force (seven attendees), and the Staff Center Committee (four 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 212 responses to the survey from Cal State San Marcos students, faculty, staff, and administrators. A summary of the survey response rate and data is included in Appendix II.

III. Concurrent Internal and External Reviews

During the 2021-2022 academic year, President Ellen Neufeldt commissioned a Presidential Task Force on Sexual Harassment to review current sexual harassment policies, procedures, and training; recommend strategies to improve the communication and transparency of the policies, procedures, and training; recommend opportunities to expand and improve the effectiveness of training and prevention efforts; and consider how the university can improve the way it cares for individuals impacted by sexual harassment. The Task Force released its report in September 2022, just prior to our campus visit. As part of our assessment, we both met with Task Force members and carefully reviewed the Task Force's recommendations.

San Marcos also engaged an external consultant, Sauni Schuster, from TNG to conduct an assessment of the university's Title IX operations and provide recommendations for best practices. TNG focused its review on cases in which a student initiated an allegation of sexual or gender-based misconduct against a faculty or staff employee. In January 2023, the university shared TNG's report[2] publicly. TNG found that the Title IX/DHR functions at San Marcos meet and exceed the compliance requirements under federal and state law, but that there are areas where moving to best practices could substantially impact Title IX/DHR implementation and effectiveness. TNG offered recommendations for best practices related to the organization and structure of the Title IX/DHR office, communications with the parties during an investigation or other process, supportive measures, timeliness, documentation, and clarity of process.

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

Our recommendations generally align with those offered by the Task Force and TNG, which President Neufeldt shared with the community this spring:

- Create a standalone Title IX Coordinator/DHR Administrator position.
- Update the Title IX/DHR Office organizational structure to realign duties and responsibilities to assure that the areas of intake, outtake, prevention education, investigation and resolution and care are optimized.
- Create a clearer identity of the Title IX/DHR Office and its services.
- Offer additional Title IX training, education and professional development centered on sexual harassment and misconduct including prevention education, reporting, process, what the range of outcomes can be, and what is public information versus confidential information.
- Improve the university's Title IX website and web presence to expand key search terms to drive individuals to the site more easily.
- Intentionally and consistently communicate throughout the Title IX process and ensure that the parties are assigned a consistent point of contact within the Title IX/DHR Office.
- Provide follow up correspondence to third party reporters to confirm that Title IX/DHR staff have contacted the referred student and provided general information about next steps.
- Offer robust, individualized, and ongoing supportive measures throughout the Title IX process.
- Expand the Title IX/DHR Office's use of its electronic records management system.

IV. Summary of Findings and Recommendations

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

Infrastructure, Structure, Resources, and Function of the Title IX/DHR Office: The Title IX/DHR Office is responsible for responding to reports of discrimination and harassment, providing supportive measures to individuals, conducting investigations and hearings, facilitating informal resolution agreements, providing training for students and employees, and overseeing prevention and awareness programming. In light of these significant responsibilities, the Title IX/DHR Office is not sufficiently staffed, resourced, or positioned to meet Title IX and DHR compliance requirements consistently and with fidelity to institutional values of care and equity. While the Title IX Coordinator is knowledgeable, respected, and has 12 years of tenure as a Title IX Coordinator, she also serves as the Associate Vice President of Student Affairs, which includes myriad other responsibilities (that do not involve Title IX/DHR). In addition, the office has also experienced significant turnover and understaffing, which has impaired the office's ability to strengthen its own internal processes and to maintain formal cross-campus

collaboration. The Title IX/DHR Office has no brand or identity that identifies itself as a resource at San Marcos. We recommend that the university create a stand-alone Title IX/DHR office; adjust the reporting line of the Title IX Coordinator; and take steps to strengthen internal processes, including by increased staffing to allow for separation of the intake/outreach functions from its investigative functions. In addition, as it relates to internal processes, we recommend that San Marcos 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; and that the Title IX Office conduct a mapping exercise of internal processes to identify efficiencies and inefficiencies in the process and to prioritize timeliness and communication.

Conclusion of Process, Discipline, and Sanctioning: San Marcos currently has one position that is responsible for faculty retention/tenure/promotion and discipline. This represents a perception of conflict of interest for many at San Marcos and may represent a barrier to faculty's use of this resource. San Marcos would benefit from the creation of a separate labor relations position for faculty and staff in order to instill confidence in the internal functioning of the Title IX/DHR program and in the final results of any discipline or sanction. Additionally, the discipline and sanctioning phases of Title IX and DHR cases largely occur without the involvement of the Title IX Coordinator, or in some instances the complainant. We recommend the Title IX Coordinator have a more active role through the ultimate conclusion of any matter, including sanctioning.

Awareness and Visibility of Title IX Office: While Title IX/DHR professionals have appropriate subject matter expertise, experience, and training, there is a disconnect in their efforts and how those efforts are received by campus constituents. This in part, is due to a lack of resources that limit the staff's capacity. Further, the campus perception of the Title IX office is marred by recent historical experiences, including at least one high-profile matter involving a faculty member respondent. To address these concerns, we recommend taking steps to increase the awareness, visibility, and connectivity of CPHD to campus constituents served. We recommend San Marcos rename the Title IX office, and expand the content on its website. Additionally, we recommend that the university launch an awareness campaign to educate the university about the Title IX office, its purpose and function, and resources available through the office.

Develop a Dedicated Prevention and Education Program: At San Marcos, the responsibility for prevention and education programming related to sex and gender-based harassment and violence has primarily fallen to Survivor Advocacy Services. Within Survivor Advocacy Services, the Sexual Violence Prevention Educators present significant programming to the campus. As importantly, they have engaged in an intentional self-assessment of their prevention and education program through Culture of Respect. While the programming for students is robust, the university has deficits in its prevention and education programming for staff and employees and professional development for staff and faculty beyond the baseline of orientation sessions and online modules. We recommend that San Marcos build a formal prevention and education program for all university community members, including a dedicated prevention and education coordinator and a Prevention and Education Oversight Committee to address issues related to discrimination and harassment, including sexual and gender-based harassment and violence.

Responding to *Other Conduct of Concern*:[3] As with other universities, San Marcos struggles with responding to conduct issues that do not rise to the level of a policy violation. San Marcos currently has no consistent and formalized mechanism for navigating these behaviors, which we refer to as *other conduct of concern*. The university, through the Office of Inclusive Excellence and campus partners in Student Affairs and the University Police Department have worked to build a bias response team, which has not been widely publicized yet. We recommend that San Marcos work closely with the Chancellor's Office to develop a formal process to address reports of *other conduct of*

[3] 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.

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

Address the Trust Gap: Although we heard positive feedback about the Title IX Coordinator, we also heard directly from multiple individuals who had negative experiences with or perceptions of Title IX and DHR at the university, and about a perceived culture and climate at San Marcos more broadly. Some stakeholders, particularly faculty and staff, shared with us their concerns about faculty sexual misconduct, inadequate sanctions, the resolution processes used to seek accountability, and the role of the union, among many other concerns. Our recommendations about enhanced community engagement and communication seek to address this trust gap.

V. Title IX/DHR Office

A. Infrastructure

San Marcos's Title IX/DHR Office is located in the university's Administrative Building. The Title IX/DHR Administrator, who also serves as the Associate Vice President for Student Affairs, reports to the Vice President of Student Affairs. The Office is responsible for administering the university's Title IX and DHR programs.

As presently constituted, the Title IX/DHR Office consists of five employees: the Title IX Coordinator/DHR Administrator; a Deputy Title IX Coordinator/DHR Administrator; a Case Resolution Manager[4]; two confidential employees, a Training and Case Resolution Coordinator, and a Confidential Administrative

[4] This position was vacant at the time of our campus visit.

Support Specialist.[5] Notably, the Title IX Coordinator, the Deputy Title IX Coordinator, and the Case Resolution Manager all handle investigations.

The Title IX Coordinator/DHR Administrator, who has worked at Cal State San Marcos for over 20 years, and previously worked at another CSU university, has served in her current role since 2011. As one individual shared, "She is among the longest serving Title IX Coordinators/DHR Administrators in the system." The Deputy Title IX Coordinator/DHR Administrator is new to the role, having served in that capacity since coming to the university in September 2022.

As a result, the Title IX/DHR Office has a high level of institutional knowledge and memory, and has had the benefit of stability in the leadership ranks and deep relationships with campus partners. However, the Office as a whole has not been fully staffed since approximately July 2021 and has had a high rate of turnover for several years. These staffing issues have had a destabilizing effect on the Office and its ability to efficiently and effectively perform its core work. University administrators reported that the staffing of the Office is "so lean" and that they are frustrated by the high rate of turnover in the Office, which, not coincidentally, they attributed in part to the understaffing within the Office that has led to "things falling through the cracks" because "so much is on everyone's plate." In this regard, we note the Title IX Coordinator/DHR Administrator has multiple roles on campus, as she also serves as the Associate Vice President of Student Affairs and Student Development Services. In these roles, she oversees several other university functions, including counseling, health services, and disability services. University administrators provided feedback that they were "worried" that the Title IX Coordinator/DHR Administrator was being "stretched in too many directions" which has resulted in her being unable to be 100% available in her role with the Title IX/DHR Office.

A fully resourced office would include, at a minimum, a Title IX Coordinator/DHR Administrator, a prevention and education coordinator, an intake and support coordinator, two investigators (the need for which may increase over time or may be subsumed by the recommended CSU Center for Investigations and Resolutions as described in the Systemwide Report), and a full-time administrative manager. This staffing structure will support the following essential elements of effective practice: increased separation

[5] We note the word, "confidential" in the title of these positions is not an indication of legal confidentiality, and we recommend re-titling the role consistent with its function.

between the care and support function and the adjudicatory function; staffing for the necessary function of education coordinator to maintain accountability for the delivery of all education and training requirements; and data input, tracking and additional administrative support for the team.

The Title IX/DHR Office utilizes Maxient as its case management system to track and document its work.

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

We received feedback about challenges related to the visibility of the Title IX/DHR Office and the university's awareness of the Office. Most significantly, the Office does not have an official name or identity. It is referred to by its function – Title IX – although that is only one of its core functions and DHR is much less commonly referenced. Administrators reported that the university has been contemplating rebranding the Office for several years, but that has not happened yet. Consistent with this lack of branding, we observed during our campus visit that there was little in the way of signage for the Title IX/DHR Office, and we heard from university constituents that certain segments of the campus community, especially students, were unfamiliar with Title IX or the Office. In some respects, the Office's visibility and awareness is also impacted by its reporting structure as it reports through Student Affairs, which may obscure its availability as a resource for staff and faculty given a common misimpression that the Office's purpose is to serve students, rather the whole community, including staff and faculty as well.

The challenges with respect to the visibility of the Office and the community's awareness of the Office (as well as the staffing challenges within the Office) play out with the metrics. According to the Office's Annual Title IX Report statistics, detailed in Appendix III, San Marcos has relatively low reporting rates and of those cases that do get reported, very few cases go to investigation and formal resolution. Consistent with barriers to reporting at other CSU universities, we learned that other factors – above and beyond lack of awareness of the Title IX/DHR functions – impacted reporting, including hesitancy to report based due to the implications of reporting under the 2020 Title IX regulations, fear of reporting based on a perceived "culture of fear and loyalty" at the university, and distrust of the Title IX/DHR Office based on a perception

that it exists, first and foremost, to defend the university. These phenomena are described in greater detail in the "Community Feedback" section below.

C. Website

Cal State San Marcos's Title IX and DHR websites are user-friendly and easy to navigate, and contain a wealth of relevant information.[6] The Title IX/DHR Office website contains the following pages:

1. A Landing Page which includes the CSU's and Cal State San Marcos's Nondiscrimination Statements, as well as links to other resources.
2. A Get Help Now Page, which includes a list of actions to complete in the event of sexual assault and an explanation of options for potential next steps
3. A Find Support Page, which includes a list of on and off campus resources.
4. A File a Report Page, which includes both confidential and non-confidential reporting options within the university and with law enforcement.
5. A Review and Reform Page, which includes a summary of past and ongoing efforts by Cal State San Marcos to prevent and respond to sexual harassment, including a description of Cozen O'Connor's review and prior reviews and assessment at the university.
6. A CSUSM Annual Reports Page, which includes annual Title IX reports from 2015 through 2022.
7. A Training of Title IX Personnel Page, which provides systemwide Title IX training materials used at all CSU Campuses.
8. A Campus Policies Page, which includes the CSU Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking and Retaliation, information about common myths and facts regarding sexual violence and Campus Title IX responsibilities, complaint forms, and the university's Notice of Nondiscrimination.
9. A Learn More Page, which contains information about consent, campus safety, potential consequences for committing sexual violence, healthy relationships, trauma, and more.
10. A Create Change Page, which contains information about bystander intervention.

[6] TNG wrote in its January 2023 report, "The CSUSM Title IX web site is outstanding and is one of the best I have reviewed in the country."

11. A Resources for Pregnant and Parenting Students Page, which provides information about the university's resources to support pregnant and parenting students and the relevant university policies.

12. A Faculty and Staff Page, which outlines the university's mandatory reporting policies and provides resources for faculty and staff including pest practices for reporting, promotion of gender equality, and exemptions to mandatory reporting requirements.

13. A Not Anymore Training Page, which includes links to university assigned trainings as well as the policies requiring students to take Title IX training.

14. A Contact Title IX Page, which includes contact information for the Title IX Coordinator, Student Health and Counseling Services, University Police, and off-campus resources.

15. A Discrimination, Harassment, and Retaliation Page, which includes the university Nondiscrimination Policy, a description of rights available to stakeholders, and links to additional information about prohibited conduct.

While the Title IX/DHR website is well-organized and informative, we recommend that it more prominently reflect the Office's role with respect to responding to reports of sexual and gender-based harassment and violence, including an overview of care and supportive measures for parties regardless of whether a case proceeds to investigation. We also recommend that the university develop an online reporting mechanism which should be displayed prominently on the websites. Finally, some simple steps can be taken to increase the Office's visibility and the community's awareness of the Office, including posting a mission statement on the landing page, and including the names, photos, and contact information for all Office staff on the "Contact Title IX" webpage.

D. Reporting Options

Reports of prohibited conduct based on protected status, including discrimination, harassment, and retaliation may be made to the Title IX/DHR Office in person or via email or telephone. Contact information for the Title IX/DHR Administrator is on the Title IX and DHR websites. There is no online reporting option available on the Title IX/DHR Office website. Rather, on the Reporting to the University webpage of the Title IX website, there is a link to a fillable PDF Complaint Form provided by the CSU system.[7] In order to submit this form, a potential complainant must print or save the completed form and

[7] This form is Attachment F to the Nondiscrimination Policy.

submit it to the Title IX/DHR Office. Although the website explains that "the Title IX Coordinator can assist you with the completion of this form/documentation of the required information via an in person meeting," the lack of an online and integrated reporting tool is a potential barrier to reporting for members of the university community.

Reports can be made by a complainant directly or through third parties (e.g., responsible employees). The Title IX website contains a webpage with specific information and instructions relating to employee reporting obligations.

E. Case Processing

The Title IX/DHR Office receives reports via email, phone call, or walk-in, and they also receive incident reports via Maxient from other campus offices. Upon receipt of an incident report, a Title IX/DHR Office staff member conducts outreach to the complainant, usually by email. This outreach email includes information about the CSU Nondiscrimination Policy, investigation procedures, the availability of supportive measures and other resources, and the option to participate in an intake meeting. We reviewed a template outreach communication, and it provides all legally required information, in a neutral and caring tone.

If a complainant does not respond to the initial outreach, the Title IX/DHR Office follows up with a second outreach email. If the complainant responds and indicates they wish to meet, the Title IX/DHR Office schedules an intake meeting to understand, at a high level, what happened, what resolution path the complainant may wish to take, and, regardless of what resolution option (if any) the complainant wishes to pursue, the availability of supportive measures and resources (including Survivor Advocacy Services) at any time. Following the intake meeting, which has typically been conducted by the Title IX Coordinator/DHR Administrator, notes of the meeting are uploaded to Maxient and the Title IX Coordinator/DHR Administrator conducts an initial assessment to determine whether the reported conduct falls within the scope of the jurisdiction of the Title IX/DHR Office.

The steps following the initial assessment 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 Title IX Coordinator/DHR Administrator). The provision of supportive measures is managed by the Title IX/DHR Office staff (the Training and Complaint Resolution Coordinator) and documented in Maxient. A complainant may receive supportive measures even if no formal complaint

and investigation is sought. The majority of reports to Title IX/DHR involve the provision and oversight of supportive measures only or no response from complainants; only a small percentage move forward to a formal investigation.

In the event a complainant wishes to proceed to resolution and the Title IX Coordination/DHR Administrator determines it is within the Office's jurisdiction to proceed, the Office issues a notice of allegations letter and the respondent is provided the same process and access to the supportive measures and resources. The Title IX Coordinator/DHR Administrator issues the Notice of Investigation. In the event a complainant does not wish to proceed to formal resolution, the Title IX/DHR Office evaluates whether, based on the available information, there are risk factors to the broader campus community (such as pattern evidence, use of weapons, etc.) such that it must nonetheless proceed to an investigation. This process entails reviewing the Office's own files and following up with other university partner offices to see if they have any relevant information about a respondent's prior history. To the extent a matter does not fall within the Office's jurisdiction, they refer the case to the Dean of Students/Student Conduct, Human Resources, or Faculty Affairs. Administrators reported that historically the Title IX/DHR Office has struggled in terms of keeping consistent documentation of its decisions during the initial assessment phase.

The Title IX/DHR Office prefers to conduct investigations using internal investigators. However, due to staffing and turnover issues, described above, that is not always possible. The Office therefore routinely outsources investigations, including to the California Attorney General's San Diego office, through CSU's Office of General Counsel.

Informal resolutions must be evaluated, approved, and signed off by the Title IX Coordinator/DHR Administrator.

In the event a case proceeds to a hearing, a pool of hearing officers is provided by the Chancellor's Office.

As detailed in the Systemwide Report, the post-investigation disciplinary processes for faculty are often conducted without sufficient input and oversight from the Title IX Coordinator. We recommend that the Title IX Coordinator remains involved with these matters through the final sanction, and appeal, if any. As the Title IX Coordinator is tasked with oversight of Title IX grievance procedures, it is important to ensure legal compliance and the prompt and equitable nature of the process.

Our recommendations include formally separating the Title IX/DHR Office's outreach/intake functions from its investigative functions in order to avoid potential confusion by parties between the Office's responsibility to help the parties through the provision of supportive measures and its responsibility, in cases that proceed to formal resolution, to conduct a neutral and impartial gathering of facts.

F. Review of Case Files[8]

CSUSM provided, and we reviewed, several case files of completed investigations, all of which related to employee respondents. The reports reflected a thorough fact gathering and detailed presentation of information gathered. However, there were notable opportunities for continued improvement in writing and presentation, including several typos and other grammatical errors. Additionally, in several investigative reports, we note there are some factors that do not appear to have been considered in the analysis. Our recommendations speak to additional training and professional development for the Title IX/DHR staff to ensure that reports address all elements of potential policy violations and to ensure more complete analyses.

We also reviewed the Notices of Investigation in a number of cases. San Marcos's template includes overly legalistic language compelling cooperation in an investigation,[9] which is inconsistent with the 2020 Title IX regulations, which recognize that an individual has the right to participate or refuse to participate in an investigation, and the institution cannot retaliate against the individual for declining to participate.

Lastly, the investigative reports do not follow a consistent template. Some identify witnesses with anonymized numbering, and in some, witness names are removed without otherwise identifying the

[8] 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.

[9] The Notice of Investigation includes language stating: "You are expected to cooperate fully throughout the investigation and be completely honest in answering questions and providing information. You are expected to provide all information and documentation you believe may help us in conducting this investigation. You must remain available during normal working hours to meet and/or provide information to University representatives." This may be reflective of former system policy and practice.

witness, even in an anonymous manner.[10] We recommend that San Marcos use a consistent template and provide some means to identify witnesses to an investigation.

G. Community Feedback on Title IX/DHR Office

A consistent theme that emerged during our meetings with administrators and university constituents was that a dichotomy exists in terms of individuals having had positive personal interactions with members of the Title IX/DHR Office, but negative experiences with the overall process. On the one hand, we heard that the Title IX/DHR professionals at the university are deeply caring and knowledgeable and genuinely want to offer support and care, with one individual commenting that "these are the most professional, caring, and committed individuals, and I am astounded by their commitment." On the other hand, we heard that the Office has been challenged in terms of its responsiveness and the timeliness of outcomes. Administrators noted that the Office needs to improve its communications with parties in a timely and ongoing manner throughout the process, consistently documenting their decisions and steps taken, and providing parties with support and referrals to resources while they are navigating the process. One individual noted that these challenges were "not from a lack of intent, but from a lack of capacity," which is consistent with our own observation that staffing levels and turnover have impacted the Office's ability to be responsive, handle cases in a timely manner, and do proactive work beyond merely responding to reports.

Compounding these challenges – and, in many ways, a symptom of them – is the community's overall distrust of the Title IX process and the Title IX/DHR Office. This is a common theme across the CSU system, and at San Marcos we heard from community members that students "do not want to talk to Title IX" because "they feel like it is a legal institution" and because "they don't trust that they are going to be believed or that they are going to be treated fairly." At San Marcos, however, we heard that this perception has impacted reporting levels and raised barriers to reporting. We heard from unions that because they perceived the process to be "broken" or a "dead end," and because "nothing ever comes out of it," that they were "advising [staff] not to go to Title IX unless there are pictures and 10 witnesses." We also heard that students had poor experiences in terms of receiving timely responses from the Office, such that they felt the Office "was not working" for them. These perceptions have had a negative impact

[10] Multiple witnesses were referred to simply as "Witness" without any other distinctive identification.

on employees' responsible employee reporting responsibilities. As explained by one employee, "I have such low confidence in the Title IX office that if a student came to me to report sexual harassment, I would feel unethical in making referral. We don't need the multiple news article about our campus to know that San Marcos is protecting the campus image more than [the student body]."

Furthermore, as described above, some community members shared their perception that there was a structural conflict in terms of the Title IX Coordinator/DHR Administrator also serving in a Student Affairs role. Many administrators praised the Title IX Coordinator/DHR Administrator for her dedication, tireless efforts, and willingness wear "multiple hats" in service to the university, while noting that her many responsibilities were pulling her in too many directions and, as a result, the Title IX/DHR Office had recently been "more stumbly and taking more time than it should." Finally, others noted that because the Office reports up through Student Affairs, that the Office could be perceived as primarily student-serving as opposed to serving all members of the university.

VI. 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;[11] (ii) adopt grievance procedures that are prompt and equitable;[12] and (iii) publish a non-discrimination statement.[13] 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 class discrimination, harassment, and retaliation,[14] we incorporate the Title IX framework as it relates to these core requirements, because they apply equally to DHR programs.

[11] 34 C.F.R. § 106.8(a).

[12] 34 C.F.R. § 106.8(b).

[13] 34 C.F.R. § 106.8(c).

[14] 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

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.[15] 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.[16] The Title IX Coordinator's role and responsibilities should be clearly defined, and the institution must notify applicants for admission and employment, 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.[17] The Title IX regulations detail the responsibilities of the Title IX Coordinator, which include, among other things:

1. Receiving reports and written complaints;[18]
2. Coordinating the effective implementation of supportive measures;[19]
3. Contacting complainants to discuss the availability of supportive measures, with or without the filing of a formal complaint;[20]

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

[15] 34 C.F.R. § 106.8(a).

[16] *Id.*

[17] *Id.*

[18] 34 C.F.R. § 106.30(a) (defining "actual knowledge" as including notice to the Title IX Coordinator).

[19] *Id.*

[20] 34 C.F.R. § 106.44(a).

4. Considering the wishes of the complainant with respect to supportive measures, including explaining the process for filing a formal complaint;[21]

5. Attending appropriate training;[22]

6. Remaining free from conflicts of interest or bias with respect to complainants or respondents, generally or individually;[23]

7. Overseeing the prompt and equitable nature of any investigation or resolution;[24] and

8. Overseeing effective implementation of any remedies issued in connection with the grievance process.[25]

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.[26] Generally, Title IX Coordinators and DHR Administrators should be positioned organizationally to operate with

[21] *Id.*

[22] 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.")

[23] 34 C.F.R. 106.45(b)(1)(iii).

[24] 34 C.F.R. § 106.8(a) (charging the Title IX Coordinator with "coordinating [institutional] efforts to comply" with Title IX).

[25] 34 C.F.R. § 106.8(a); 34 C.F.R. § 106.45(b)(7)(iv).

[26] 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 and aligned with the current regulations. 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."

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 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."[27] 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 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 current Title IX Coordinator has served as Cal State San Marcos's Title IX Coordinator and DHR Administrator since 2011. The Title IX Coordinator's contact information – as well as contact information for the Title IX Office more broadly – is displayed on the university's Title IX and DHR websites. We find that the Title IX Coordinator/DHR Administrator is appropriately positioned organizationally, as the Coordinator reports to the Vice President for Student Affairs. However, because of this reporting structure, a common perception is that the Title IX Coordinator/DHR Administrator is student-facing only.

[27] 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."

As noted elsewhere in this report, we recommend that the university re-evaluate the efficacy of this reporting line. If keeping the reporting line within Student Affairs, the university could consider also adding a dual reporting line to an-employee centered division like Human Resources or the Provost.

In terms of resources, we find that the Title IX/DHR Office is not adequately resourced. The Title IX and DHR functions struggle in much the same way as other Title IX/DHR programs across the system. The Title IX/DHR Office has had high levels of turnover, has not been fully staffed for nearly two years, and does not have a dedicated intake/outreach coordinator or prevention and programming coordinator. Additionally, the Title IX Coordinator, who also serves as the Associate Vice President for Student Affairs, has too many responsibilities in her portfolio to be able to effectively fulfill her Title IX/DHR roles.

In terms of training, we observed that the Title IX Coordinator/DHR Administrator has a high level of substantive subject matter fluency with respect to Title IX and DHR issues.

Finally, in terms of a conflict of interest, the Title IX Coordinator/DHR Administrator also serves in the role of Associate Vice President for Student Affairs. In this capacity, the Title IX Coordinator oversees counseling, health services, and disability services. In certain instances, these dual roles could create a conflict of interest. They also impact perceptions of Title IX/DHR as some view the office as primarily student-serving.

B. Notice of Non-Discrimination

The Title IX regulations require that institutions publish a non-discrimination statement.[28] 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;[29]
2. The institution does not discriminate with respect to admissions or employment; and

[28] 34 C.F.R. § 106.8(b).

[29] *Id.*

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, 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.[30]

Cal State San Marcos has a Notice of Non-Discrimination on the Basis of Gender or Sex, which, consistent with the Title IX regulations, 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 Notice provides the required contact information, for Cal State San Marcos's Title IX Coordinator and OCR, to individuals seeking to report sex discrimination.

Cal State San Marcos's Notice of Non-Discrimination on the Basis of Gender or Sex is accessible on the university's Title IX and DHR webpages. However, there is no direct link to the Notice on most other university webpages, including the webpages for Admissions, Athletics, and Student Life.

Separately, Cal State San Marcos publishes a broader Notice of Non-Discrimination on the basis of protected classes other than sex and gender on the Title IX/DHR Office's website. This broader notice is available on certain university webpages, such as the Student Health and Counseling Services website, but is not linked to most university webpages. Publishing a broader Notice of Non-Discrimination across the university's web universe 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 class discrimination, harassment, and retaliation.

[30] 34 C.F.R. § 106.8(b)(2).

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 . . . ."[31] 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.[32]

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 class discrimination, harassment, and retaliation, this document sets forth the grievance procedures and process for resolving reports of sex discrimination, as well as other protected class 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 classes. 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

[31] 34 C.F.R. § 106.8(c).

[32] *Id.*

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.[33] 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. 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.[34]

VII. Campus Coordination

During our campus visit, we consistently heard administrators and key university partners praise the healthy partnerships within the university. These collaborative working relationships were reported to exist between and among various university functions, and between those functions and the Title IX/DHR Office.

Administrators consistently described excellent communication and collaboration within Student Affairs as well as a strong partnership between Human Resources and Faculty Affairs. Administrators also described a similar dynamic with respect to the University Police Department, Survivor Advocacy Services, and the Title IX/DHR Office. Campus professionals described the "amazing relationships and people" across the university, and explained how they felt "very lucky" to have such strong partners and such high

[33] 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."

[34] This was a significant area of concern for San Marcos faculty with whom we met.

levels of responsiveness from their colleagues. These campus professionals praised the "very good working relationships" with the Title IX/DHR Office, which they said was based primarily on "relationships and amazing people."

Despite these healthy and organic open lines of communication, there is no formal multidisciplinary team in place that meets on a regular basis to discuss student, staff, and/or faculty cases. We observed a strong openness and willingness among all university partners to institute such a routinized and structured meeting, with one administrator commenting that they sometimes get "frustrated" with the lack of communication about what happens after they refer students to the Title IX/DHR Office; this individual compared this phenomenon to "sending someone to an elevator and not knowing if it got them to where they need to be." We also note San Marcos has a standing CARE Team (detailed description below under "Additional Resources for Students") to address student behavior that poses a concern.

A. University Police Department

Cal State San Marcos's University Police Department (UPD) is responsible for enforcing all California Penal and Vehicle codes on and around the campus. UPD also assists the San Diego County Sheriff's Department with campus-related calls. UPD currently consists of an Interim Chief of Police; four Sergeants; eight Officers; four Corporals; six Dispatchers; one Risk Analyst; one Director of Integrated Risk Management; one Records Coordinator; one Access Control Coordinator; one Emergency Manager; and one Business Continuity Analyst. The Interim Chief of Police reports to the Vice President for Finance and Administrative Services.

UPD supports the university's Clery function, described below, and issues timely warnings as necessary. UPD's website also contains information about community engagement, risk management, parking and commuter resources, reporting of bias incidents, and other programs and resources such as workshops on personal safety and safety escorts.

UPD investigates reports of criminal sexual or gender-based violence that reportedly occurred on-campus, which includes fact-gathering, and evidence collection. Additionally, UPD sends all officers to sexual assault first responder trainings within the first year of being hired. Under its interpretation of California Penal Code 293, UPD does not include a complainant's name in reports to Title IX where the complainant has requested that their name not be shared. However, UPD commented that most do not elect to remain

confidential. UPD also reports a cordial and collaborative working relationship with the Title IX/DHR Office and other campus partners.

B. Office of Student Conduct

Cal State San Marcos's Office of Student Conduct & Ethical Development is housed within the Dean of Students Office. The Office is responsible for administering the university's Standards for Student Conduct, including academic integrity matters, through the Student Conduct Process. The Office offers a safe and fair environment for students to reflect on their behaviors and discuss learning that has occurred as a result. The office investigates matters referred to it by the Dean of Students.

Matters investigated by this office include, among other things, alcohol violations, cheating and other academic dishonesty, hazing, and disorderly conduct. The office may also receive reports of sexual misconduct. The Office refers matters that relate to Title IX/DHR to the Title IX/DHR Office, and the Title IX/DHR Office refers matters that do not rise to the level of a potential Title IX/DHR violation to Student Conduct. The Office of Student Conduct also intersects with the Title IX/DHR Office in determining sanctioning for students following a formal investigation.

The Office of Student Conduct is led by the Director of Student Conduct & Ethical Development, who reports to the Associate Dean of Students.

C. Housing

The Office for Housing and Residential Education consists of an Executive Director, four Resident Directors, an Associate Director of Operations & Conferences, a Director of Facilities & Operations, a Maintenance Manager, an Assistant Director of Licensing & Marketing, and two Coordinators of Licensing & Marketing. Housing and Residential Life falls under the supervision of the Dean of Students and the CSUSM Corporation. As of the 2021-22 academic year, the total housing capacity was 1,532 students, and 10% of the student body lived on campus. Of those who lived on campus, approximately 70-80% were first year students.

Resident Directors supervise student staff, advise area councils, and administer the housing conduct process, which includes the Standards for Student Conduct. They also offer supportive counseling and mediation, plan and implement educational programming, and assume responsibility for the general

management of the residential apartments. Resident Directors are Master's-Level professional staff members who live on campus.

Resident Advisors (RAs) and Residential Peer Mentors (RPMs) are leaders selected for the position based on leadership skills and concern for peers and other students. RAs are trained to provide campus resource information, community activities and programming, assist with roommate conflicts, peer mediation and advising, and the development of a residential community to enhance the holistic collegiate experience. Additionally, they help ensure safety and security, especially through the maintenance of community guidelines. RPMs provide academic programming and support directly to residents. There were approximately 35 RAs and 8 RPMs during the 2022-23 academic year.

Housing and Residential Education staff are responsible employees and must refer reports of sexual misconduct to the Title IX/DHR Office. Reporting obligations, as well as available reporting options and resources for residents, are explained in the university's Resident Handbook.

D. Faculty Affairs

Faculty Affairs sits within the Division of Academic Affairs. Faculty Affairs is responsible for, among other things, administering the terms of the university's Collective Bargaining Agreements for faculty and academic student employees, and related faculty personnel functions. The office is led by the Associate Vice President for Faculty Affairs, who reports to the Provost and Vice President for Academic Affairs. In addition to the Associate Vice President, Faculty Affairs staff includes a Director of Faculty Personnel Services and four Faculty Personnel Coordinators (one position is vacant).

We heard concerns from faculty and other campus constituents that the Associate Vice President of Faculty Affairs had two potentially conflicting functions. One individual observed, "The person who disciplines faculty should be separate from the person who handles faculty retention, tenure, promotion. It is hard to feel safe asking questions about what we should do for our evaluations also knowing that this person knows how to punish us in the best way with the evaluations." The individual further observed, "Splitting those two roles would do a lot for us on our campus," noting that the mere perception that the AVP of Faculty Affairs is in charge of discipline chills the ability to go to the AVP as a resource. We recommend creating a dedicated labor relations position to expand capacity and promote effective practices.

E. Human Resources

Human Resources is led by an Associate Vice President for Human Resources and a Senior Director of Human Resources. Human Resources is responsible for overseeing Employee & Labor Relations, Benefits and Leaves of Absence, Workers' Compensation, Classification & Compensation, Customer & Operational Support, Equal Employment Opportunity & Compliance, Talent Acquisition, Payroll, Training & Professional Development, and the Employee Staff Center. Human Resources' Employee Relations function is responsible for providing counsel, advice, and conflict resolution with respect to work related difficulties, as well as administering the Collective Bargaining Agreements for staff. The Associate Vice President for Human Resources reports to the Vice President for Finance and Administrative Services.

F. Clery Act Responsibilities

San Marcos's Clery Act responsibilities are fulfilled by the university's Interim Clery Director, who has served in the role since September 2022. The Interim Clery Director previously served as the Clery Coordinator since 2018. The Interim Clery Director reports to the Associate Vice President for Administration, who previously had served as the Clery Director prior to moving to the VP role.

The Clery function is responsible for maintaining information necessary to prepare the university's Annual Security Report, and for identifying and training campus security authorities (CSA). The university has a multidisciplinary Clery Compliance Team who assist the Clery Director in developing, writing, reviewing, and ensuring the accuracy of the Annual Security Report; in the proper identification of relevant Clery Act geography; in programming, developing, and providing training and outreach efforts on the campus for compliance; and in overall compliance with the Clery Act and state student safety laws. The Clery Compliance Team meets at least quarterly, and comprises the following members: the Interim Clery Director; the Director of Residential Education; University Counsel; the Title IX Coordinator/DHR Administrator and Deputy Title IX Coordinator/DHR Administrator; the Associate Vice President for Human Resources; the Associate Vice President of Student Life; the Dean of Students; the Interim Chief of Police and Records Clerk for UPD; the Chief Communications Officer; the Associate Dean for Global Programs and Services; the Associate Director of Athletics; the Executive Director for Housing & Residential Education; and the Associate Dean for Student Success and Enrollment Management.

The university also has a Clery Statistics Reconciliation Team that assists the Clery Director in collecting information and required crime statistics for the university's Annual Security Report. The Clery Director

collaborates with members of this Team on a monthly basis to compile and classify the necessary crime statistics. Members of this Team include the Interim Clery Director, the Director of Student Conduct, UPD's Records Coordinator, the Director of Residential Education, the Executive Director for Housing & Residential Education, and the Deputy Title IX Coordinator/DHR Administrator.

UPD, in conjunction with the Clery Director, is responsible for assessing whether a timely warning should be issued to the university community. UPD uses a written assessment criteria form for timely warnings to document the factors considered in issuing or declining to issue a timely warning.

VIII. Campus Resources for Students and Employees

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

A. Confidential Advocates[35]

Cal State San Marcos offers confidential campus advocate services through Survivor Advocacy Services, which sits within Student Health & Counseling Services and reports up to the Director of Counseling and Psychological Services (CAPS). Survivor Advocacy Services employs two Sexual Violence Prevention Educators/Advocates, and has four student Sexual Violence Peer Educator volunteers.

The mission of Survivor Advocacy Services is to provide "a confidential environment where reports will NOT automatically lead to a legal or Title IX report." Services provided by the office include: general support connected to stalking, sexual harassment, dating/domestic violence, sexual assault and rape; accompaniment to medical appointments, police interviews, legal and court meeting, and Title IX meetings; safety planning including help with restraining orders; on campus advocacy for academic and housing concerns; support for concerned persons and secondary victims/survivors of sexual trauma; referrals for on- and off-campus resources; information about reporting options; and support groups.

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

Survivor Advocacy Services publishes a brochure explaining its function and services, and the Survivor Advocacy Services website contains statistics about the hundreds of campus constituents it reaches through Advocacy service contacts and trainings.

As reported to us during our campus visit, Survivor Advocacy Services is perceived as a student service and is not well known as a resource for faculty and staff as well. The Survivor Advocate positions sit within Student Health and Counseling Services. We learned that in the past year, more than 70 students had contacted the office for advocacy services, as opposed to just a small handful of employees. We note that at the time of our visit, the number of students seeking care from the Advocates was reportedly already up 25% over the prior year.

At the time of our visit, one of the advocates was leaving San Marcos and the soon-to-be vacant position was not yet posted to be filled.

B. Respondent Support

While there is no requirement to have a respondent support person or advisor, we recommend that San Marcos identify a dedicated resource to address the unique needs of respondents in the grievance process. Like most other CSU universities, Cal State San Marcos does not have a dedicated resource 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 (and complainants) if they do not already have their own advisor, as required by the current Title IX regulations. Student respondents also have access to other university resources, including the CARE Team and Student Health & Counseling Services, and employee respondents have access to the Employee Assistance Program, all described below. Counseling and Health Services

Students may also receive wellness services through Student Health & Counseling Services (SHCS). SHCS provides holistic healthcare to students through primary care, preventive services, wellness education, and mental health services. Student may seek confidential support through SHCS's Counseling Services. Counseling provides several short-term types of services, including group workshops, individual therapy, couples counseling, and group therapy. SHCS also offers prevention and education programming through its Sexual Violence Advocacy and Education function, which includes Survivor Advocacy Services (described above). As described on its website, the Sexual Violence Advocacy and Education staff (including professional staff and peer educators) conducts 60-100 events, trainings, and workshops each

year on topics that include affirmative consent, bystander intervention, (un)healthy relationships, technology & safety, intersectionality of violence, and healthy masculinity. Trainings on these topics are available upon request through the SHCS website. SHCS had four sexual violence peer educator volunteers this past year.

C. Ombuds

Cal State San Marcos has a University Ombuds, whose role is to assist current CSUSM faculty, staff and enrolled students resolve university-related conflicts, disputes or complaints on an informal basis. The Ombuds office handles communication issues, workplace conflicts, interpersonal conflicts between students, cultural misunderstandings, and more. The office provides information regarding available resources and options, and counsels stakeholders with respect to conflict resolution.

The Ombuds office consists of the Ombudsperson, an Ombuds Advisor, and an Administrative Assistant.

D. Additional Resources for Students

Cal State San Marcos has a student-focused Campus Assessment, Response, and Education (CARE) Team that sits within the Dean of Students Office. As described on the CARE Team's website, the CARE Team promotes a safe and productive learning, living, and working environment by identifying, discussing, investigating, evaluating, and working on student behavior that poses a concern, potential threat, or actual threat to self or others. The CARE Team assesses available information about students of concern and creates intervention plans to assist the students and community with the concern or threat.

The CARE Team, which is overseen by the Dean of Students, meets twice a month or on an as-needed basis. The Team comprises the following employees: Dean of Students; Associate Vice President – Student Development Services (Title IX Coordinator/DHR Administrator); Associate Vice President – Faculty Affairs; Deputy Title IX Coordinator/DHR Administrator; Director of Cougar Care Network; Medical Director; Director of Counseling and Psychological Services; Interim Director of Residential Education; Director of Student Life; Director of Disability Support Services; Chief of Police and University Police representatives. Reports about students of concern can be made to the CARE Team directly to the Dean of Students Office or through referral from the Cougar Care Network, which has an online Maxient reporting form.

Cal State San Marcos also offers services to students experiencing food insecurity, hunger, disasters, unstable housing, homelessness, and poverty. Through Student Basic Needs, the university assists

students with, among other things, access to food, emergency housing, emergency grants, and mental health programs. The Cougar Care Network (CCN) also provides information, resources, and support to students who are experiencing financial, personal, academic or other challenges which may be adversely affecting their academic and/or personal success.

Students also have access to affinity groups, cultural centers, and community centers such as The Pride Center, The Cross-Cultural Center, the Women and Gender Equity Center, and the Latinx Center, among others.

E. Additional Resources for Employees

The university also offers an Employee Assistance Program (EAP) called LifeMatters, which is administered through Empathia. The program is designed to provide resources for professional assistance to faculty, staff, and their families in assessing and resolving personal difficulties that may be affecting well-being or job performance. Resources available to employees include counseling services and referrals to community resources. The counseling services for employees include five free sessions, and consultations are available to discuss a range of topics including marital/relationship issues, anxiety, anger, financial issues, bereavement/grief, substance abuse, depression, legal questions, coping with change, and low self-esteem.

San Marcos has recently created a Staff Center as a resource for staff members. While relatively nascent, the Staff Center will ideally function as a place where employees can go to seek resources specifically with respect to professional development, but also would serve as an informal social meeting place. Initially a virtual service, the Center now has a physical location. At the time of our campus visit, the Center's Director was the only staff member and is responsible for running the Center. As a result of limited staffing, the Center is not open all day.

IX. Prevention, Education, Professional Development, Training and Awareness[36]

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.[37] Even if responsibilities are shared with a Confidential Advocate, the Title IX Coordinator "remains primarily responsible for all campus-based prevention and awareness activities."[38] The Nondiscrimination Policy further provides that 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.[39]

A. 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

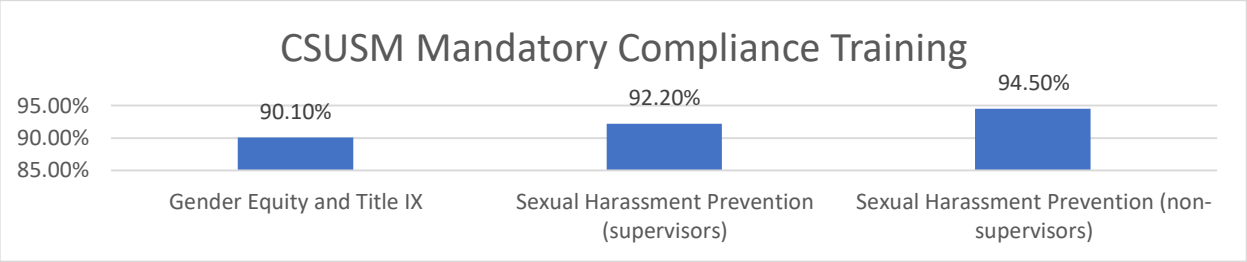
[36] The legal and regulatory framework, which sets forth requirements under federal and state law, is outlined in Section VIIB.2 of the Systemwide Report, Legal Framework re: Prevention and Education.

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

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

[39] *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."

chart, provided by the Chancellor's Office, shows the completion percentage for San Marcos for the 2022 calendar year:[40]



Faculty and staff were reported as having larger training gaps than students. These gaps exist in the areas of employees' understanding of their reporting responsibilities, and in manager/department chairs' skill sets to identify issues, report concerns, or problem solve to resolve conflicts. We note that in order to close these gaps, the university has begun to engage in professional development efforts in these areas, including trainings for department chairs and deans.

Title IX/DHR professionals also provide training to employees, including during new employee orientation, new faculty institute, and responsible employee training (including for housing professional and student staff).

B. Students

In terms of prevention and education, we received feedback that Cal State San Marcos has devoted significant attention to programming for the student population but that programming for faculty and staff has lagged behind. In terms of programming for students, administrators reported that multiple departments contribute to education efforts, including Title IX/DHR, Housing & Residential Education, Student Affairs (during New Student Orientation), and Survivor Advocacy Services' Sexual Violence Prevention & Education function. For example, through New Student Orientation, all incoming students receive a day long training/orientation that includes Title IX topics. Transfer students receive a truncated half-day version of the same training. Both programs include a panel which includes representatives from the Title IX Office, UPD, and Student Health and Counseling. Moreover, specific populations at San Marcos

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

receive additional training, including student organization leaders, the fraternity and sorority life community, Athletics, and Housing.

Within Athletics, students previously received training from the Confidential Advocate in partnership with the Title IX Office. The Athletics staff reported this was an impactful opportunity for their students, as the speakers were dynamic and contextualized the topics of sexual violence, training, content, and resources for the student-athletes. This also gave coaches and staff the message that they had greatest proximity to student-athletes, and the attendant importance of understanding their role, and how to have conversations on these topics.

The bulk of the campus's prevention and education programming is spearheaded by Survivor Advocacy Services – through the university's Sexual Violence Prevention Educators/Advocates – in conjunction with student Sexual Violence Peer Educators. The Sexual Violence Advocacy & Education staff delivers trainings in a variety of formats, including lectures, workshops, discussions, videos, and interactive activities, on a variety of topics including: Sexual Violence Prevention 101; Healthy vs. Unhealthy Relationships; Bystander Intervention; Digital Abuse & Online Safety; Consent 101; Supporting Survivors of Sexual Harm; and Trauma-Informed Care. Survivor Advocacy Services has a dedicated website where faculty and instructors can schedule customizable presentations for their classes. Survivor Advocacy Services also displays information on their website about recent achievements with regard to prevention education. According to the website, as of August 2022, the Sexual Violence Advocacy & Education staff was delivering 60-100 events, training, and workshops every year and connecting with thousands of students and employees every year. As a result, 99% of the community were aware of the different types of sexual violence; 98% of the community could identify at least one way to confront sexual violence; and 99% of the community was confident in their ability to practice affirmative consent.

We note that San Marcos's Annual Security Report, required under the Clery Act, generally lists primary prevention and awareness programs offered by the CSU system as a whole, but does not specifically detail any programming specific to San Marcos.

C. Coordination

San Marcos has engaged in an introspective review of their current programming by collaborating with external resources. Recently, San Marcos participated in the Culture of Respect's two-year Collective to assess current programming and target goals for organizational change. The Culture of Respect

Assessment involved a team of people across campus, who could serve as the basis for the recommended Prevention and Education Oversight Committee. San Marcos is poised to develop and build out strategic plans for prevention, education, training, professional development, and awareness.

X. Other Conduct of Concern

As with other universities across the CSU system and nationwide, San Marcos has grappled with conduct issues that may not rise to the level of a potential policy violation but that nonetheless have disrupted living, learning, or working environments for some individuals. 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. As noted elsewhere, this includes:

- 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.

San Marcos, like universities across the system, has struggled with providing a consistent response mechanism for addressing issues relating to civility, bullying, protected speech that negatively impacts constituents, and actions and words that may constitute misconduct or unprofessionalism but that do not relate to protected status and/or do not rise to the level of being sufficiently persistent, severe, and/or pervasive.

As with nearly every CSU university, the feedback we received at San Marcos regarding this *other conduct of concern* was that it was not being triaged effectively and that the university's response mechanisms seemed *ad hoc* and inconsistent, which contributed to a perception that there was a lack of concern or accountability with respect to such behaviors, which, in turn, has undermined the effectiveness of the Title IX/DHR Office.

At Cal State San Marcos, incidents that do not rise to the level of a policy violation are referred to the Dean of Students/Student Conduct, Human Resources, or Faculty Affairs, but there is no consistent process for responding, documenting, and tracking these referrals. During our campus visit, we heard from administrators and employees that the campus community "does not have a clear idea of what

would meet the Title IX threshold and what would not." As described by one campus professional, "The process should entail people being heard, validated, and having their issues resolved; here, we get to the 'heard' part but not the other two." Other campus professionals commented that because of the lack of established protocols and procedures for addressing *other conduct of concern*, the university's response is "clunky, if not harmful" once it is referred out from the Title IX/DHR Office. Faculty members shared their perspective that there is a "black hole" at the university in terms of "low level immediate interventions," which would help prevent problematic behaviors from escalating.

At the time of our campus visit, the university was taking steps to formalize a process for reporting bias incidents as a way to address some of the *other conduct of concern* that was occurring on campus. We note that the university has developed a process for bias reporting, which has not been published yet. There is an online Bias Incident Reporting Form through Maxient, along with a Bias Reporting website through the Office of Inclusive Excellence (OIE). As explained by the website, after the university receives a bias incident report, the "Bias Assessment Team" reviews the report, meets with the complainant, and works with the complainant to facilitate access to campus and community resources and support. The Bias Assessment Team is a cross-department collaboration, including Title IX/DHR, OIE, the Dean of Students (DOS), and UPD. Reports that do not meet the criteria for a potential policy violation are referred to the DOS or OIE for individual support or evaluation of community remedies. The website makes clear that complaints may be made anonymously and that the bias reporting system "does not replace existing policies or normal avenues of reporting at CSUSM" such as the Title IX/DHR Office. It further provides that the university "values freedom of thought and expression" and makes clear that "bias incidents or hate crimes do not include speech or behavior that an individual or the institution merely disagrees with or finds offensive."

To our understanding, the process is not live yet. Administrators shared, "We have talked about a bias reporting process, but we are falling down on resources." Another observed, "It is better not to invite people, if we are not able to do the work." We learned that OIE had developed a position description for an individual within OIE with "unicorn" experience with conflict resolution that has bias elements to do microaggression work, but that they were only guaranteed funding for bias incident response coordinator for one year.

The President's Task Force on Sexual Harassment also looked at *other conduct of concern* as it relates to sexual harassment. The Task Force defined the term "Ambiguous Situations" to references "where the

person might not know or feel that what they experienced was sexual harassment, but they believe it could be understood by others as sexual harassment or inappropriate behavior. It entails situations where the person might not feel it is "severe, persistent, or pervasive" (as indicated in the Policy above on items c and d) enough to warrant a formal complaint, but that it is still not appropriate behavior." The Task Force recommended providing "care for those experiencing ambiguous situations," providing resources, and identifying "a path forward for people who have experienced it or those who have witnessed it." The Task Force explained, "When ambiguous situations occur that don't yet meet the standards laid out in the CSU policy, members of the campus community need to know where to go and whom to talk to in order to be heard and receive information and care." The Task Force recommend using the bias incident reporting process, described above, to address ambiguous situations (recognizing that sexual harassment may be governed by different protections than other forms of harassment).

Finally, we note that Cal State San Marcos has an Office of University Ombuds, whose purpose is to help faculty, staff, and students resolve conflicts, disputes, or complaints on an informal and confidential basis. During our campus visit, we learned that the Ombuds was viewed as an underdeveloped resource.

XI. 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
    3.1. Shift the Title IX Coordinator role to a full-time position and separate the AVP of Student Affairs
    3.2. Consider staffing the Title IX/DHR Office with, at a minimum, a Title IX Coordinator/DHR Administrator, a prevention and education coordinator, an intake and support coordinator, two investigators (the need for which may increase over time or may be subsumed by the CSU Center for Investigations and Resolutions as described in the Systemwide Report), and a full-time administrative manager
    3.3. Ensure that the following essential elements of effective practice are staffed: increased separation between the care and support function and the adjudicatory function; staffing for the necessary function of education coordinator to maintain accountability for the delivery of all education and training requirements; and data input, tracking and additional administrative support for the team
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
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 administrators' independence and autonomy with the need to identify and elevate critical issues and concerns about safety/risk
7. Evaluate and potentially shift the Title IX Coordinator's reporting line to a more neutral, less constituent-identified individual
8. 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.)
9. 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 multidisciplinary team 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
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)
3. Improve the Title IX/DHR 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. 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:

3.3.1. 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

3.3.2. 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

3.4. 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 Ombuds 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 a sufficient documentation systems 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

The below chart reflects key metrics and demographic information for Cal State San Marcos:

California State University San Marcos				
Location Information				
Location: San Marcos, CA. (pop. 94,854)[41]		**County:** San Diego County (pop. 3,276,208)[42]		**Locale Classification:** Large Suburb[43]
University Information				
President: Ellen Neufeldt Ph. D. (July 2019-present)				
Designations: Hispanic Serving Institution (HSI)[44] Asian American and Native American Pacific Islander-Serving Institution (AANAPISI)[45]				
Students – Enrollment Data[46]				
Total Number of Students	**15,182**			
State-Supported		**Self-Supported**		
Undergraduates	12917	Undergraduates	688	
Grad & Post Bac Students	552	Grad & Post Bac Students	1025	
Student Ethnicity[47]				
Overall (includes State- and Self-Supported)				
Hispanic / Latino	50%			
White	26%			
Asian	10%			
Two or More Races	6%			
Race and Ethnicity Unknown	3%			
Black / African American	3%			
International Student	2%			
Native Hawaiian / Other Pacific Islander	<1%			
American Indian / Alaska Native	<1%			

[41] United States Census Bureau, https://www.census.gov/quickfacts/fact/table/sanmarcoscitycalifornia/PST045221, population estimate as of July 1, 2021. This report will be updated to reflect material inaccuracies brought to our attention on or before September 15, 2023.
[42] United States Census Bureau, https://www.census.gov/quickfacts/fact/table/sandiegocountycalifornia/PST045221, population estimate as of July 1, 2021.
[43] Defined as a territory outside a Principal City and inside an Urbanized Area with population of 250,000 or more. *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.
[44] 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.
[45] AANAPISIs are defined under the Higher Education Act as colleges or universities with an undergraduate enrollment that is at least 10% Asian American and Native American Pacific Islander. Additionally, at least half of the University's degree-seeking students must be low-income. *See* https://www2.ed.gov/programs/aanapi/eligibility.html.
[46] California State University Enrollment Data, Fall 2022, Cal State San Marcos: https://tableau.calstate.edu/views/SelfEnrollmentDashboard/EnrollmentSummary?iframeSizedToWindow=true&%3Aembed=y&%3AshowAppBanner=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.
[47] *Id.* This data includes students at the undergraduate, graduate, and post-baccalaureate levels.

State-Supported (13,469 students)		**Self-Supported** (1713 students)	
Hispanic / Latino	52%	Hispanic / Latino	38%
White	25%	White	29%
Asian	9%	Asian	16%
Two or More Races	6%	Race and Ethnicity Unknown	6%
Race and Ethnicity Unknown	3%	Two or More Races	5%
Black / African American	3%	Black / African American	4%
International Student	2%	International Student	2%
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[48]	
Overall (includes State- and Self-Supported)	
First in Family to Attend College	27%
% students who are traditionally underrepresented[49]	54%
% of undergrads who were Pell Grant recipients[50]	47%
% of students who live on campus[51]	10%
% undergrads who are in a fraternity or sorority[52]	>6%
4-year graduation rate for first-time FT freshmen[53]	28.0

State-Supported (13,469 students)		**Self-Supported** (1713 students)	
Average Age	22	Average Age	29
Sex[54]	59% F; 41% M	Sex[55]	75%F; 25% M
First in Family to Attend College	28%	First in Family to Attend College	20%
% traditionally underrepresented[56]	55%	% traditionally underrepresented[57]	42%

Instructional Faculty[58]	
Total # of faculty	854
Tenure-track	35%
Lecturer	65%
% full-time[59]	49.39%
% part-time	50.61%

[48] *Id.*, except where noted otherwise. This data includes students at the undergraduate, graduate, and post-baccalaureate levels.
[49] For purposes of this table, "traditionally underrepresented" refers to students with ethnicity of Hispanic, Black/African American, or Native American/Alaska Native.
[50] 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.
[51] 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.
[52] *See* https://www.csusm.edu/slic/greek/index.html (last visited May 17, 2023).
[53] California State University, Graduation & Success Dashboards, with link to Graduation Dashboard, selecting the Summary Overview tab, and with Cal State San Marcos 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 CSUSM during the Fall 2018 (most recent complete 4-year term available).
[54] Data does not capture number of students who do not identify on the sex/gender binary.
[55] *Id.*
[56] For purposes of this table, "traditionally underrepresented" refers to students with ethnicity of Hispanic, Black/African American, or Native American/Alaska Native.
[57] *Id.*
[58] California State University, CSU Faculty, Fall 2022. *See* https://www.calstate.edu/csu-system/faculty-staff/employee-profile/csu-faculty, except where noted otherwise.
[59] 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.

Leadership body	Academic Senate[60]
Staff[61]	
Total # of staff	811
% full-time	97.29%
% part-time	2.71%
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[62]	
NCAA Division	II
NCAA Conference	CCAA[63]
Number of sponsored sports for '22-'23 academic year	14
Number of student athletes[64]	250

[60] Cal State San Marcos Academic Senate. *See* https://www.csusm.edu/senate/index.html.
[61] 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.
[62] NCAA Directory, https://web3.ncaa.org/directory/orgDetail?id=30198, except where noted otherwise.
[63] All sports are in the California Collegiate Athletic Association except Women's Indoor Track, which is Independent.
[64] *See* U.S. Department of Education, Equity in Athletics Data Analysis, at https://ope.ed.gov/athletics/#/, data for California State University San Marcos. 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 share 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 212[65] responses to the survey from Cal State San Marcos students, faculty, staff, and administrators as follows:

Constituency	Number of Responses
Undergraduate Student	85
Graduate Student	5
Staff	55
Administrator or Manager	14
Faculty	56
Other	8

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:

- Campus generally perceived as safe. Survey respondents wrote that they generally felt physically safe on campus.

- Racism in housing. In the housing context, a number of survey respondents noted that they had encountered racism or white supremacy.

- Online training. With respect to Title IX training, survey respondents stated that they did not prefer online training, and requested additional in-person trainings to ensure that the sessions were meaningful and engaging.

- Policy about faculty dating students. Multiple survey respondents requested that the university implement a formal policy about faculty dating students, noting that there were power dynamics at play that could be harmful to students and that the university had no policies in place about this issue.

[65] Some survey respondents identified as belonging to multiple constituencies; hence, the number listed here is smaller than the sum total in the chart below.

- Requests for increased visibility. Survey respondents noted that they did not know where to go to access resources, and that the university's website was challenging to navigate.

- Union protection of accused faculty. Survey respondents noted several times that tenured faculty were insulated from consequences by the union appeals process, and that they often received no meaningful sanctions, had years of paid leave, or were permitted to retire as a following Title IX allegations.

- Bullying on campus. A small number of survey respondents described bullying on campus, which they did not feel was adequately addressed by the university.

- Timeliness. Survey respondents noted that the Title IX process was not timely, and that complaints could take years to resolve.

Appendix III
Title IX Annual Report Metrics

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

As part of our review of the Title IX program at Cal State San Marcos, 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 the university's Title IX 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 the Title IX/DHR Office 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 all 23 universities. That being said, we have confidence that the data, while imperfect, provides sufficient reliability to extrapolate key themes and observations. As currently structured, the data-gathering system has significant challenges:

- across the system, the universities do not use consistent documentation and recordkeeping systems and practices to maintain their data;

- data gathered by the Chancellor's Office is reliant on reporting by Title IX/DHR staff at each university based on the nature and manner in which they keep documentation;
- 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 consistently 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 Title IX functions or make meaningful comparisons with other CSU universities from the data alone.

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 universities have provided data prepared by individuals who are no longer employed by the CSU. 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. Cal State San Marcos verified the accuracy of the 2021-2022 annual Title IX report via email on May 8, 2023.

Finally, we recognize the significant impact of the COVID-19 pandemic on colleges and universities across the country, including Cal State San Marcos. 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 the Title IX/DHR Office 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[66]

	2018-2019	2019-2020	2020-2021	2021-2022
Reports of Sexual Misconduct/Sexual Assault	48[67]	24	18	35
Reports of Dating/Domestic Violence		13	10	12
Reports of Stalking		11	3	7
Sexual Exploitation*		No data available	No data available	1
Sexual Harassment*				15
Total # of Reports in Above Categories	**48**	**48**	**31**	**70**
* This data was not requested by the Chancellor's Office prior to the 2021-2022 academic year.				

B. Respondents' Roles[68]

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	17	13	10	17
Reports in which the Respondent is an employee	0	2	0	1
Reports in which the Respondent is a third-party	29	22	19	50
Reports in which the Respondent is unknown	2	11	2	1
Reports in which the Respondent is unidentified				1
Total # of Reports in Above Categories	**48**	**48**	**31**	**70**

[66] This data does not include reports of incidents that fail to meet the threshold of a potential Title IX policy violation.

[67] Data was not sorted.

[68] Respondent Role totals may differ from Reported Conduct totals because in some instances, one respondent may have multiple allegations.

C. Case Outcomes[69]

The below data reflect the collective outcomes of reports to the Title IX/DHR Office.[70]

	2018-2019[71]	2019-2020	2020-2021	2021-2022
Reports in which the Complainant did not respond to outreach and there was insufficient information to move forward	8	28	6	42
Reports in which the Complainant's identity was unknown to the Title IX Office	No data available	16	0	0
Reports in which the Complainant requested supportive measures or resources only	No data available	0	19	24
Reports that resulted in other outcomes (except formal investigation)	40	2	5	0
Reports that resulted in a formal investigation*	0	3	0	0

*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.

[69] 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.

[70] 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.

[71] Based on the nature of the data stored, these figures were extrapolated from the report.