

A Call to Action

HOW POSTSECONDARY EDUCATION INSTITUTIONS
CAN ADDRESS SEX DISCRIMINATION AND PROVIDE
EDUCATIONAL JUSTICE ON CAMPUS

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ABSTRACT

Preventing sex discrimination is an edict from the Federal Government established by Title IX of the Education Amendments of 1972 (Title IX). Title IX goes beyond ensuring women have access to sports and academic majors; it requires all higher education institutions to provide educational programs free from sex discrimination. The prevention of sex discrimination is more than simply having a policy on how to address complaints. Prevention is creating a campus culture that addresses the root cause of sex discrimination before it becomes a complaint. The prevention of sex discrimination includes training where bystanders are empowered to intervene, a campus where students, faculty, and staff are encouraged to report incidents, and a culture, where those reports are met with support for all parties involved. Policies are necessary to address sex discrimination when it occurs, but those policies should be trauma-informed and focused on imposing accountability rather than retribution when conduct is found to have violated the campuses' policies or the law.

To understand how higher education institutions are preventing and addressing sex discrimination on campuses, staff from the Assembly Committee on Higher Education hosted fact-finding briefings with representatives from the California Community Colleges (CCC), the California State University (CSU), the University of California (UC), and various California Independent Colleges and Universities. This report is a synopsis of the information gleaned from the briefings and a compilation of legislative proposals for how the State can partner with higher education institutions to prevent and address sex discrimination in all its forms on campuses throughout California.

For purposes of this report "sex discrimination" means sexual assault, sexual harassment, stalking, domestic violence, and dating violence.

WHO ENACTS THE POLICIES GOVERNING THE PREVENTION OF SEX DISCRIMINATION ON HIGHER EDUCATION CAMPUSES?

The prevention of sex discrimination on college and university campuses in California is outlined in three main sets of policies: Federal (Title IX), State (Sex Equity in Higher Education Act and related sections of the Education Code), and the higher education institution's policies. *Committee Staff acknowledge that the Federal Civil Rights Act, the Violence Against Women's Act, and the Clery Act include provisions that impact cases of sex discrimination on college and university campuses. Due to the complexity and overlap of these various laws, Committee Staff elected to focus on the main laws governing the adjudication of sex discrimination complaints on campuses.*

Federal

The Office for Civil Rights (OCR) within the U.S. Department of Education oversees Title IX compliance at higher education institutions that receive federal funding. The OCR has the authority to investigate higher education institutions that are reported to the OCR by survivors or whistleblowers who believe the higher education institution has not followed Title IX. The OCR can open an investigation if:

1. A complaint is filed by a survivor or a witness;
2. The OCR initiates an investigation (could be due to a media exposé on a specific incident); or,
3. A targeted compliance review is conducted and potential violations are found.

The OCR does not require campuses to provide annual data as to how they are preventing or addressing sex discrimination on campus. The only time the OCR requires data to be provided by a campus is if the campus was investigated and a reporting requirement was part of the resolution agreement or monitoring agreement with the OCR.

Committee Staff spoke with the Office of Civil Rights and it was confirmed the U.S. Department of Education only investigates complaints and relies on settlements and mediation to help urge schools to comply with the Federal Title IX Regulations.

In 2022, *USA Today* published an investigative series entitled “Title IX: Falling Short at 50,” which focused on answering the questions as to how colleges and universities were fulfilling the Federal requirements for providing educational equity to all sexes. One of the articles, “What happens if a school doesn’t comply with Title IX, not a whole lot,” explained the limitations of the Office for Civil Rights:

“Schools accused of violating Title IX – which bans sex discrimination across all aspects of education, including athletics and sexual harassment – have little to fear from the Office for Civil Rights; they can openly defy the agency, withhold records, and fail to heed agreements with impunity” (Axon).

The *USA Today* review of the OCR’s funding, found that the Federal government has consistently cut the agency's budget despite years of pleading by the OCR to hire more investigators (Axon). Underfunded and hamstrung by regulations, the OCR is unable to do more than adjudicate cases brought before them through direct complaints.

Even if the complaint results in a violation, the OCR’s response is to provide the offending entity with a letter of findings and a resolution agreement that can be ignored as demonstrated by the University of Kentucky in the *USA Today* articles (Axon). The OCR cannot require the offending entity to adhere to the resolution agreement. In other words, the OCR does not withhold federal funding from institutions even if they are found to have violated Title IX.

Based on research conducted by Committee Staff, the OCR relies on mediation and settlements, which occur before a letter of finding and a resolution agreement to hold institutions accountable for implementing Title IX with fidelity. The OCR has no true sanction by which to hold the institutions accountable, as any form of punishment could ultimately harm students, as the form of federal funding most higher education institutions receive are Pell Grants.

State

Education Code (EDC) Section 66290 – 66293 provides the scope of the State’s ability to hold higher education institutions accountable for implementing the Sex Equity in Higher Education Act and other related EDC sections about the prevention of sex discrimination on campus. One tool of accountability available to the State is to restrict the provision of state financial assistance

(General Budget Allocations) or state-funded financial aid (Cal Grants), until the higher education institution is seen as compliant.

Higher education institutions demonstrate their compliance by providing a single assurance in writing to the California Student Aid Commission (EDC § 66290). **To the knowledge of Committee Staff the California Student Aid Commission has never exercised its authority to deny an institution’s financial aid eligibility as a consequence of not complying with Title IX or state nondiscrimination laws.**

The other tool available to the Legislature is to have the California State Auditor conduct an audit to determine whether a higher education institution complies with state laws. In the last 10 years, the State Auditor has audited the California State University (CSU) and the University of California (UC) twice to assess their handling of sex discrimination claims. Many recommendations were made in each of the audits and it was found that CSU has fully implemented most, but not all, of the recommendations made by the State Auditor in audits before 2023. *Committee Staff note the CSU is still working on implementing recommendations from the most recent 2023 audit.* The UC has fully implemented the recommendations made by the State Auditor.

The California State Auditor is not an enforcement agency, but rather an oversight agency. The Auditor conducts audits to answer questions posed by the Legislature, but the Auditor does not have enforcement power to force agencies’ to comply with the audit recommendations.

Higher Education Institutions

The EDC Section 66030 states it is the intention of the Legislature for all students to be provided an educational environment that allows all Californians to fully develop for their potential. The responsibility of providing this equitable environment, an environment free from all forms of discrimination and harassment, is delegated to the systemwide governing boards¹ of the public higher education institutions.

Other sections of the EDC, 66292, 66292.1, and 66292.2, assign the primary responsibility of ensuring educational programs are free from discrimination resides with the local governing boards of community college districts, CSU campus presidents, and the UC campus chancellors (EDC § 66292, 66292.1, and 66292.2). Therefore based on the Education Code, every level of leadership from campus executive officers to the systemwide governing boards, are responsible for providing educational experiences for students that are free from discrimination.

¹ The systemwide governing boards are the CCC Board of Governors, the CSU Board of Trustees, and the UC Board of Regents.

Unlike our Federal counterparts, the State does not have a regulatory body to provide an additional layer of transparency and protection for students, faculty, and staff who may wish to provide evidence of continual sexual harassment and discrimination on campus.

Committee Staff acknowledge the Civil Rights Department of California is a state agency tasked with enforcing California’s civil rights laws. However, neither the Education Code nor the Government Code mention the department’s jurisdiction over postsecondary education institutions in California.

The California Education Code and the California Constitution authorize the governing boards of the CCC, CSU, and UC to oversee the operations of the system. The CSU and UC each conduct performance reviews of each campus President (CSU) and campus Chancellor (UC) every three years. Due to local control, each local community college district board provides reviews for the campus presidents or chief executive officers of the community colleges within the district.

Past Legislatures has enacted laws with no mechanism to enforce those laws.

Instead past Legislatures have relied on the courts through civil cases to hold institutions accountable to the letter of the law; which, often result in monetary settlements and no true change on campus.

Committee Staff examined California law, the California Code of Regulations, and the three public higher education governing board policies to determine if preventing sex discrimination is specifically part of the campus leader’s review. According to the CSU, the campus presidents are evaluated based on several criteria, including any known areas of concern from the campus-based Title IX office. However, the policy as written by the CSU does not explicitly include an assessment of the president’s responsibility in keeping educational programs free from sex discrimination (Board of Trustees, CSU). The CSU indicated that during the annual conference between the campus president and the systemwide Chancellor, feedback is provided by the Vice Chancellor for Human Resources and the Office of General Counsel on

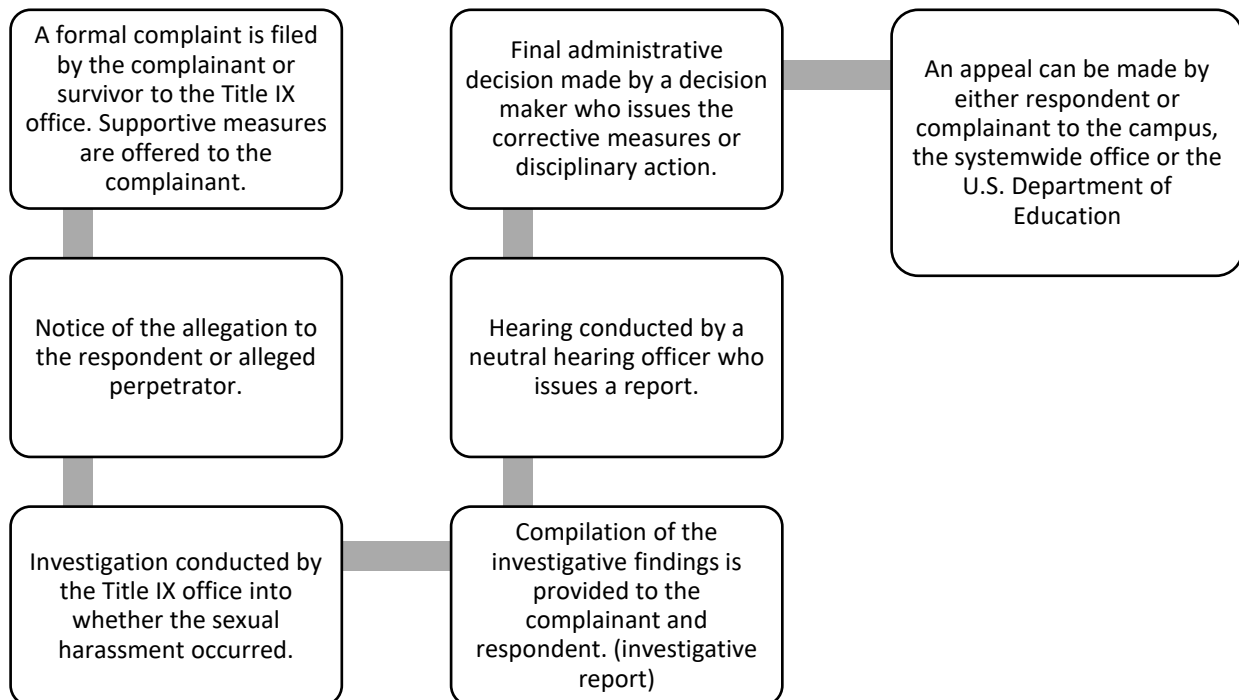
presidents/campuses on various topics including campus climate (Personal Correspondence, January 19, 2024).

None of the public higher education institutions include a review of the campus leader’s action plan to address and prevent sex discrimination on campus as part of campus administrators’ evaluation (Board of Trustees, CSU, 2020) and (Board of Regents, UC, 2023). In the case of CSU and UC, the evaluation of campus executive officers is conducted confidentially and the results of the evaluation are not presented to the public. **Despite having the authority, none of California’s public higher education institutions governing boards, whether local in the case of the CCC, or systemwide in the case of the CSU and UC can demonstrate they are actively evaluating campus leaders’ performance to ensure the system is free from sex discrimination.**

In January of 2017, then-Vice President Joe Biden wrote an op-ed for *Medium* where he challenged every college and university President, Chancellor, and Senior administrator to create an environment, “where all students are treated with dignity and respect; where men and women feel empowered to step up and speak out against sexual violence; and where survivors of sexual assault no longer feel ashamed to come forward and ask for the help they desperately want and deserve” (Biden). He called the leaders to act because, “as presidents, chancellors, deans, and administrators, you have an obligation to stand up, to speak out, and to foster the safest and most inclusive environment possible for every student that walks onto your campuses” (Biden). **According to then-Vice President Biden, the obligation to provide a campus climate of equity and inclusion resides with the leaders of the campus.**

WHAT ARE THE CCC, CSU, AND UC DOING TO ADDRESS AND PREVENT SEX DISCRIMINATION ON CAMPUS?

If the responsibility of providing a campus climate of equity and inclusion primarily resides with the campus leaders, then one must examine the policies and procedures in place for addressing sex discrimination on CCC, CSU, and UC campuses. State and Federal law require that the campus grievance procedures, or the steps in place to help resolve complaints of sex discrimination, have the following basic tenets:



Note: The above is a basic pathway for addressing sex discrimination and does not account for the various tracks or methods for processing complaints as implemented by the nondiscrimination policies of the CCC, CSU, and the UC. Furthermore, this graphic does not account for informal resolutions nor additional opportunities for appeals throughout the grievance process.

Public higher education in California is offered at three uniquely distinct systems: the CCC, CSU, and UC. In total, there are 116 community college campuses, 23 CSU campuses, and 10 UC campuses. Each system is overseen by a systemwide governing board and each has a systemwide office that publishes guidance on how to implement laws set forth by the Legislature. Each system is governed by the same set of laws, yet each system has fundamentally divergent policies for how campuses should prevent and adjudicate cases of sex discrimination.

The CCC Board of Governors is tasked with overseeing the entire system through regulations, and the Chancellor's Office of the Community Colleges receives oversight authority from the Board of Governors. Contained within the California Code of Regulations are the agency's

operating procedures for addressing discrimination complaints. These regulations act as the minimum standard for how community colleges are to adjudge sex discrimination complaints filed against students and employees. Committee Staff reviewed the regulations and questioned whether the regulations are aligned with best practices and interpretations of State and Federal law. For example, the California Sex Equity in Education Act (EDC Section 66271.5 – 66282) requires there to be an employee on each campus of the CCC who carries out the provision in the Act and permits the same person on campus to be the Title IX coordinator. However, the regulations permit the Title IX coordinator to be at the district level with no mention of the requirements as listed in the Sex Equity in Education Act. Furthermore, the CCC regulations do not require the same information to be provided to the respondent and the complainant, a standard best practice procedure. The regulations also require a complaint to be filed within one year for non-employment discrimination complaints and 180 days for employment-related discrimination complaints. The CCC Chancellor’s Office cited the need for the 180-day limitation due to the Federal regulations that permit the OCR to investigate complaints only if they are filed within 180 days of the incident in question. However, Federal regulations permit the OCR to waive this limitation and this does not account for the one-year requirement for non-employment complaints. This is an important distinction as rejecting a sex discrimination complaint due to a time constraint, denies the complainant from being provided supportive measures that can help the survivor remain on campus and engaged in their studies. Furthermore, neither the CSU nor the UC have a time constraint on when complaints can be filed and recent state laws have increased the statute of limitations for the reporting of sexual-related crimes.

An important aspect of the governing structure of community colleges is local control or the ability of the local governing boards to enact policies based on their interpretation of Federal and State law. Each community college is run by a chief executive officer and each community college is geographically contained within a district. Each community college district has a local governing board that is elected by the population of the district. The local governing board adopts policies that are aligned with California regulations and Federal law. If the California regulations as previously mentioned are the community college operating procedures, the policies of the district are the manuals for how to implement the procedures. Committee Staff learned that community college districts have differing policies for addressing sex discrimination (Martinez). In *Title IX Policy in the California Community Colleges*, Dr. Martinez examined multiple CCC districts to ascertain if CCC were meeting state and federal requirements for the prevention of sex discrimination on campus and her dissertation makes the following findings:

- 1) Half of the district policies examined were completely silent about Title IX, other than to mention the need to have a Title IX coordinator (pg. 50);
- 2) Based on the policies reviewed, districts were found to be out of compliance with Title IX regulations (pg. 54); and,
- 3) Title IX coordinators felt it was their job to prevent sex-based discrimination, but prevention was not in their job description. Little is done to provide prevention practices on campus. Prevention practices include interacting with data to address trends of discrimination and providing prevention education to the campus community (pg. 65).

While most of the community college districts rely on templates provided at cost by the Community College League of California to help draft district-based policies, nothing prevents the districts from relying on in-house counsel to write the policies or from hiring a law firm to

provide a different template. Each of the 72 districts² have a Title IX coordinator that oversees all the colleges within the given district and each of the district-level Title IX coordinators could have additional job titles/responsibilities beyond the adjudication of sex discrimination cases. Committee Staff examined several district policies and discovered no two were alike and of the community college districts examined none had a Title IX coordinators whose sole responsibility was to prevent and address sex discrimination on campus.

The CCC is the only system that does not mandate students annually participate in a prevention educational program. The CCC in compliance with Federal law (Violence Against Women’s Act) and State law does provide training as part of the campus-offered orientation. However, students are not required to attend the college’s orientation. Prevention education training is provided to faculty and staff. Despite requirements in the California Code of Regulations for annual reporting on the handling of sex discrimination complaints, the Chancellor’s Office has never issued guidance on how to submit the reports. As a result of the lack of guidance, community college districts have never been formally required or held accountable to meet this regulatory standard. Furthermore, the CCC is the only system without a systemwide Title IX coordinator and a formal systemwide policy for how to prevent and address sex discrimination on campus. *Committee Staff acknowledge that with local control there are limits to how uniform policies and procedures will be at the community colleges. Committee Staff also recognize the limitation of the Chancellor’s Office to conduct meaningful oversight while also honoring local control. However, perhaps in this instance, the impediments of local control outweigh the benefits, and the time for a uniform policy and additional oversight may be warranted.*

The community colleges are the only system that does not provide mandated training on sexual harassment, consent, and bystander prevention to students. AB 2683 (Gabriel), Chapter 798, Statue of 2022, seeks to rectify this by requiring training to be provided by September 1, 2024. At the time of the publication of this report, Committee Staff were informed by practitioners that the community colleges had not received guidance for how to implement the law by the Chancellor’s office.

Both the CSU and the UC have campus-based Title IX offices, Title IX coordinators at each campus, and a systemwide Title IX offices. The CSU and UC each have one systemwide policy on how to address complaints of sex discrimination on campus. However, contained within each policy are several procedures for how complaints are handled, and campus-based Title IX coordinators are required to determine which procedure to use based on: (1) whether the respondent (subject of the complaint) is an employee or a student, and (2) whether the complaint applies to the Federal definition of sex discrimination or the State definition. The CSU has five grievance procedures (including informal resolutions), and the UC has nine. While the CSU’s grievance procedures only vary between students and employees, the UC’s grievance procedures vary further based on whether the employee is a faculty (tenured or not) or a represented employee (based on their classification).

² Committee Staff note that CalBright does not have Title IX coordinator on staff, but does have a process for complaints to be filed with a designated human resources employee.

After an investigation, and if warranted, a hearing has transpired and the respondent is found to have violated the campus's nondiscrimination policy, then a disciplinary sanction is levied. Again the policies between the UC and CSU diverge. The person who determines the disciplinary sanction at the UC is the chancellor of the campus or the chancellor's designee. At the CSU, the campus president delegates the decision to the campus vice president for student affairs if the respondent is a student and then to the appropriate campus vice president, assistant vice president, dean, or similar high-level administrative position, if the respondent is an employee.

During staff briefings with representatives from the UC, an emphasis was placed on the use of prevention education programming (or training) as a key tool in preventing sex discrimination on campus. The UC highlighted the multiple modalities by which they provide training to students, faculty, and staff; including, training that is trauma-informed for survivors of sexual assault.

Each of the 23 campuses of the CSU provide a variety of in-person and online prevention education training. Prevention education materials are provided by both segments to faculty, staff, and students at various points throughout the year. Both the UC and CSU have staff whose work portfolios includes the prevention and education programming that supplement the annual training required by the campuses.

Unique to the UC grievance procedure is the case management model, where multiple entities on campus such as police, confidential advocates, respondent coordinators, and the Title IX office work together to determine how best to address complaints when they are brought to the Title IX office. To address systemic sex discrimination, UC campuses are required to appoint a Coordinated Community Review Team (CCRT), composed of local community and campus partners; including student representatives. The CCRT's role is to act as an advisor to campus leadership on matters related to sex discrimination. Specifically, the CCRT provides a collaborative approach to preventing and addressing sex discrimination by providing best practices, education, prevention, and response to provide meaningful cultural transformation.

Furthermore, each UC has a stand-alone confidential advocate office that helps complainants understand their rights before and after a complaint is filed. The confidential advocates connect complainants to support services, such as mental health counselors, basic needs provision, and academic supports. The UC also has respondent services for those who are alleged to have violated the university policies. The respondent coordinators are available to anyone who faces a sexual, behavioral, or academic misconduct violation. The purpose of the coordinators is to provide referrals to on-campus or off-campus resources and to help the respondent understand the grievance procedures (adjudication procedures). Each CSU campus has at least one confidential advocate, but they do not have designated respondent services.

A July 2023 audit report by the California State Auditor found that the CSU did not provide campuses with sufficient and uniform guidance on how to interpret and apply the CSU's nondiscrimination policy to address allegations of sexual harassment and discrimination (California State Auditor, 2023). Absent uniformed guidance and a complex multi-layered policy, CSU campuses are left to apply the policy in an ad hoc manner, which has led to various interpretations of the policy and various outcomes of complaints. The Auditor also found that not

every case was sufficiently investigated and addressed, leaving the complainant in a place of uncertainty and potentially in the vicinity of their perpetrators (California State Auditor, 2023).

EDC section 66292.1 places the responsibility of preventing sex discrimination on campus with *both* the CSU Chancellor's Office and the presidents of each campus. Therefore, since the CSU Chancellor's Office acts as the oversight body of the CSU for other policies, one could assume the CSU Chancellor's Office actively monitors incidents on campus to assist presidents. In 2022, the CSU hired an independent law firm, Cozen O'Connor, to conduct an independent assessment of how the CSU handles sex discrimination complaints on campus, the report with findings was published in 2023. The Cozen O'Conner report found the CSU system does not adequately collect data in order to allow institution to track patterns to address trends of sex discrimination on campus (Gomez, p. 8). The State Auditor also found that although CSU Chancellor's Office had previously performed reviews of campuses' compliance with Title IX and CSU's sexual harassment policy, the CSU abandoned its effort in 2018 (California State Auditor, 2023). The CSU originally began performing the reviews to comply with recommendations from a state audit in 2014 (California State Auditor, 2014).

The UC tracks campus and systemwide data to ascertain and address patterns of sex discrimination on campus and throughout the system. Each of the CSU campuses maintains data which is tracked at the individual campus. None of the systems consistently conduct campus climate surveys to determine how students, faculty, and staff feel about the policies in place and whether the system's policies have the intended outcome of creating a culture of inclusion and equity.

All three public higher education segments rely on the adjudication of complaints and prevention training as their primary tools for preventing sex discrimination on campus; and yet, sex discrimination continues to persist. Broader approaches focused on systemic remedies to address the root cause of sex discrimination should be implemented. In conversations with several Title IX coordinators, it became evident that they feel the weight of responsibility of addressing sex discrimination on campus before it results in an incident that harms students, staff, or faculty.

Addressing misconduct that does not arise to the level of sexual harassment or sex discrimination is a preventative step that Title IX coordinators do not feel equipped to address. The 2023 State Auditor's report on the CSU addressed this issue by stating unprofessional conduct that is questionable should be addressed by the institution's policies before the behavior escalates and harms the campus community (California State Auditor, 2023). As one CCC Title IX coordinator candidly expressed, their role is to help students feel whole and sometimes this means addressing cultural incompetency on campus, yet the current policy only permits them to address complaints of specific incidents instead of addressing the root issue as to why a complaint was filed (Martinez).

WHAT IS THE STUDENT, FACULTY, AND STAFF EXPERIENCE WITH THE PUBLIC HIGHER EDUCATION SEGMENTS' POLICIES ON PREVENTING AND ADDRESSING SEX DISCRIMINATION ON CAMPUS?

The lack of attention to the broader campus climate and cultural competency has left many issues unresolved on CCC, CSU, and UC campuses. This in turn has resulted in a culture of resentment and distrust between the administration and the students, faculty, and staff on campus. The prevailing message from students, staff, and faculty is that current policies of the CCC, CSU, and UC do not protect survivors and instead are used to protect the institution from lawsuits. To further gain a better understanding of this erosion of trust, Committee Staff took meetings with students, faculty, and staff from the CCC, the CSU, and the UC.

In a survey conducted by the Faculty Association of the CCC (FACCC), a concern was raised regarding the level of knowledge and familiarity students have with Title IX and the college's nondiscrimination policies. Faculty felt students are not adequately informed of what constitutes sexual harassment and sex discrimination and therefore, students often file complaints that amount to academic grievances, not discrimination grievances. FACCC stressed the need for there to be proactive and ongoing training for students to help them understand what constitutes sex discrimination and the role the Title IX office plays in adjudicating complaints.

As mentioned previously, the CCC is a decentralized system with no universal policy on how sex discrimination complaints are to be processed. FACCC stressed the need for a standardized sex discrimination policy and procedure that is the same across all 73 community college districts. To quote FACCC, "Our primary issue is the need for standardized Title IX policies and procedures across community college districts. With faculty often teaching across multiple districts and systems of higher education, clarity and consistency in processes are paramount for students and faculty when filing complaints" (Personal Correspondence, January 12, 2024).

The confusion FACCC mentions above is not solely due to local control and the ability to have 73 different policies (one for each district), the confusion also lies with the multiple, overlapping, and complex laws that govern sex discrimination prevention for community colleges (Title IX, California Education Code, Federal Violence Against Women Act, The Civil Rights Act, and Title 5 regulations). While the California Community College League does have policies that help community colleges understand the labyrinth of laws, colleges must pay for this service, and even with the templates provided, nothing prevents the community college district from omitting sections or adding sections to the policy to suit the interpretation of the local governing board.

The final concern raised by FACCC is the reluctance of colleges to terminate employees who are found to have violated Title IX or the college's nondiscrimination policies. Like their CSU and UC counterparts, the CCC uses settlements as an alternative to termination. While this cycle of passing the harasser, removes the offending party from the campus, it also further erodes the trust in the process to be judicious and fair. These settlements only occur for employees who then go on to find work elsewhere; whereas, students are issued disciplinary sanctions that can incur economic impacts due to their inability to receive further education elsewhere.

Student representatives from the Student Senate for the California Community Colleges (SSCCC), confirmed that not only are the policies governing sex discrimination are confusing to students, but the lack of training has left many CCC students unaware of protections provided to them by both Title IX and the college's nondiscrimination policies. Not only are the policies confusing to students, but it is difficult for them to reach the designated person to issue a complaint due to the Title IX coordinators often covering multiple campuses.

Student representatives further asserted the support services available on campus are minimal and do not truly help restore access to educational equity. The dominant perception from CCC students is that current policies fail students since violators of the policy seem to return without recourse.

Students from all three public higher education segments shared personal stories of instances where complaints were filed, investigations concluded with a finding of responsibility, and the responsible party continued to be employed even after a violation was found to have occurred. Permitting employees to return to work without an explanation has led to a deep level of mistrust between students and the administration at all three public higher education institutions.

Students believe the policy protects everyone but them;

Staff believe the policy protects faculty and administrators; and,

Faculty believe the policy protects administrators and the institution.

Students at the CSU described a culture where they feel their voices do not matter to the collective leadership of the CSU. Student leaders, who represent the over 400,000 students at the CSU, described multiple occasions where they had to fight for their voices to be heard on campus and during Board of Trustees meetings. For example, the representatives from Cozen O'Connor originally conducted initial campus visits during the summer months of 2022 when faculty and staff were not available. The initial visits were designed to understand university policies, structure, and how campuses were implementing practices to prevent sexual harassment. However, concerns were raised by both faculty and students that their voices should be included at every phase of the 2022-2023 Cozen O'Connor assessment and not just when the law firm elicited feedback on the CSU's policies. During

an August 31, 2023, Joint Legislative Committee Hearing, student representatives expressed the solutions presented by the Chancellor's Office and the Board of Trustees as solutions to sexual harassment on campus, were not student-centric and lacked meaningful student input (California State Legislature).

CSU classified staff also lack confidence in not just the leadership of the CSU, but the Legislature to address sex discrimination on campus. The California State University Employees Union (CSUEU), which represents the 16,000 support staff of the CSU, explained that past Legislatures have held hearings on how to prevent sexual harassment on CSU campuses. One CSUEU representative demanded to know what would be different this time, as they recalled how past Legislative engagement had not rectified the matter.

When asked if the recommendations in the 2023 Cozen O'Connor report were enough to protect staff and students, the resounding response from CSUEU representatives, was that the report does not alleviate the belief that the CSU will protect the institution at the expense of students and staff. The California Faculty Association (CFA), which represents CSU faculty, echoed many of the sentiments listed above regarding the lack of trust in the CSU Chancellor's Office to change course and offer policies that protect all faculty, students, and staff from discrimination. CFA also expressed in the August 2023 Joint Legislative Audit hearing, how the current policies

and procedures focus on rendering judgment rather than helping the survivor (California State Legislature).

A similar breakdown of trust was documented by the Survivors + Allies 2021 Survey of the UC Community. In 2020, a student-led collective surveyed students across the UC system to establish a feedback loop on whether students were aware of the various entities on campus that can help survivors of sexual violence and sexual harassment. Specifically, the survey asked about Title IX, Campus Assault Resources and Education (CARE), Counseling and Psychological Services, and the UC Police Department. The survey produced several key findings:

1. *Students lack an overall awareness of the resources available to them on campus, despite the in-depth educational program on UC campuses.*
 - a. 68% of surveyed students had heard of CARE;
 - b. 32% of students did not know international students were covered by Title IX;
 - c. 38% did not know undocumented students were covered by Title IX; and,
 - d. 36% of students thought reporting to the Title IX office was confidential, meaning that the coordinator was not required to act upon the information provided.
2. *Students are not comfortable reporting to the UC Police Department.*
 - a. 70% of students who self-identified as LGBTQ+ felt uncomfortable reporting an incident to the UC Police Department; and,
 - b. 52% of students who identify as heterosexual were uncomfortable reporting an incident to the UC Police Department.
3. *Survivors reported negative experiences with Title IX.*
 - a. Survivors reported they found the process lengthy, confusing, and inequitable; and,
 - b. Only 30% of students surveyed indicated they felt safe interacting with Title IX staff compared to 80% who felt safe interacting with CARE staff.

“Title IX, at the end of the day they still had my abuser living in the same dormitory as me. They really ended up doing nothing for my safety except for offering me a no contact order”- Quote from a UC Santa Cruz undergraduate student provided by the Survivors + Allies survey

In conversations with faculty, staff, and students from the three public postsecondary institutions, Committee Staff asked if the State should consider establishing an office where complaints could be evaluated by a neutral third party. With the exception of the UC Academic Senate, every group resoundingly agreed on the need for additional oversight and regulation due to the mistrust in the higher education institutions' ability to address sex discrimination.

HOW MANY STAFF ARE NECESSARY TO ADDRESS SEX DISCRIMINATION ON CAMPUS?

Federal Title IX regulations require every recipient of federal funding to have a Title IX coordinator. The number of staff assigned to a Title IX office varies by campus and by segment. Training provided to the Committee Staff by *Institutional Compliance Solutions, LLC*, suggested

that each campus-based Title IX office should at the bare minimum have: a Title IX coordinator, an investigator, and an informal resolution officer. Furthermore, each campus should have an identified hearing officer, who is independent of the Title IX office, who is trained in the grievance procedures and State/Federal law regarding the adjudication of sex discrimination complaints. Standards of best practice suggest the hearing officer not be a member of the Title IX office to prevent a claim of collusion between the office and the impartial hearing officer when a finding is determined after a hearing.

To determine the number of staff required to operate a sufficient Title IX office, Committee Staff reviewed multiple sources including the U.S. Department of Justice Civil Rights Division's *Resolution Agreement between the United States of America and San José State University* (U.S. Department of Justice, 2021). On page 7 of the agreement, the U.S. Justice Department asks the campus to sufficiently fund the Title IX office to maintain qualified Title IX personnel including a Title IX coordinator, a deputy Title IX coordinator, a minimum of two Title IX investigators, and one administrative assistant. The resolution further states, that the Department will assess after one year whether additional staff or resources will be recommended to support the Title IX office based on the workload and need. The other requirement in the resolution was for the Title IX office to be centrally-located, physically on-campus in a location that provides a private space for students and employees to meet with the Title IX office staff.

Due to the lack of available staff, CCC and the CSU have opted to outsource portions of the grievance procedure to law firms. The 2023 State Audit of the CSU found the CSU used outside investigators (law firms) to assist in investigations (California State Auditor, 2023). The State Auditor found investigators were not always aware of the CSU nondiscrimination policy which led to the premature closing of complaints that perhaps should have been investigated (California State Auditor, 2023). The CCC also permits the hiring of outside law firms to assist in the adjudication of complaints. Committee Staff learned of one community college that was so overwhelmed by complaints and that it chose to hire a law firm to adjudicate the complaints.

Title IX permit the hearing officer to be a person employed by either the campus or within the higher education system. Both the CSU and UC rely on outside hearing officers for student cases, but neither precludes the use of internal hearing officers. Both systems require the hearing officers to be trained in both the institutions' and Title IX grievance procedures. While the hiring of outside hearing officers is a method that removes institutional bias from the hearing process, outside hearing officers are extremely expensive to employee. One CSU campus reported spending more than \$50,000 in the first three months of the academic year on hearing officers.

Title IX offices should not be the only "staff" assigned to preventing discrimination on campus. A 2017 report, *Addressing Gender-Based Violence on Campuses: Guide to a Comprehensive Model*, recommends that all campuses establish a "Coordinated Community Response Team" (Campus Technical Assistance and Resource Project). A Coordinated Community Response Team is activated to serve as a working group that focuses on providing a more coordinated and collaborative response to gender-based discrimination (Campus Technical Assistance and Resource Project, p. 16). The membership of the Coordinated Community Response Team includes confidential advocates, campus police, the Title IX office, mental health counselors, faculty and student representatives, campus administration, and on-and-off-campus resources

that oversee the prevention or adjudication of incidents of gender-based violence. A successful Coordinated Community Response Team does the following:

1. Engages key partners on and off-campus to develop and oversee all aspects of the campus response to gender-based discrimination;
2. Ensures that all campus policies are aligned with State and Federal laws;
3. Develops goals, strategies, and messaging to prevent gender-based discrimination;
4. Facilitates communication between on-campus and off-campus resources to help the campus respond to gender-based discrimination;
5. Ensures the campus response to survivors is seamless; and,
6. Ensures all policies and frameworks are culturally relevant and survivor-centered (Campus Technical Assistance and Resource Project).

Committee Staff note as mentioned on page 9 of this report, the UC has adopted a team similar to the Coordinated Community Response Team as described above.

SHOULD COLLEGES AND UNIVERSITIES HAVE CONFIDENTIAL ADVOCATES AND RESPONDENT COORDINATORS?

Confidential advocates provide a continuum of care for survivors and play an integral role in restoring educational equity after a discriminatory event. Confidential advocates are the key architect in building a blueprint for a survivor's recovery as they are responsible for connecting the survivor with on- and off-campus resources to help facilitate healing after the alleged incident.

Addressing Gender-Based Violence on Campuses: Guide to a Comprehensive Model, establishes confidential advocates as the first line of action when it comes to helping survivors determine the next steps. In addition to connecting survivors to comprehensive care services, confidential advocates assist survivors in navigating the difficult choices of reporting in a manner that leaves the survivor empowered to choose what is best to meet their individual needs (Campus Technical Assistance and Resource Project). Confidential advocates provide trauma-informed, inclusive, emotional support by helping survivors connect with services such as access to health care and counseling.

Not Alone, the first report by the White House Task Force to Protect Students from Sexual Assault, determined a key best practice in responding effectively when a student is sexually assaulted, is for every campus to have a confidential victim advocate who can provide emergency and ongoing support to the survivor (The White House, 2014). The state of Texas goes a step further by not only requiring higher education institutions to have confidential advocates, but Texas also requires higher education institutions to employ students as confidential advocates to encourage reporting (Texas Higher Education Coordinating Board, 2023).

A task force created by the Massachusetts Board of Higher Education published a report with best practices for campus safety and violence prevention, which included a recommendation to provide support services to both survivors of sexual violence and those who are accused (Massachusetts Commissioner of Higher Education, 2016). Both parties will need help through the grievance process, and both may need access to support services such as counseling and

academic support. The report also suggests the institutions examine the impact of the sex discrimination incident and offer confidential advocates to those impacted by the discriminatory incident; such as roommates, teammates, classmates, fraternity brothers or sorority sisters, friends, professors, coaches, and others who may have been impacted by having witnessed or learned of the incident (Massachusetts Commissioner of Higher Education, 2016).

ARE THERE IDENTIFIED BEST PRACTICES FOR GRIEVANCE PROCEDURES?

Every public higher education segment in California has a different procedure for handling complaints of sex discrimination on campus. While each may have an intake process, investigation process, and hearing process, all three segments take a different and often winding path to resolve complaints. Each adjudication process is lacking in guidance and oversight at various steps in the process to reinforce equitable treatment of the complainant and respondent. Equitable treatment is defined by the State and Federal Court system as due process. Throughout the history of Title IX, court cases have provided “best practices” to help campuses understand how complaints should be adjudicated.

In 2019, the California Court of Appeals overturned a Title IX disciplinary decision by the University of Southern California (USC) because the university denied the plaintiff the right to due process. The court overturned the ruling because the investigator and the decision maker (the person who determines whether a complaint occurred or not) were the same person. This was a concern because essentially the prosecutor, judge, and jury were all the same person (Doe v. Allee, et al., NO. B283406, California Court of Appeals. Jan. 4, 2019). Having multiple people examine the evidence and determine fault is a safeguard that ensures due process and prevents institutional bias against a complainant or a respondent from occurring.

Having checks and balances throughout the adjudication process that ensures implicit bias or one’s harsh interpretation of what constitutes sexual harassment, is not the determination of whether a complaint moves through the adjudication process. The State Auditor found that some complaints at the CSU were either dismissed too early due to an unreasonable definition of sexual harassment (California State Auditor, 2023). As a result of its findings, the State Auditor recommended the CSU Chancellor’s Office create a procedure by July 2024 to require a documented review and approval of the investigative reports and the outcomes of each report of sexual harassment (California State Auditor, 2023). The suggested safeguard above should be applied to every phase of the adjudication process to ensure implicit and confirmation bias do not influence the outcome of complaints.

Another safeguard to ensure due process rights for both parties is the right to an appeal. Complainants and respondents should have the right to appeal at each phase of the process and the right to review written justification from the Title IX office as to why their case was closed. All three public higher education institutions contain appeal opportunities for faculty, staff, and student respondents and complainants.

For three years, Committee Staff have heard of concerns regarding the Federal Title IX regulatory requirements for hearings for all complaints of sex discrimination. Currently, Title IX requires a hearing after the investigation phase concludes. The hearing can be traumatizing for victims as they are required to “face” their alleged perpetrator. The Title IX regulations are

explicit that the hearing must be live and include an opportunity for both parties (the respondent and complainant) to cross-examine witnesses (Code of Federal Regulations, Title 34, Subtitle B, Chapter 1, Part 106, Subpart D). The California Sex Equity in Higher Education Act tried to limit the requirement for a hearing to cases where the credibility of the complainant and respondent was in question (EDC Section 66281.8). In proposed regulations, issued by the United States Department of Education in 2022, a hearing would only occur if (1) it is part of the institution's grievance process and/or (2) is used to help assess the credibility of the respondent, complainant, or witnesses of the complaint (U.S. Department of Education, 2022).

In trainings provided by *Institutional Compliance Solutions LLC*, legal experts provided a briefing on national judicial trends. Among the trends, was the occurrence of cases appearing before state and federal courts as to whether the higher education institution's grievance procedures were "fundamentally fair" and "consistent with a student's reasonable expectations." Therefore having training on the policy process with clear guidance on when a hearing "will or will not" occur can help prevent litigation that could overturn a campus' decision culminating in further distrust in the campus' handling of complaints.

One of the methods by which campuses could help ensure due process would be to require hearings for specific alleged acts of sex discrimination and to provide guidance on the types of disciplinary sanctions that should be enacted for specific categories of sex discrimination. This would eliminate confusion and help provide systemwide guidance for how to adjudicate sex discrimination complaints.

WHAT PREVENTS A RESPONDENT FROM BEING HIRED OR ENROLLED IN ANOTHER HIGHER EDUCATION INSTITUTION IF THEY ARE FOUND TO HAVE ENGAGED IN SEX DISCRIMINATION?

In a fifty-state comparison published by the Education Commission of the States on campus-based sexual misconduct policies, only seven states require higher education institutions to include a transcript notification when a student is found to have violated the campus's nondiscrimination policies (Education Commission of the States, 2022). While California does not have a law requiring that disciplinary sanctions be recorded on a student's transcript, both the CSU and the UC have internal policies to require a notation on a student's transcript if the student was suspended or expelled. This notation follows the student in perpetuity as there is no requirement for its removal, and most higher education institutions require a student to submit their transcript before approval of enrollment.

The National Academies of Science, Engineering, and Mathematics, established an action collaborative on preventing sexual harassment in higher education. A working group from within the collaborative explored how to resolve the concept of "passing the harasser" that occurs in higher education when a harasser quietly resigns from one institution only to be hired by another. A paper published under the auspices of the National Academies found that there is no universal system where institutions of higher education share information on faculty members who are found under investigation or are found responsible for sex discrimination (Serio, et. al, 2023). The paper explored how two entities, UC Davis and the State of Washington have implemented policies to help prevent the "passing of harassers" from one institution to another. AB 1844

(Medina) of 2022 would have codified the State of Washington’s policies; however, the bill was held under submission in the Assembly Appropriations Committee. AB 810 (Friedman) of 2023 - 2024 Legislative Session, would codify and expand upon the UC Davis model for the hiring of tenured faculty. At the time of the publication of this report, AB 810 (Friedman) resides on the Assembly Floor.

Investigations conducted by *EdSource* found that multiple faculty at various CSU campuses were able to retain employment despite having violated the CSU’s nondiscrimination policies at other CSU campuses. After the faculty resigned from “Campus A” they were able to be employed by “Campus B” (Peele, et. al., 2022). The *Los Angeles Times* reported that a former CSU professor, who was found to have violated the CSU’s nondiscrimination policy and settled with the campus, was working at a community college near the CSU campus where the incident occurred (Timmko, A., 2022). In 2023, SB 791 (McGuire) Chapter 415, Statutes of 2023; required all campuses of the CCC and the CSU, and requested campuses of the UC to ask whether the applicant for an academic or administrative position has committed sexual harassment at their previous place of employment within the last seven years. While the bill is an excellent first step, it does not address a key loophole in the campus grievance procedures, which according to *The Chronicle of Higher Education* is exploited by legal experts:

“We advise people when there’s an allegation to get out and start looking for a new school before there is a finding. We don’t have a lot of faith in the ability of schools to conduct fair investigations,” said Joshua A. Engel, a lawyer who represents faculty members and students accused of harassment. Engel has also taught criminal law and consulted with the federal government on Title IX matters” (Brown & Mangan, 2019).

The hesitancy to share information between higher education institutions may reside in the fear that the sharing of information could lead to employee lawsuits or litigation should the disclosure request process fail to catch repeat harassers. To shield the institution from liability, institutions should consider a two-part response: (1) require that the applicants in the final stages of the hiring process sign releases allowing prior employers to respond to disclosure requests; and, (2) require that if a history of misconduct is discovered during employment, the campus will have grounds for dismissal.

WHY ARE THE GRIEVANCE PROCEDURES DIFFERENT FOR EMPLOYEES OF THE PUBLIC HIGHER EDUCATION INSTITUTIONS?

Grievance procedures at every public higher education institution differ based on whether the respondent is a student or an employee. In the case of the CSU nondiscrimination policy, for certain sexual harassment complaints (non-federal complaints) respondents who are employees are not provided hearings, this is known as Track 3 in the CSU policy. This track can also be used for student respondents for specified cases. The CSU is the only system that does not require a hearing for employees for non-Title IX complaints. *Committee Staff note it is possible to have a sex discrimination complaint that does not qualify under Federal Title IX laws but could qualify under either California law or the institution’s policies as potential misconduct.*

Disciplinary sanctions are another area where grievance procedures differ. After the nondiscrimination policy related appeals are exhausted, the only avenue available for a student

respondent to overturn a disciplinary sanction is to sue the college or university. The disciplinary sanction remains in effect until overturned by a court of law. However, faculty and staff are afforded an additional appeal process known as a “Skelly hearing.” This process is not required by Federal Title IX regulations.

The California Education Code and the institution’s employee collective bargaining agreements dictate how the Skelly hearing is to transpire. On a basic level, a Skelly hearing is in place to provide employees due process when a disciplinary sanction is levied against them by their employer. For non-sex discrimination cases, a Skelly hearing is often the first opportunity for an employee to appeal a disciplinary sanction and provides them their first opportunity to examine the evidence being used to warrant the sanction. In the case of sex discrimination complaints, Skelly hearings offer a rehearing of the case before a Skelly hearing officer who then renders a final verdict. For the UC, their policies and procedures also include a version of a Skelly hearing or a secondary hearing process before a Skelly hearing officer.

Essentially an employee can have a hearing with a neutral hearing officer on whether the sex discrimination complaint occurred, have a disciplinary sanction levied against them, request a Skelly hearing, and then have their case re-litigated before a Skelly hearing officer.

Every Skelly hearing provides the employee the right to re-examine the evidence against them (or the reason for the disciplinary sanction), has the right to representation (of their choice), and is provided a hearing before a Skelly hearing officer.

To be clear, the Skelly hearings described above only occur after the employee has exhausted all other appeal opportunities afforded to them by the institution’s grievance procedures and/or Title IX procedures.

In the Joint Legislative Audit Committee hearing on August 31, 2023, concerns were raised by representatives from Cozen O’Connor and the CSU Vice Chancellor for Human Resources that disciplinary sanctions are often overturned by the Skelly hearing process as described above (California State Legislature). In briefings with student representatives from all three segments, it was expressed to Committee Staff how unfair the Skelly hearing process is to the campus community. Specifically, students found the process deeply unfair to survivors who are often re-exposed to their alleged perpetrator without any warning after the alleged perpetrator’s return due to the Skelly hearing overturning the campus’ findings and sanctions.

Committee Staff acknowledge that faculty and staff respondents are provided additional protections under the law when compared to students. The California Supreme Court ruled in *Skelly v. State Personnel Board* (1975) 15 Cal. 3d 194., that a civil service employee was denied his due process rights and the Skelly hearing process evolved from the outcome of the case. Due

For purposes of this report, “Skelly hearing officer” refers to either an arbitrator, administrative law judge, State Personnel Board, a committee comprised of faculty, or any other designee as required by either a collective bargaining agreement or the Education Code.

The Skelly hearing officer will review the disciplinary sanction suggested by the institution and determine if it is to be upheld.

to this understand and despite the acknowledgement of the unfair process of affording an additional appeal to faculty and staff respondents, Committee Staff cannot recommend the removal of safeguards intended to provide due process rights for faculty and staff.

Union representatives have argued the Skelly process is essential as employees are permanent long-time members of the campus community and have vested interest in staying at the college or university where they are employed; whereas, students are only present on campus for a finite period of time. However, one could argue the lasting impact of a disciplinary sanction depending on the severity could have the same economic impacts on a student as an employee. Unlike employees, whose employment records are often not shared with future employers, students are required to share their transcripts with future higher education institutions they attend and there are policies requiring demarcations on transcripts of disciplinary sanctions.

The Skelly hearing afforded to faculty and staff is a re-litigation of the entire complaint. Complainants are not required to provide testimony during the Skelly hearing unless they are summoned by the Skelly hearing officer. Committee Staff learned that the investigative reports issued by the campuses of the CSU and CCC are not always reviewed during the Skelly hearing. Instead, the Skelly hearing officers will focus on whether there was sufficient evidence for a finding of a violation, whether the disciplinary sanction fits the violation, and whether the institution showed bias towards the employee. After a Skelly hearing issues its ruling, the decision is legally binding and the campus must adhere to the decision. Furthermore, Skelly hearing officers are not trained in Title IX nor are they trained in campus adjudication procedures.

Mandating training for Skelly hearing officers and, for specific cases of sex discrimination, having the Skelly process mirror other appeal processes, would provide a fair and equitable process while affording faculty and staff their due process rights.

WHAT ARE SETTLEMENTS AND WHEN ARE THEY USED?

According to public higher education segments, campuses will often settle with the employee respondent to avoid the overturn of a disciplinary sanction by a Skelly hearing.

In December 2022, *EdSource* reported on a Chico State professor who was investigated for having an inappropriate sexual affair with a graduate student. Although the professor violated the CSU's policy, "'Chico State opted for a light discipline fearing anything harsher could have been overturned in arbitration since the student did not complain and the affair was consensual', said Andrew Staples, Chico State spokesman in a statement" (Peele, T, 2022). The settlement included a suspension and the exclusion of the investigation from his personnel file (Peele, T, 2022). The professor was reinstated, promoted to a tenured position, and received an award as an Outstanding Professor the year after the investigation.

After being reinstated, the Chico State professor allegedly harassed and made threatening comments toward the colleagues who originally reported his affair with the student (Peele, T, 2022). When the threats were investigated, despite finding him a potential threat to campus safety, the professor was once again re-instated. Female professors in the same department have stated they left Chico State out of fear for their lives (Peele, T, 2022). *Committee Staff note the*

above information was taken from news articles on the incident and is not reflective of the pending personnel actions based on the outcome of the ongoing investigation by the CSU Chancellor's Office into this incident.

In California, there are no State laws that govern the contents of settlements as described in the text box. Settlements can include monetary payouts, retreat rights, conditions for letters of recommendation, and removal of paperwork from the employee's file. In the *USA Today* report on Chancellor Castro's mishandling of sexual harassment complaints, CSU Fresno settled with its Vice President of Student Affairs Frank Lamas, and provided Mr. Lamas with a payout of \$260,000 and a letter of recommendation, in order to remove him from the campus and prohibit him from working in the system in the future (Jacoby, K, 2022). When the article was made public, the outrage from students, faculty, staff, the general public, and the Legislature led to the resignation of then-Chancellor Castro, who is now a professor at California Polytechnic University, San Luis Obispo.

CSU indicates the actions of former Chancellor Castro when he was the President of the Fresno State were aligned with the CSU's nondiscrimination policy. While his actions demonstrated a clear bias towards his friend and colleague, the failure to hold a known harasser accountable lies with the system as a whole.

Committee Staff understand that the systemwide governing boards of the CSU and the UC are unaware of settlements and have delegated the authority of approving settlements to the systemwide office.

Committee Staff note the CSU Board of Trustees and the UC Board of Regents approve the annual budget for the system (including its campuses) as well as the annual budget requests on behalf of the system to the State.

WHAT ARE THE POLICIES GOVERNING “RETREAT RIGHTS” AND LETTERS OF RECOMMENDATION?

Since the initial *USA Today* article in 2022 as referenced above, concerns have been raised regarding settlements, retreat rights, and letters of recommendation. During the August 31, 2023 Joint Legislative Audit Committee Hearing, members of the Legislature expressed ongoing concern with the CSU's policies for letters of recommendation and retreat rights, despite recent edits (California State Legislature, 2023). Retreat rights are only provided to tenured faculty and are generally used to encourage faculty to take administrative positions. Retreat rights are meant to be an incentive to help encourage faculty to leave the security of tenure and undertake administrative posts throughout the CCC, CSU, and UC. Retreat rights are collectively bargained and once granted are available to the grantee unless they are dismissed for cause.

Settlements are a form of informal resolution used by campuses to settle with faculty and staff prior to a disciplinary sanction being levied.

Settlements are often used if it appears that the employee is hostile towards the institution and is likely to either sue or appeal and require a Skelly hearing that could result in an overturn of the disciplinary sanction.

To be clear, the tolerance of sex discrimination by permitting employees with violations to receive perks like letters of recommendation and retreat rights is not only unfair to the survivors but demonstrates a greater concern that the colleges and universities are deliberately indifferent to complaints of sex discrimination on campus.

Retreat rights are an agreement between the tenured faculty and the institution, which permits the faculty member to return to their teaching position. It is worth noting that becoming an administrator is a promotion and often includes benefits and salary compensation not available to tenured faculty.

Colleges and universities should be doing everything within their power to prevent sexual harassment and discrimination on campus as the Ninth Circuit determined in *Karsek v. Regents of the University of California* 956 F.3d 1093 (9th Cir. 2020), that a campus could be held liable if it maintained a policy of deliberate indifference to particular incidents of harassment which heightened a risk of sexual harassment, and a future plaintiff was harassed as a result.

DOES THE STATE OR THE FEDERAL GOVERNMENT PROVIDE FUNDING FOR THE IMPLEMENTATION OF NONDISCRIMINATION LAWS?

Federal Title IX regulations only apply to higher education institutions that receive federal funding including federal financial aid. The Federal government does not provide funding to assist institutions in their compliance with the laws. During the Obama Administration, there were several grants available through the U.S. Department of Justice for campus climate surveys; however, this practice ended with the next administration. The California State Budget does not provide ongoing allocations of funding to address sex discrimination on campus. As mentioned previously in this report, the California State Legislature ties compliance with sex discrimination laws to the receipt of general fund allocations and the receipt of state financial aid. Committee Staff note a one-time allocation of \$1 million was provided to the CSU in the 2023-2024 California State Budget to help augment the cost of Title IX investigations.

CONCLUSION AND RECOMMENDATIONS TO ADDRESS AND PREVENT SEX DISCRIMINATION ON CAMPUS.

In the fall of 2021, the Chair of the Assembly Higher Education Committee directed Committee Staff to examine how the State could best assist higher education institutions adhere to State and Federal law regarding the prevention of sex discrimination on campus. Since that time, Assembly Higher Education Committee have spent over 400 hours participating in training, researching, reading reports and dissertations, and listening to experts, students, staff, and faculty from the California Community Colleges, California State University, University of California, and Association of Independent California Colleges and Universities (AICCU).

Drafts of this report were provided to the CCC, CSU, UC, California Federation of Teachers, Faculty Association of CCC, California Faculty Association, CSU Employees Union, UC Student Association, Student Senate for the CCC, and Cal State Student Association for

technical feedback on both content of the report and recommendations. The Committee's intent is to work with all segments and stakeholders as partners to improve the process of preventing sex discrimination on campus and therefore, the final report incorporated feedback and content from the organizations mentioned above.

The recommendations within this report represent a pathway forward for the Legislature to partner with higher education institutions to assist in the fulfillment of the promise to provide educational programs free from sex discrimination for students and employees.

Statewide Recommendations:

Recommendation 1 – Provide ongoing funding for the CCC, CSU, and UC to prevent and address sex discrimination on campus. To determine the cost, it is recommended that an oversight hearing of the Budget Subcommittees on Education Finance in both the California State Senate and the California State Assembly to determine the cost to implement all the recommendations of this report.

Recommendation 2 – The Committee recognizes that best practices from multiple would suggest the creation of a statewide office to provide guidance and to monitor the compliance of postsecondary education institutions with sex discrimination laws. However, the State of California does not have a Postsecondary Education Coordinating Board, nor a Department of Higher Education; therefore it is difficult to suggest the creation of such an office due to the start-up cost. In the absence of a statewide board, the following is recommended:

- 1) A task force should be commissioned to examine the need for a *Statewide Office of Compliance and Oversight* for the prevention of sex discrimination on campus;
- 2) The jurisdiction of the California Civil Rights Department should be expanded to include the adjudication of appeals of all (student and employee) complaints of sex discrimination on postsecondary education campuses; or,
- 3) The state creates or reinstates a higher education oversight entity and establishes within the entity an office to assist in the monitoring of the adjudication of complaints of sex discrimination.

Recommendation 3 – Due to an article on a Federal Title IX exemption received by Baylor University, concerns were raised regarding the ability of religious institutions to exempt themselves from compliance with both Federal Title IX and the California Sex Equity in Education Act. To ensure all students are aware of their rights regardless of their chosen postsecondary education institution, the California State Aid Commission should be required to annually inform students, who receive financial aid, if their postsecondary education institution has an exemption on file with the Commission.

Recommendation 4 – Have an annual compliance report presented by the Leader of each public higher education institution and the Chair of each institution's governing board. The report will be presented to the Budget Subcommittees on Education Finance in both the California State Senate and the California State Assembly. The compliance report will provide a state of the

system address detailing to the Legislature how the public higher education institutions are complying with state and federal law to prevent sex discrimination on campus.

Recommendation 5 – Require all settlements at the CCC to be approved by the chief executive officer of the campus and the local governing board. Require all settlements at the CSU to be approved by the CSU campus president and the CSU Board of Trustees. Require all settlements at the UC to be approved by the UC campus chancellor and the UC Board of Regents. Limit the use of settlements to require the removal of respondents from the campus and system and to require a notification of non-rehire in the employee’s file.

Recommendations 6 – Prohibit the use of retreat rights for employees who are found to have violated the public higher education institution's nondiscrimination policy and/or rules of conduct for employees. Prohibit the use of letters of recommendation for employees who are found to have violated the public higher education institution's nondiscrimination policy and/or rules of conduct for employees.

Recommendation 7 – Require the CCC and the CSU, and upon the condition of receipt of the general fund, the UC to report to the Legislature on their actions to prevent and address sex discrimination on campus.

Recommendations 8 – Examine the existing Education Code to require Skelly hearings to do the following:

- i) In the examination of a case involving a sex discrimination violation, permit the complainant an opportunity to provide written testimony that includes, but is not limited, to how the reversal of the disciplinary action will impact them;
- ii) Require the Skelly hearing officer to examine the hearing report (if one is done) and the investigative report as evidence during the Skelly hearing.
- iii) Limit the overturn of a disciplinary sanction by the Skelly hearing for complaints involving a finding of sexual assault, sexual violence, sexual battery, domestic violence, dating violence, or sexual exploitation, to cases where procedural irregularity, institutional bias, or insufficient due process affected the outcome. If the case is overturned, permit the campus to re-adjudicate the complaint based on recommendations by the Skelly hearing officer.

Recommendation 9 – Amend the Education Code to comply with the pending federal Title IX regulations and best practices as identified in this report.

Recommendation 10 – Require all public higher education institutions to implement UC Davis’ policy conduct employment verification checks to determine if the applicant for an athletic, academic, or administrative position has any substantiated allegations of misconduct from their previous employer. AB 810 (Friedman) of the 2023-2024 Legislative Session aligns with this recommendation.

Recommendation 11 – Amend EDC Sections 66292, 66292.1, and 66292.2 to include the Board of Governors of the CCC, the CSU Board of Trustees, and the UC Board of Regents as one of the responsible parties for providing educational programs free from discrimination.

Recommendation 12 – Require the California State Auditor to audit the CCC, CSU, and the UC every three years on their handling of sex discrimination complaints.

Systemwide Recommendations:

Recommendation 1 – Each system should have a Systemwide Office of Civil Rights. The office is independent from the systemwide office and reports directly to the systemwide governing board. The office should have a systemwide Title IX coordinator and deputy coordinator. The office is tasked with the following:

- 1) Adopting one nondiscrimination policy for the entire system (including the CCC). The policy will include procedures for the adjudication of Federal Title IX complaints and complaints that align with the California Sex Equity in Education Act;
- 2) Adjudicating complaints against a campus president/chancellor/chief executive officer OR complaints filed against staff within the systemwide office, including those against the Systemwide chancellor (CCC and CSU) or president (UC);
- 3) Provides training for campus-based (CSU and UC) or district-based (CCC) Title IX offices;
- 4) Provides best practice guidance for the prevention of sex discrimination and the adjudication of complaints of sex discrimination;
- 5) Interacts with data provided by campuses (or districts CCC) to aid in the prevention of sex discrimination;
- 6) Develop and execute a comprehensive prevention education strategy that incorporates bystander prevention training, policy awareness training, and assault prevention training. The educational prevention strategy should adopt an approach of intersectionality that calls for a pursuit of culturally relevant programs and practices that name and meaningfully consider how students of various identities (such as race, gender identity, class, sexual orientation, and ability) interact with each other. The training should contain feedback loops to ascertain whether the training is having the intended effect;
- 7) The systemwide office will act as an appeal office for all sex discrimination cases that occur on campuses within the system;
- 8) Meets with all campus-based or district-based Title IX offices every three months to assess their compliance with state and federal law;
- 9) Developing a campus climate survey (in the case of the CCC a district-based climate survey) to be instituted every three years to provide a feedback loop as to how the campus community perceives the institution’s policies for the prevention of sex discrimination; and,
- 10) Provides an annual presentation on the state of the system to comply with sex discrimination laws and offer recommendations for improvement to the Systemwide Governing Board each year.

Recommendation 2 – Require the local governing board of the CCC and the systemwide boards of the CSU and UC to require an annual evaluation of each campus leader’s action plan to prevent and address sex discrimination on campus. The evaluation should be made available for public comment. These annual evaluations should be included as part of the consideration for performance and salary evaluations for the chief executive officers of the campus.

Campus Recommendations:

Recommendation 1 – Each campus of the CSU and UC should have a Title IX office that is centrally located and ensures the privacy of complainants and respondents. The office shall have at a minimum a Title IX coordinator, Title IX deputy coordinator, case manager, investigator, prevention education coordinator, and an administrative assistant.

Each CCC campus shall have a Title IX deputy coordinator (will intake cases and provide supportive measures) and a prevention education coordinator (will provide educational prevention training to the campus).

The staff of the Title IX office will have no other responsibility other than to prevent and address sex discrimination complaints.

Each CCC district will have at a minimum a Title IX coordinator, a case manager, and one investigator for each campus in the district. The role of the district office is to assist the campus-level office with the prevention of sex discrimination on community college campuses within the district.

Recommendation 2 – Each year the campus-based Title IX office and district-based Title IX office will provide a report to either the president (CSU), chancellor (UC), or local governing board (CCC) regarding the staffing capacity of the offices and whether additional personnel are warranted to meet the demands placed on the offices. The staffing evaluations shall be included in the annual report provided to the CCC local governing board and the CSU and UC systemwide governing board.

Recommendation 3 – Require each campus of the CCC, CSU, and UC to hire at least one confidential advocate and one confidential respondent coordinator. The advocates and respondents shall be housed in an independent office and shall be confidential by every standard under the law. Campuses are encouraged to hire students, in addition to the required advocates as listed above, who shall be confidential advocates for their peer students and shall be trained and certified as confidential advocates to provide the campus community with peer-confidential resources.

Recommendation 4 – Every three months the campus-based Title IX coordinator or district Title IX coordinator (CCC) will provide information on the campus's education prevention programming, adjudication of complaints, and trends/patterns of sexual harassment on campus to the chief executive officer (CCC), president (CSU), and chancellor (UC) of the campus. The same report will be provided to the Systemwide Title IX coordinator every three months. In the

case of the CCC, the district Title IX coordinator will also be required to provide information every three months to the local governing board.

The Committee note concerns were raised as to how the above recommendations could impact smaller and rural community college campuses and districts. The Committee is committed to working with these districts to find an outcome that allows for a fully staffed and operational Title IX office while addressing the unique needs of the districts.

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Committee Staff wish to acknowledge our human failings. The recommendations in this report are a starting point. Committee Staff are committed to continual education on how to best address sex discrimination on higher education campuses.

Finally, the Committee Staff wishes to collectively apologize to any survivors of sex discrimination for your experience. We thank you for coming forward and speaking truth to power. We acknowledge your voices and we believe you.

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