

California State University Title IX Update April 29, 2024

The California State University (CSU) is committed to fully implementing the Title IX and discrimination, harassment, and retaliation (DHR) recommendations made in the California State Auditor and Cozen O'Connor reports that were released in July 2023. While the scope of these reports differed, the recommendations from both were consistent with each other.

The State Auditor's timeline for their recommendations to be implemented ranges from July 2024 to July 2026, and the CSU plans to meet every deadline and update stakeholders as we do so. Our six-month report to the State Auditor was submitted in January and has been made public on their website. You can view the report [here](#). The next report to the State Auditor will take place at the one-year mark in July 2024 and will be made public once the auditor has reviewed it.

The collective recommendations fall into the following categories:

- Building Chancellor's Office infrastructure and increasing oversight of university Title IX and DHR programs
- Establishing systemwide standards
- Supporting university-led Implementation Teams
- Leading key initiatives, such as centralized reporting tools; a unified case management system; prevention, education, training, and professional development; establishing a Center for Investigations and Resolutions; and systemwide communications

Below are updates on some of our most recent steps toward fulfilling these recommendations since we last communicated with you in February.

Building Chancellor's Office Infrastructure and Increasing Oversight

Staffing of the Office of Civil Rights at the Chancellor's Office

- The CSU's new Office of Civil Rights is now being led by Associate Vice Chancellor Hayley Schwartzkopf, who joined the CSU in February. For the last seven years, Hayley served as the Title IX Coordinator and Director of Labor Relations at MiraCosta Community College. Hayley has also provided extensive advice and counsel regarding board policies, administrative procedures, personnel practices, and labor and employee relations issues throughout her career. Prior to joining MiraCosta, Hayley was an attorney who represented employees and private and public employers in discrimination, harassment, retaliation and wrongful termination cases.
- Recruitment is underway for the hiring of three systemwide directors, five civil rights attorneys, and two administrative support coordinators. We are excited to report that two of the three systemwide directors and two civil rights attorneys will be onboard by June 1. A third civil rights attorney will be onboard in July. These staff members will be assisting campuses with complex cases, safety planning, reviewing investigations and supporting the hearing process, as well as supporting the ongoing work of the campus Implementation Teams. Final interviews are underway for many of the remaining positions, and we anticipate that this team will be fully staffed by the fall.

Updating Systemwide Retreat Rights Policy

- At the CSU’s March 2024 Board of Trustees meeting, the trustees voted to amend the system’s option to retreat policy (more commonly called ‘retreat rights’) for tenured faculty members who become administrators. This policy update is based both on recommendations from the State Auditor and feedback from the Joint Legislative Audit Committee.
- The newly adopted policy now clarifies that:
 - All administrators, including, but not limited to, presidents, vice chancellors, and the chancellor, who have the option to retreat memorialized in their administrative appointment letter are subject to this policy.
 - An administrator who is involved in a misconduct investigation may not retreat while an investigation is ongoing. If an administrator is found to have violated CSU policy, they will not be allowed to retreat, even if their violation did not result in termination.
 - Any administrator who is found ineligible to retreat shall **not** be provided a positive reference or letter of recommendation.

Updating Systemwide Letters of Reference Policy

- Also, at the March 2024 Board of Trustees meeting, action was taken by the trustees to amend our systemwide letters of reference policy. An employee who is found to have engaged in sexual harassment in violation of the [CSU Nondiscrimination Policy](#) shall **not** receive a positive letter of reference regardless of whether they were separated from employment at the CSU as a result of that finding. Only a verification of employment may be provided.
- The newly adopted policy now clarifies that:
 - All references, personal (on behalf of the employee) or official (on behalf of the university) must be reviewed and authorized by the campus Human Resources and Faculty Affairs departments. Before giving authorization, those departments must consult with the campus Title IX/DHR office to ascertain whether the employee is the subject of a pending complaint or has ever been found to be in violation of the systemwide Nondiscrimination Policy.
 - No current or former CSU employee who is subject to a finding that they engaged in misconduct and were non-retained, terminated, or separated through a settlement may receive a letter of reference, nor can an employee who is currently under investigation or who left the university while the investigation was pending. Only an employment verification may be provided by the campus for such employees.
 - An employee who is subject to a finding of misconduct but is not terminated may later request a letter of reference, but that letter must include documentation of the employee’s misconduct.

Establishing Systemwide Standards

- We are pleased to report that the California State Auditor determined that the first audit recommendation to issue specific guidance and resources on case intake and initial

assessment has been fully implemented. This recommendation was due in July 2024, and was completed ahead of schedule and deemed complete by the State Auditor as of April 2024. These protocols will ensure that campuses consistently and appropriately justify and document their decisions about whether to conduct formal investigations.

- Systemwide written procedures and guidelines now do all of the following:
 - Require campuses to determine whether a respondent has been the subject of multiple or prior reports of misconduct;
 - Clarify how to assess the benefits and risks of conducting or not conducting an investigation when there are challenges with, or ambiguities about, a complainant's desire or ability to participate;
 - Provide guidance about attempting to identify or contact any potential complainants mentioned or discovered during the intake and initial assessment process and about evaluating the likelihood that an investigation could reveal new allegations, context, or information;
 - Specify that if a campus decides not to conduct an investigation because a report or complaint fails to allege a sexual harassment policy violation, the campus must explain why there are clear indications that the alleged conduct, even if true, could not reasonably meet CSU's definition of sexual harassment; and
 - Require a thorough and documented rationale for campuses' decisions about whether to conduct an investigation that addresses, at minimum, any applicable factors listed above and any other relevant factors in CSU policy.
- The Office of Civil Rights team's priority is finalizing guidance as required by the State Auditor's assessment. The list below includes guidance that will be issued by July 2024 to meet the State Auditor's first deadline:
 - Guidance regarding the structure of analyses of evidence, including conducting a credibility analysis, assessing evidence against allegations and likelihood of occurrence, cumulative effect of conduct, and analysis of conduct meeting the definition of sexual harassment;
 - Guidance regarding the sexual harassment definition, including specific examples as necessary;
 - Guidance regarding documented review and approval of analyses or outcomes;
 - Guidance regarding the informal resolution process, including template agreement and possible resolutions;
 - A requirement that all campuses track key dates and timeline extensions in a consistent manner, including developing a system for reminders and follow-up
 - Guidance regarding disciplinary or corrective action;
 - Guidance regarding documents that must be maintained in the case file;
 - Collecting and analyzing sexual harassment data, including patterns and trends, and timeliness of investigations; and
 - Creating a policy for compliance reviews.

Supporting Campus Implementation Teams

- All 23 campuses have an Implementation Team that has broad representation of students, staff, faculty, and administrators. Each campus Implementation Team has developed a

communication and implementation plan, all of which were individually submitted to the Chancellor's Office. The plans are currently being reviewed by Chancellor García.

- We anticipate that there will be some plans that are approved by the Chancellor, while there may be other plans that receive conditional approval upon receipt of additional information. These plans will be posted online and will be shared publicly. It is expected that all plans will be available for review in the summer.
- Every campus's Implementation Team has a charge with specific goals and deliverable deadlines to meet the required timelines of the State Auditor's report – July 2024, July 2025, and July 2026, as well as the recommendations of the Cozen O'Connor report. Individual campus reports can be found on the CSU website [here](#).

State Legislation and Federal Action

- The CSU is monitoring the state legislature's 'Call to Action' legislative bill package and has been actively involved in discussions on each of the bills to ensure that the system and campuses can fully implement the proposed legislation. CSU officials will continue to engage with authors' offices and committee staff on all legislation.
- On April 19, the U.S. Department of Education [released](#) its long-awaited Final Rule under Title IX. The final regulations restore and strengthen vital protections for students and provide schools and universities with information to meet their Title IX obligations while offering appropriate discretion and flexibility to account for variations in school or university size, student populations, and administrative structures. The final regulations also require schools and universities to take prompt and effective action when notified of conduct that reasonably may constitute sex discrimination in their education programs or activities.
- The CSU's Office of Civil Rights is reviewing the new federal regulations and will be working to update our systemwide Nondiscrimination Policy before the regulations go into effect on August 1, 2024. According to the Department, the final regulations include:
 - **Protect against all sex-based harassment and discrimination.** The final rule protects all students and employees from all sex discrimination prohibited under Title IX, including by restoring and strengthening full protection from sexual violence and other sex-based harassment. The rule clarifies the steps a school must take to protect students, employees, and applicants from discrimination based on pregnancy or related conditions. And the rule protects against discrimination based on sex stereotypes, sexual orientation, gender identity, and sex characteristics.
 - **Promote accountability and fairness.** The final rule promotes accountability by requiring schools to take prompt and effective action to end any sex discrimination in their education programs or activities, prevent its recurrence, and remedy its effects. The final rule requires schools to respond promptly to all complaints of sex discrimination with a fair, transparent, and reliable process that includes trained, unbiased decisionmakers to evaluate all relevant and not otherwise impermissible evidence.
 - **Empower and support students and families.** The final rule protects against retaliation for students, employees, and others who exercise their Title IX rights.

The rule requires schools to communicate their nondiscrimination policies and procedures to all students, employees, and other participants in their education programs so that students and families understand their rights. The rule supports the right of parents and guardians to act on behalf of their elementary school and secondary school children. And the rule protects student privacy by prohibiting schools from making disclosures of personally identifiable information with limited exceptions.

The CSU will next update you on the progress of our one-year update to the State Auditor this summer, staffing of the systemwide Office of Civil Rights, and the status of our individual campus implementation plans.

It is the intent of the CSU Chancellor's Office to provide these regular updates to share transparently about policy changes, staff expansion, and investments in our campus communities related to Title IX and DHR. For more information about how the CSU is implementing Title IX and DHR reforms, please contact Maggie White, Legislative Advocate, at (916) 449-3548 or via email at mwhite@calstate.edu. We will be sharing ongoing updates to keep stakeholders apprised of our implementation efforts, and we welcome questions and feedback.