

**SEXUAL MISCONDUCT ADVISORY COMMITTEE**

**THIRD REPORT AND RECOMMENDATIONS**

**as submitted to the Education Committees of the Senate and House of  
Representatives of the Colorado General Assembly**

**January 15, 2022**

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## EXECUTIVE SUMMARY

The state of Colorado continues to be positioned to be a national leader in the prevention and response to sexual misconduct at Institutes of Higher Education (IHEs) since the passage of C.R.S. §§ 23-5-146 *et seq.* (SB 19-007) in May 2019. Through the facilitation of the Colorado Department of Higher Education (CDHE), the Sexual Misconduct Advisory Committee (Advisory Committee) – comprised of Title IX coordinators, advocates, and attorneys who represent both victims and those accused of sexual misconduct – has met regularly since January 2020 to respond to constantly evolving Title IX law and provide recommendations that promote and sustain safe and non-discriminatory environments for post-secondary communities and ensure fair and equitable adjudication processes for sexual misconduct cases.

Specifically, following the release of amended Title IX regulations in May 2020 and pursuant to their statutory charge, the Advisory Committee submitted two reports ([First Report](#), dated August 4, 2020, and [Second Report](#), dated January 15, 2021) containing eighteen recommendations to the Education Committees of the Senate and House of Representatives of the Colorado General Assembly.

Also pursuant to SB 19-007, CDHE hosted its [First Biennial Colorado Summit on Sexual Misconduct](#) in July 2021. The Summit, held virtually and free of charge, brought together university and K-12 students, faculty, and staff from across the state, advocates, policy makers, state representatives, community stakeholders, and nationally recognized legal experts to discuss, among other topics, prevention and response to campus sexual assault, dating and domestic violence and stalking, consent education, legal updates and implementing the new hearing process, multi-institutional collaboration, and the financial and disparate impact of the new rules on IHEs. See [Summit Planning Committee Report](#), September 15, 2021.

Additionally, there were two significant legal developments in 2021 pertinent to the Advisory Committee's work for this Third Report. First, the U.S. Department of Education announced that it was undertaking a [comprehensive review of existing Title IX regulations, orders, guidance, policies](#), and other similar agency actions. As part of that comprehensive review, the Department also released a statement that it would issue [a notice of proposed rulemaking in April 2022](#) to again amend the Title IX regulations. Because of the lengthy notice and comment period required, and given the prior administration's process that went from November 2018 to May 2020, the upcoming changes to Title IX are not likely to be implemented for at least one to two years. Thus, with one exception as discussed in more detail below, the 2020 Title IX amendments currently apply to all Colorado IHEs for the foreseeable future.

Second, in late July 2021, a federal district court in Massachusetts upheld most of the 2020 Title IX regulations but struck down one provision. Specifically, the court vacated, for all post-secondary institutions nationwide, the so-called “exclusionary rule.” This rule had required a decision-maker, in reaching a final determination in a Title IX adjudication, to disregard all statements – which could include for example, statements contained in police reports, university interview notes or memorandum, recordings, Sexual Assault Nurse Exam documents, medical reports, social media posts, text messages, or emails – by witnesses or parties not subject to live cross-examination. See *Victim Rights Law Ctr. v. Cardona*, No. 20-11104-WGY, 2021 U.S. Dist. LEXIS 140982, at \*48-53, 62-64 (D. Mass. July 28, 2021)(*Cardona*). Following the *Cardona* decision, the U.S. Department of Education indicated that it would [immediately cease enforcement](#) of that provision (found in 34 C.F.R. § 106.45(b)(6)(i)) and that post-secondary institutions would no longer be subject to that provision. Consequently, under the Title IX regulations as amended by *Cardona*, decision-makers in Title IX adjudications may consider statements not subject to cross-examination.

Within this context – including the two Reports, the First Biennial Colorado Summit on Sexual Misconduct in July 2021, and the recent legal developments – the Advisory Committee met from October 2021 to January 2022 to prepare this Third Report. The Advisory Committee identified numerous issues critical to the response to and prevention of sexual assault, dating and domestic violence, and stalking on and off college campuses, but ultimately decided to focus on the now discretionary exclusionary rule and more broadly on how IHEs are implementing the requirement to provide live hearings for Title IX cases. To address the latter topic, the Advisory Committee asked CDHE to send a survey to all Colorado IHEs about the amended Title IX rules and the hearing process. CDHE collected anonymized survey responses in December 2021.

Overall, following the Advisory Committee’s review and discussion of the *Cardona* decision – including presentations and analysis by both an attorney representing sexual assault victims and an attorney representing those accused of sexual misconduct – and after reviewing the survey responses showing that most Colorado IHEs had conducted only a limited number of Title IX hearings given the narrow jurisdictional and definitional scope of Title IX based on the 2020 regulations, the Advisory Committee provides the following additional recommendations to the Education Committees:

*Recommendation Nineteen: Following the Cardona decision, remove the exclusionary rule for witnesses and parties in Title IX and non-Title IX sexual misconduct hearings.*

*Recommendation Twenty: Review IHE policies, procedures, and practices to ensure the reliability of party and witness statements gathered during an investigation of Title IX and non-Title IX sexual misconduct cases to promote fair and equitable resolution by IHE decision-maker.*

*Recommendation Twenty-One: Convene IHEs and relevant stakeholders in summer 2022 to discuss the potential need and viability of a “state center” to provide technical guidance and facilitation if needed for the adjudication of Title IX and non-Title IX cases.*

The Advisory Committee provides fuller context below for each recommendation.

Finally, the Advisory Committee wishes to express its continued appreciation to Executive Director Dr. Angie Paccione and the staff of CDHE, and in particular Senior Director of Student Success and P20 Alignment and Colorado GEAR UP Project Director Carl Einhaus for his considerable support of the work of the Advisory Committee and his tireless commitment to the safety and support of all our campus communities in Colorado.

## **BACKGROUND**

### ***First and Second Reports of the Sexual Misconduct Advisory Committee***

On May 6, 2020, the U.S. Department of Education released new Title IX rules. On August 4, 2020, following an intensive review of the new rules and based on their collective experience and expertise, the members of the Sexual Misconduct Advisory Committee (Advisory Committee) submitted their [First Report and Recommendations](#) (*First Report*) to the Education Committees of the Senate and House of Representatives of the Colorado General Assembly pursuant to their statutory charge under Senate Bill 19-007, codified as C.R.S. §§ 23-5-146 *et seq.* (SB 19-007)<sup>1</sup> and posted it on the

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<sup>1</sup> SB 19-007 required the Colorado Department of Higher Education to create an Advisory Committee to respond to the new federal rules and make recommendations to the General Assembly and Institutions. See C.R.S. § 23-5-147. SB 19-007 required the Advisory Committee to consist of three representatives from Institutions of Higher Education; two Title IX Coordinators from Institutions of Higher Education; three persons who are representatives of organizations that advocate on behalf of or provide services to victims of sexual misconduct; an attorney who has experience representing victims of sexual misconduct at Institutions of Higher Education; an attorney who has experience representing persons accused of sexual misconduct at Institutions of Higher Education; and a person with experience providing trauma-informed care. See C.R.S. § 23-5-147(4)(a). SB 19-007 also requires Institutions of Higher Education to:

- Adopt sexual misconduct policies with required components not otherwise in conflict with applicable Title IX law (C.R.S. § 23-5-146(2)(a)(3));
- Provide information to students on how to receive support regarding sexual misconduct (C.R.S. § 23-5-146(4));

Colorado Department of Higher Education’s (CDHE) website.<sup>2</sup> The *First Report* contained fifteen recommendations focused on two primary areas: (1) handling sexual misconduct incidents outside of an Institute of Higher Education’s (IHE) programs, activities, or property as defined by the regulations; and (2) conducting live cross-examination. The *First Report* also identified further issues for consideration by the Education Committees, including funding and resources, adjudicative timeframes, confidential victim advocates and advisor roles, cross-examination and children, and impacts of implicit bias. After the submission of the Advisory Committee’s First Report, the Title IX rules became effective on August 14, 2020.

Pursuant to its statutory charge to produce its next report on or before January 15, 2021, see § 23-5-147(6)(b), the Advisory Committee met again in 2020 to discuss recommendations for changes to state statutes and institutional methods to reduce sexual misconduct at IHEs. The Advisory Committee also discussed the new Title IX rules considering the transition to a new federal administration in January 2021, as well as plans for a CDHE sponsored summit in mid-2021. Given the context of the new federal administration and potential changes to the Title IX rules, the continuing pandemic, the relatively short time-frame for IHEs to have implemented the new rules – as well as the upcoming 2021 Summit – the Advisory Committee concluded that recommending additional changes to state statutes was not warranted at that time. Instead, the Advisory Committee continued to support the fifteen recommendations for IHE adoption contained in its *First Report* and unanimously voted to recommend the following for its [Second Report](#)<sup>3</sup>: (1) IHEs should continue to address all forms of sexual misconduct – whether identified as Title IX or not; (2) the Education Committees should identify means to include participation of K-12 stakeholders in state advisory roles to address and respond to sexual misconduct; and (3) CDHE should cover the following issues for the [Summit](#): IHE response to the new rules, implicit bias, and education/prevention.

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- Promote awareness and prevention of sexual misconduct and applicable policy and distribute policy (C.R.S. § 23-5-146(5));
  - Offer training (C.R.S. § 23-5-146(6)); and
  - Provide to CDHE each year a copy of its sexual misconduct policy; a statement on how the Institution is informing students, promoting awareness and prevention and training; and any updates/changes to the information (C.R.S. §§ 23-5-146 (7) and (8)).

<sup>2</sup> The First Report can be found at: <https://cdhe.colorado.gov/sites/highered/files/SMAC%20Report%208.4.20%20FINAL.pdf>.

<sup>3</sup> The Second Report can be found at: [https://cdhe.colorado.gov/sites/highered/files/SMAC%20Second%20Report%201.15.21%20FINAL\\_.pdf](https://cdhe.colorado.gov/sites/highered/files/SMAC%20Second%20Report%201.15.21%20FINAL_.pdf)

## ***Preparing the Third Report of the Sexual Misconduct Advisory Committee – October 2021 through January 2022 Meetings***

Following its submission of the *Second Report* on January 15, 2021, the Advisory Committee<sup>4</sup> met five times from October 2021 through January 2022 (October 26, November 9 and 30, December 14, and January 11). During these meetings, the Advisory Committee identified numerous issues for discussion, though the majority of those issues focused on some aspect of the new hearing process required by the Title IX rules, including but not limited to:

- 1) how IHEs share evidence gathered during the investigation with the parties and their advisors prior to a hearing;
- 2) whether IHEs provide for a pre-hearing conference or meeting with the parties together or separately to provide guidance and rules for the upcoming hearing (*see, for example*, Recommendation Thirteen of the *First Report* regarding case management documents and providing parties and advisors “specific guidance for parties about deadlines, procedures, advising, and decorum [so as] to facilitate a fair, neutral and efficient hearing.”);
- 3) the scope of the hearing process and whether, in addition to live cross-examination, IHEs are providing opportunities for legal arguments prior, during or after the hearing (motions practice), opening statements, direct examinations, or closing arguments;
- 4) experiences of IHEs with the exclusionary rule that previously required exclusion of all statements by a witness or party from the consideration of the final decision-maker if that witness or party does not subject to live cross-examination in Title IX cases;

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<sup>4</sup> The Advisory Committee members as of the date of this *Third Report* are as follows:

- Lara Baker, Attorney, Foster Graham Milstein & Calisher, LLP;
- Angela Gramse, General Counsel, Colorado Community College System;
- Ana Guevara, Director of Title IX, Adams State University;
- Elle Heeg Miller, Nurse Practitioner, Heath Center at Auraria;
- Elizabeth Newman, Public Policy Director, Colorado Coalition Against Sexual Assault (**Co-Chair**);
- Monica Rivera, Director, Women and Gender Advocacy Center, Colorado State University;
- Cari Simon, Attorney, The Fierberg National Law Group;
- Valerie Simons, Interim Chief Compliance Officer and System Title IX Coordinator, University of Colorado (**Co-Chair**); and
- Emily Tofte Nestaval, Executive Director, Rocky Mountain Victim Law Center.

- 5) significant costs and staffing required for the hearing process and the disparate impact on rural, minority-serving, and smaller IHEs;
- 6) overall timelines for the entire adjudicative process, which now include investigation, hearings, and appeals;
- 7) use of private investigators by parties and advisors;
- 8) NCAA sexual misconduct rules for student athletes;
- 9) cross-campus/IHE complaints (parties from different IHEs); and
- 10) whether and how IHEs are utilizing restorative justice or other adaptable resolution models for resolution of sexual misconduct cases.

From this larger list, the Advisory Committee chose two issues for further discussion and review with its remaining meetings which became the basis for its three recommendations: (1) the exclusionary rule; and (2) IHEs' experience with the new hearing process since August 2020.

## **RECOMMENDATIONS AND FOCUS AREAS**

*Recommendation Nineteen: Following the Cardona decision, remove the exclusionary rule for witnesses and parties in Title IX and non-Title IX sexual misconduct hearings.*

*Recommendation Twenty: Review IHE policies, procedures, and practices to ensure the reliability of party and witness statements gathered during an investigation of Title IX and non-Title IX sexual misconduct cases to promote fair and equitable resolution by IHE decision-maker.*

*Recommendation Twenty-One: Convene IHEs and relevant stakeholders in summer 2022 to discuss the potential need and viability of a "state center" to provide technical guidance and facilitation if needed for the adjudication of Title IX and non-Title IX cases.*

### ***Exclusionary Rule in Title IX Hearings and the Cardona Decision***

As discussed in more depth in the Advisory Committee's *First Report*, the 2020 Title IX regulations require IHEs to conduct a live hearing for purposes of cross-examination for Title IX cases. See *First Report* at 19-20 and 34 C.F.R. § 106.45(b)(6)(hearings). In particular, the IHE's decision-maker for Title IX cases must permit each party's advisor

to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. The cross-examination must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. Such cross-examinations can be conducted virtually. Unlike civil and criminal hearings, witnesses and parties cannot be compelled to attend Title IX hearings for purposes of live cross-examination through subpoena and there are minimal "rules of evidence," which allow a decision-maker to prohibit a question or answer only for reasons of relevance, victim's sexual predisposition or prior sexual behavior (unless offered to prove someone other than the accused was responsible or to prove consent), confidential treatment records, or privilege. *See, for example*, Recommendation Fifteen of the *First Report* for guidance related to the "decorum rules" of proceedings.

Prior to the *Cardona* case, the Title IX regulations also required the application of the **exclusionary rule**, which was triggered if a party or witness did not submit to cross-examination – either by not appearing at the live hearing or by appearing but not answering cross-examination questions. In that circumstance, the regulations required that the IHE's decision-maker must not rely on any "statement" of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker could draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

The *Cardona* decision lifted this requirement from the Title IX regulations for all post-secondary institutions nationwide as of August 2021. Given the significance of this decision, the Advisory Committee asked its members who directly represented victims and those accused of sexual misconduct to provide an overview of the decision from their unique perspectives.

Based on its discussion and review, the Advisory Committee found that the exclusionary rule seemingly increased both the length of time and costs for Title IX hearings. Additionally, the rule also raised concerns related to campus safety as such evidence or information that could lead to fair and reliable outcomes – admissions of misconduct or other non-disputed factual statements for example – would be excluded from the decision-maker's determination if parties or witnesses chose not to or were unable to participate in the hearing. The exclusionary rule also likely had a chilling effect that could decrease participation by parties and witnesses.

The Advisory Committee also unanimously agreed that it is critical that statements relied upon by the decision-maker to make a final determination in a sexual misconduct case – whether Title IX or not – should be trustworthy to promote reliable outcomes. Ensuring the trustworthiness or reliability of a statement can be done through one or more various techniques, including:

- utilizing highly trained staff to conduct the interviews and to accurately memorialize the statements;
- audio or video recording statements;
- requiring parties and witnesses to verify or attest to the accuracy of their statements;
- sharing the statements in a preliminary investigative report;
- asking the witnesses and parties follow-up questions regarding their original statements (through live cross-examination or other form of questioning); and
- enforcing prohibitions against making intentionally false or misleading statements.

Finally, and just as important, the IHE must ensure that its hearings are staffed with decision-makers with sufficient training and experience who can properly review the statements gathered during the investigation to determine their weight, relevance and materiality to the specific facts, and policy provisions at issue.

### ***December 2021 Survey to IHEs regarding new Title IX Rules and Hearing Process***

The Advisory Committee sought information from Colorado IHEs about their experience with implementing the updated Title IX regulations to further explore the issues raised above. At the Advisory Committee's request, CDHE sent a survey in December 2021 to all Colorado IHEs about the amended Title IX rules and the hearing process. Out of the 34 public institutions of higher education in the state and participating private non-profit institutions, 18 Title IX leads responded, for a response rate of 53 percent. The types of institutions that responded were primarily public IHEs (16) along with two private institutions. A majority of survey respondents represented two-year IHEs, with 12 two-year colleges, five four-year institutions, and one that identified as "other" comprising the respondents. While the survey is not completely representative of all of Colorado's IHEs, some valuable information can be gleaned.

The new Title IX regulations, which became effective in August 2020, appeared to have little effect on the number of sexual misconduct reports. Most IHEs (9) saw the number of sexual misconduct reports remain relatively consistent from previous years. The remaining IHEs were split by those noting an increase (4) and decrease (5) in reports. However, four-year IHEs were more likely to identify an increase in the number of reports while two-year IHEs were more likely to identify a decrease in the number of sexual misconduct reports.

From August 2020 to December 2021, half (9) of the IHEs that responded had conducted at least one Title IX hearing under the new regulations, with one IHE having held two hearings during this time frame. The greatest issue identified with the hearing process under the new regulations was the cost. Survey respondents reported that Title

IX hearings averaged \$20,000 per hearing, with a range of \$5,000 to \$50,000. Such costs included \$16,000 for the investigation at one campus and \$5,000 for a hearing officer at another campus. For those IHEs that had non-Title IX sexual misconduct cases, most had not held hearings; although one IHE reported a similar cost for each sexual misconduct hearing, whether Title IX or not, of approximately \$6,000.

Overall, IHEs responded that the hearings require a large amount of personnel and time. “It is a huge undertaking,” one survey respondent said. IHEs used an average of six internal staff positions for a Title IX hearing, with as few as two and as many as 14 reported. Internal personnel were involved in investigations, served as advisors, and administered hearings. IHEs also utilized external positions to staff Title IX hearings. IHEs reported an average of two external positions, with a range of zero to nine to fill roles as hearing officers, investigators, advisors, and hearing administrators.

Needless to say, staffing was not only a major cost, but an added responsibility to many existing personnel with other non-related roles at the IHEs. This required much training and coordination. As one respondent shared, “I have to rely on several administrators that do not do this work regularly. There is a ton of training that goes into this, and I find that it is still sometimes not sufficient.”

Survey respondents shared that the hearing process was also hard on students. One Title IX lead stated, “These live hearings require many administrators, are retraumatizing, are time consuming, are unnecessary... I have had several people want an investigation and then withdraw because they do not want to go through the hearing as it sounds horrible to them.” Another survey respondent reported that the process of the live hearing with cross-examination discouraged students from moving forward with Title IX complaints.

Another component of the hearing process that IHEs identified as a challenge was the exclusionary rule. Although it is no longer required following the *Cardona* decision, it was in practice for several Title IX hearings in Colorado. One respondent shared that, “It was a huge hindrance in our hearing. We had four complainants in the case and two refused to participate in the hearing at the last minute. So all interviews, evidence, and information that they had provided was not considered by the decision maker and could have drastically changed the outcome.” Another IHE reported that because the rule prohibits the consideration of relevant and material evidence if a witness or party does not subject to live-cross examination, it can jeopardize campus safety. In addition, this IHE found that it extends the length of time and number of people involved in the hearings thereby increasing costs to the IHE and overall burden to parties. However, most of the IHEs that had Title IX hearings reported that the exclusionary rule was discontinued as a result of the federal ruling in July.

One final challenge shared by IHEs in responding to Title IX reports was the issue of equity. Title IX leads at small IHEs shared concerns that they lack the budget to provide the services and support to students that larger institutions can provide. One survey respondent lamented that the way the federal regulations are drafted, this disparity in resources is particularly significant for students of color and first-generation students who attend IHEs dedicated to them, such as Hispanic Serving Institutions (HSIs), Minority Serving Institutions (MSIs), and Historically Black Colleges (HBCs).

Given the shifting landscape of Title IX and the overwhelming burden in cost, personnel, and training, a large majority of respondents (12) supported the idea of a statewide support center. IHEs identified staffing as the greatest need that could be met by such a center, followed by standardization, guidance, and training. Respondents shared their needs as:

- “Any help from the State to lower or defer costs would be immensely helpful.”
- “We all have other roles at the college and so this is an added thing that though we get training, we are not experts nor as versed as needed when an issue arises. We are then not consistent.”
- “It’s expensive.”
- “I think it would be incredibly helpful to develop and train advisors who would serve pro bono or for a small fee as advisors. This is the hardest part to staff right now.”

These survey responses provided additional rationale for the recommendations from the Advisory Committee. IHEs highlighted the risks and burden of the exclusionary rule and the majority had already discontinued its use. Based on the concerns identified by IHEs, the Advisory Committee determined that it was necessary to expand its discussions as soon as possible to IHEs throughout the state to address their critical needs – particularly considering the disparate impacts both between and within IHEs – for the hearing process, which will be required for the foreseeable future.

## **CONCLUSION**

For the reasons stated above, the Advisory Committee submits the three additional recommendations identified in this report to the Education Committees of the Senate and House of Representatives pursuant to C.R.S. § 23-5-147(6)(a). The complete list of recommendations from the Advisory Committee is included in the attached Appendix.

## **APPENDIX: COMPLETE LIST OF RECOMMENDATIONS SUBMITTED BY THE SEXUAL MISCONDUCT ADVISORY COMMITTEE**

### ***First Report Recommendations***

*Recommendation One: Adjudicate and provide supportive measures regarding incidents of sexual misconduct outside of the designated Title IX jurisdiction.*

*Recommendation Two: Complete disciplinary proceedings regardless of whether the respondent de-enrolls, quits, graduates, retires or otherwise leaves the institution.*

*Recommendation Three: Adjudicate and provide supportive measures even where complainant may not be participating or attempting to participate in programs or activities based on status of the respondent and an analysis of the safety and impact of the conduct on the educational or employment environment.*

*Recommendation Four: Define institution's relationship with all students to ensure clarity regarding Title IX jurisdiction.*

*Recommendation Five: Ensure that policies (either in one policy or multiple policies) cover non-Title IX sexual misconduct that falls outside the definition of Title IX sexual harassment.*

*Recommendation Six: Consider multiple options for informal resolution to maximize and promote agency for complainants and respondents but ensure expertise, experience and subject matter knowledge before offering any type of informal resolution, particularly for sexual violence, intimate partner violence (dating and domestic violence) and stalking.*

*Recommendation Seven: Provide on and off-campus resources and supportive measures for non-Title IX cases for students and employees.*

*Recommendation Eight: Provide complainants with the contact information for confidential victim advocates pursuant to C.R.S. § 23-5-146(4).*

*Recommendation Nine: For violations of Title IX and other forms of sexual misconduct (non-Title IX sexual misconduct) refer students and/or employees to the same sanctioning authorities.*

*Recommendation Ten: Train students and employees pursuant to C.R.S. §§ 23-5-146(5) and (6) for both Title IX and non-Title IX cases.*

*Recommendation Eleven: Train any individual designated as responsible for investigating or adjudicating complaints under the institution's Title IX and non-Title IX sexual misconduct policy (or policies) pursuant C.R.S. §§ 23-5-146(5) and (6).*

*Recommendation Twelve: Provide documents explaining rights to entire grievance process and supportive measures for all parties.*

*Recommendation Thirteen: Provide a case management document.*

*Recommendation Fourteen: Ensure accessible and reliable technological support and space requirements.*

*Recommendation Fifteen: Implement procedural/decorum rules and prohibit abusive, misleading, confusing and harassing questioning to ensure a fair process for all participants.*

### **Second Report Recommendations**

*Recommendation Sixteen: IHEs continue to address all forms of sexual misconduct - whether identified as Title IX or not (See First Report, Recommendations Nos. 1,3, 5, 7, 9,10, and 12) and provide support services/accommodations to victims of sexual assault, again whether in Title IX or not (First Report, Recommendation No. 7).*

*Recommendation Seventeen: Education Committees identify means to include participation of K-12 stakeholders in state advisory role to address and respond to sexual misconduct.*

*Recommendation Eighteen: CDHE cover the following issues for the 2021 Summit: IHE responses to new rules (including but not limited to barriers to participation, role of advisors, resource guides and regional center), implicit bias and education/prevention. The Advisory Committee also recommends inviting participation of K-12 stakeholders to the 2021 Summit.*

### **Third Report Recommendations**

*Recommendation Nineteen: Following the Cardona decision, remove the exclusionary rule for witnesses and parties in Title IX and non-Title IX sexual misconduct hearings.*

*Recommendation Twenty: Review IHE policies, procedures, and practices to ensure the reliability of party and witness statements gathered during an investigation of Title IX and non-Title IX sexual misconduct cases to promote fair and equitable resolution by IHE decision-maker.*

*Recommendation Twenty-One: Convene IHEs and relevant stakeholders in summer 2022 to discuss the potential need and viability of a “state center” to provide technical guidance and facilitation if needed for the adjudication of Title IX and non-Title IX cases.*