



113228

**DATE:** November 15, 2022

**TO:** Board of Supervisors

**FROM:** Sylvia Gallegos, Deputy County Executive

**SUBJECT:** Agreement with Cozen O'Connor for Assessment of Educational Institutions' Compliance with Title IX

### **RECOMMENDED ACTION**

Under advisement from December 14, 2021 (Item No. 21): Approve Agreement with Cozen O'Connor relating to providing assessments of educational institutions' compliance with State and Federal laws regarding sex- and gender-based harassment and violence and related community engagement in an amount not to exceed \$1,357,635 for period November 15, 2022 through November 30, 2025, that has been reviewed and approved by County Counsel as to form and legality.

### **FISCAL IMPLICATIONS**

There is no new impact to the County General Fund from this recommendation. This agreement would be funded with one-time funds in the Office of Gender-Based Violence Prevention in an amount not to exceed \$1,357,635.

### **REASONS FOR RECOMMENDATIONS**

At the September 22, 2020 meeting of the Board of Supervisors (Item No. 23), the Board approved a referral from Supervisor Cortese to prepare analyses pertaining to K-12 and post-secondary institutions' legal compliance related to sex- and gender-based harassment and sexual assault as mandated by Title IX of the Education Amendments of 1972 and the Jeanne Clery Act.

After a solicitation in which the proposed vendor withdrew from the process the day before the Board's consideration of the agreement, the Administration subsequently issued a Request for Proposals on January 3, 2022 that incorporated Board direction that proposers be limited to law firms and that proposers submit proposals for both components of the work—assessments for legal compliance and community outreach. The submission period closed on February 4, 2022.

The County received one proposal that was deemed responsive. An evaluation period ensued consisting of consensus-based scoring of the bidder's proposal, vendor interviews by a panel of subject matter experts, and executive review.

The proposal was evaluated based on the following criteria:

- Team credentials, expertise, and prior experience
- Methodology and approach
- Trauma-informed and culturally sensitive services
- Collaboration
- Privacy and data security
- Price proposal
- Financial management capacity

The Evaluation Committee determined that Cozen O'Connor was eminently qualified to satisfy the objectives of this project.

### **Cozen O'Connor**

Cozen O'Connor is an international law firm that provides a full range of legal services. It has an *Institutional Response Group* led by Gina Maisto Smith and Leslie Gomez who are respectively the chair and vice chair of the Group that will perform the work. Ms. Gomez will be the project lead for this engagement. The Institutional Response attorneys have extensive experience conducting investigations into sex and gender-based harassment and violence as well as assisting institutions in implementing trauma-informed, fair, and impartial prevention and resolution processes.

Additionally, Cozen O'Connor's affiliate, *Margolis Healy and Associates* (MHA), a consulting firm that focuses on all aspects of campus safety, including campus and community security, will support the engagement. The Margolis Healy team is comprised of experts in effective implementation of the Jeanne Clery Act.

### **Phases and Timeline**

The project would be conducted in phases and preparatory work would begin upon the execution of the agreement. A phased workplan is appended to this report. The first phase of the work relates to research and kick-off meetings with educational institutions to engage

them in this effort and to establish the goals of the project including the deliverables that would be of benefit to educational institutions. The analyses and assessments would begin in phase two with a focus on public and private K-12 schools and districts.

In June 2022, the U.S. Department of Education published proposed changes to the Title IX regulations, which will result in significant changes to Title IX compliance efforts, particularly for colleges and universities. The proposed regulations would overturn Trump-era policies for the process of responding to sexual harassment, assault, and sex discrimination. Additionally, the changes would broaden the definition of sex-based harassment and discrimination to include gender identity and sexual orientation and provide new protections to pregnant and parenting students.

The County, along with the County Office of Education and several local school districts, submitted comments generally supportive of the proposed regulations and offered several suggestions for improving the proposed rule. It is uncertain when the final amendments to the Title IX regulations will be issued.

Given the changing landscape of Title IX regulations and its particular implications for colleges and universities, this project begins by undertaking assessments of K-12 schools and districts. Numerous County elected and appointed officials have deep relationships with local school districts, which County staff hope to leverage to assist the Cozen O'Connor team establish relationships with local school districts. The phased approach also allows for more time for the U.S. Department of Education to publish the new regulations, which would affect the training delivered by Cozen O'Connor.

Phase three would focus on local post-secondary institutions. Cozen O'Connor would then prepare a final report to summarize the findings. The work is estimated to be completed by June 2024 but is dependent upon many variables including the number of schools, volume of information, and other factors.

### Model Policies and Training

Importantly, Cozen O'Connor would work with the County to develop model policies, templates, and training materials to share with schools at the completion of the process. These models and templates would be based upon the state and federal sex- and gender-based harassment and violence related legal requirements that apply to Santa Clara County educational institutions.

Additionally, Cozen O'Connor would develop and deliver training directly to educational institutions, and/or train a core group of campus leaders to provide training within their units. The training would be focused on informed and effective practices for maintaining a legally compliant and effective Title IX program.

The training would discuss how to conduct initial assessments, evaluate jurisdiction, provide supportive measures, oversee fact-gathering and decision-making, and promote a culture that promotes safety, accountability, equity, and respect for all community members.

Cozen O'Connor would provide practical advice about the unique dynamics of sex and gender-based harassment and interpersonal violence, including using trauma-informed and inclusive language, ensuring accessible reporting options, and building awareness among staff about reporting obligations and responses. The training would also address the intersections with California child protective services laws and other legally required reporting obligations to law enforcement.

### **San José State University**

In the spring of 2021, Cozen O'Connor was engaged by the California State University system to assist San José State University (SJSU) in response to an enforcement action by the U.S. Department of Justice (DOJ). Cozen O'Connor serves as the equity consultant to assist SJSU in meeting the required elements of the resolution agreement with the DOJ. In addition, Cozen O'Connor provides interim Title IX Coordinator services, and has provided additional assistance to SJSU in an attorney-client privileged context. There are no publicly available written deliverables created by Cozen O'Connor other than materials provided to and deemed by the DOJ as publicly releasable records.

Cozen O'Connor has also been engaged by the California State University system to conduct a systemwide assessment of the CSU's Title IX and DHR (discrimination, harassment, and retaliation) programs. The systemwide assessment encompasses all 23 CSU institutions as well as the Chancellor's Office and systemwide coordination. Cozen O'Connor anticipates this engagement will result in several publicly available deliverables including a written report for each CSU institution, such as SJSU.

Due to the ongoing involvement of the DOJ and Cozen O'Connor's engagement with SJSU and CSU in resolving Title IX compliance concerns, SJSU was not incorporated within the scope of work. It is proposed that the County rely upon the anticipated publicly available written deliverables for SJSU resulting from the CSU engagement as well as those documents deemed by DOJ to be publicly available in its resolution with SJSU. Additionally, the County would require a separate vendor to assess SJSU because Cozen O'Connor has an existing financial interest in SJSU through those two engagements.

## **Next Steps**

Upon approval of this agreement with Cozen O'Connor, preparatory work would begin soon after. The Administration would oversee and support the Cozen O'Connor team to ensure efforts remain on track for successful completion.

## **CHILD IMPACT**

The recommended action would have a positive impact on children and youth by ensuring equitable access to educational spaces and improving campus safety.

## **SENIOR IMPACT**

The recommended action would have no/neutral impact on seniors.

## **SUSTAINABILITY IMPLICATIONS**

The recommended action would have positive impact on sustainability, specifically advancing the goal of “**Enhancing Social Equity and Safety**” by assessing compliance with relevant laws and regulations and identifying opportunities for improvement in addressing sex- and gender-based harassment and violence with the goal of supporting educational institutions in preventing, ending, and remedying the effects of sex- and gender-based harassment and violence.

## **BACKGROUND**

At the September 22, 2020 Board meeting (Item No. 23), the Board approved a referral from Supervisor Cortese to prepare analyses pertaining to sex- and gender-based harassment and violence by assessing compliance of K-12 schools and post-secondary institutions throughout Santa Clara County with Title IX, the Jeanne Clery Act, and other relevant state and federal laws.

At the October 20, 2020 Board meeting (Item No. 12), the Board received a report from the Administration with a proposal to conduct these analyses as well as a plan for community engagement.

On January 4, 2021, the Administration released a Request for Statement of Qualifications (RFSQ), Audit of Santa Clara County Education Institutions' Compliance with State and Federal Laws Relating to Sex- and Gender-Based Harassment and Violence RFSQ-CEO-FY21-0171.

At the June 22, 2021 Board meeting (Item No. 37), a proposed agreement with a vendor— Education, Training, and Research (ETR)—was submitted for Board approval. The vendor withdrew from the process the day before the Board’s consideration of the agreement.

Subsequently, at the December 14, 2021 Board meeting (Item No. 21), during a discussion about a future RFP led by Supervisor Chavez, the Board gave direction to limit proposers to law firms and to require proposers to submit proposals for both components of the work.

The Administration released a subsequent Request for Proposals on January 3, 2022.

**CONSEQUENCES OF NEGATIVE ACTION**

Staff would not be able to undertake this work.

**STEPS FOLLOWING APPROVAL**

Please notify Julie Ramirez and Gladys Cabagbag in the Office of the County Executive.