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Litigation and the Title IX Coordinator: A Look Into the Effects of Litigation on the 23
CSU System Campuses After Implementation of a Title IX Coordinator

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Litigation and the Title IX Coordinator: A Look Into the Effects of Litigation on the 23
CSU System Campuses After Implementation of a Title IX Coordinator

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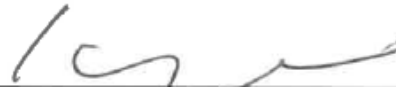
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ABSTRACT

Litigation and the Title IX Coordinator: A Look Into the Effects of Litigation on the 23

CSU System Campuses After Implementation of a Title IX Coordinator

by Megan D. Carthen Jackson, DPA

Sexual misconduct remains among the highest underreported crimes across the nation. Incidents of sexual misconduct at institutions of higher education across the United States continue to be of grave concern as well. Lawsuits for mishandled reports of sexual misconduct by college and university administration as a violation of Title IX continues to draw media attention as litigation presents itself to be a viable method for aggressive institutional and societal change. Title IX law seeks to eliminate, prevent, and remedy instances of sex discrimination in educational activities, programs, and employment and applies to all colleges and universities that receive federal financial assistance. Violation of Title IX law exposes institutions to both litigation and loss of federal funding. In an effort to address institutional compliance with Title IX, the role of the Title IX coordinator was created as a tool of policy implementation. The purpose of this study was to investigate the effect, if any, of the role of the Title IX coordinator as a method of policy implementation through demonstration of a statistically significant difference in the number of cases of litigation for mishandled reports of sexual misconduct by administration across the 23 CSU System campuses. The study utilized a quantitative quasiexperimental study to analyze the intervention of the 2011 Dear Colleague Letter and publish mandate of a Title IX coordinator in relation to number of cases of Title IX litigation. A paired *t* test analyzed the number of cases of Title IX litigation across the 23

CSU System campuses 6 years before and 6 years after the 2011 Dear Colleague Letter and published mandate of a Title IX coordinator.

Keywords: Title IX coordinator, litigation

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DEDICATION

This work is dedicated to my family, my husband, and Kato and Kota who with endless love endured the stress and business of my life in pursuit of this dream. My mother and father who encouraged me and my little brother Eric whose laughter carried me through. I also dedicate this to my baby brother Evan whose thirst for knowledge and determination kept me moving forward on this journey. Evan, although your presence is felt, you are so very missed.

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CHAPTER 1: INTRODUCTION

Brett Sokolow, the executive director of the Association of Title IX Administrators (ATIXA), estimated the cost of Title IX compliance for institutions of higher education to ensure appropriate allocation of resources to mitigate sexual misconduct ranges between \$25,000.00 annually at small institutions to at least \$500,000.00 at larger more affluent colleges and universities (“NYT: Title IX Costs Colleges Millions Each Year,” 2016). Sokolow (as cited in Hartocollis, 2016) stated, “Certainly, colleges are spending more related to Title IX than ever in history, both preventatively and responsively, Mr. Sokolow said. He estimated that dealing with an inquiry could cost ‘six figures,’ and that responding to a lawsuit ‘can run into the high six or even seven figures, not counting a settlement or verdict’” (p. 3). Sokolow, who is also the managing partner of the National Center for Higher Education Risk Management (NCHERM), approximates 60% of Title IX lawsuits brought forward by victims and 40% brought forward through the U.S. Department of Education Office for Civil Rights (OCR) complaints to be successful, with the average award to be about \$200,000.00 for those that see a jury. Many cases are settled out of court, and the public never hears anything about them (Hattersley-Gray, 2012; Kingkade, 2015; Sokolow, Lewis, & Schuster, 2010). Officials at the University of California, Berkeley have estimated the cost of expenses related to Title IX compliance to have risen by a minimum of \$2 million since 2013 (Hartocollis, 2016).

In an effort to assist institutions with understanding and complying with Title IX law, OCR distributes written guidance to aid institutions in their efforts to combat sex discrimination within the educational system. In September 2017, Trump administration

Department of Education Secretary Betsy DeVos held a press conference to formally remove prior OCR guidance established under President Barack Obama in 2011 for institutional response to reported incidents of sexual misconduct under Title IX (McCausland, 2017; Wilson, 2016). DeVos stated that the previous guidance failed students, conveyed a lack of fairness and due process for those involved, and was unworkable for administrators (Gersen, 2017). The Obama administration issued Title IX compliance guidance via the 2011 “Dear Colleague Letter” from the U.S. Department of Education’s OCR as part of a larger effort to increase schools’ obligations under the federal statute addressing sex discrimination. That memorandum to institutions of higher education called on colleges and universities to increase efforts to eliminate, prevent, and remediate all forms of sex discrimination; investigate and adjudicate allegations; ensure adequate training of students, faculty, and staff by informing all as to what constitutes sexual misconduct and the next steps when they encounter an incident or receive a report that an incident has occurred; preventative programming; and the publication of the institutions’ Title IX coordinator as designated requirements under the Title IX statute or be at risk of losing federal funds (Kreighbaum, 2017; Silva, 2017). Public reception to the current transition varies across the nation as statements indicate that the change will undermine victim’s rights, allow the opportunity for setbacks in the protections the Obama-era guidance afforded those reporting sexual misconduct, and prevent OCR from being an ally to hold institutions accountable for addressing sexual misconduct. Furthermore, additional viewpoints express the change as an opportunity to afford greater protections and fairness to those individuals who have been accused of sexual misconduct, and OCR will no longer be weaponized to work against institutions (Gersen,

2017; Kreighbaum, 2017; Silva, 2017). As administrators work to navigate compliance when reports are mishandled, it is important to note that in addition to complaints filed with OCR, civil lawsuits with a request for monetary damages are possible.

NCHERM now believes Title IX cases to be among the most expensive lawsuits in history, brought forward both by accusers and accused for administrative mishandling of reports of sexual misconduct. The first settlement against a college after *Davis v. Monroe County Board of Education* Title IX was \$75,000.00 in 2000; now settlements are reaching closer to potential limits such as the \$19.1 million jury verdict against California State University, Fresno in 2008. Even with a subsequent judge reduction to \$6.6 million, the cost of compliance for institutions to address their responsibility under Title IX is apparent (*Brzonkala v. Virginia Polytechnic Institute and State University*, 1997; Hostetter & Anteola, 2007; Lipka & Wolverton, 2007). This study examined the 2011 Dear Colleague Letter and publicized implementation of a Title IX coordinator as an accountability tool to ensure adequate compliance with Title IX via an analysis of litigation for mishandled reports of sexual misconduct by higher education administrators within the California State University System before and after the 2011 guidance and mandated employment of a Title IX coordinator.

Background of the Problem

Sexual assault is one of the most underreported crimes in the world (Sachs, 2014). Currently described as a wicked problem, difficult to define, and thereby inherently unsolvable, this problem is encroaching horrendously on college campuses with varying degrees of influential policy transforming into actionable behavior (Breitenbecher, 2000; Brubaker, 2009; Weber & Khademian, 2008). Across the nation, the number of women

sexually assaulted during their college years is deemed to be one in five college women (Bradley, Yeater, & O'Donohue, 2009; Clement, 2015; Edwards, 2009; Exner & Cummings, 2011; Milhausen, McBride, & Jun, 2006; Suzuki, 2013), and yet the past 20 years have demonstrated little reprieve to the reporting obstacles or barriers hindering the progressive movement of sexual misconduct prevention and response (Edwards, 2009). It is postulated that women who attend institutions of higher education may actually be at a greater risk for encountering an incident of sexual misconduct within that microcosm, or world in miniature, than those who do not attend an institution of higher education (D. Carmody, Ekhomu, & Payne, 2009; Kress, Shepherd, & Anderson, 2006; McMahon, 2008). Kress et al. (2006) deemed this rate to mean college women are three times more likely to fall victim to an incident of sexual misconduct compared to women in general society. M. Carmody et al. (2009) further indicated a microcosmic society where dating, alcohol, and drug use are more prevalent than the norm, developing a unique environment in relation to sexual misconduct. Furthermore, since 2000, sexual assault and other forms of sexual misconduct and relationship violence have continued to be the most widely underreported crimes on college campuses (Gonzales, Schofield, & Schmitt, 2005). In a 2006 survey, both men and women reported to researchers the main barriers to reporting incidents of sexual misconduct were hesitancy because they may know the perpetrator, incapacity and potential to be blamed for what occurred, shame, guilt, fear of their sexuality being challenged, embarrassment, judgment, concerns for confidentiality, retaliation, and fear of not being believed (Sable, Danis, & Mauzy, 2006). However, a large contributor to the reason acts of sexual misconduct go unreported stems

from unclear reporting procedures, policies, and educational methods for obtaining resources and aid when encountering an incident.

In 2013, Andrea Pino captured accounts from more than 60 fellow students in preparation to file a complaint with the U.S. Department of Education OCR (Kingkade, 2013a). The complaint alleged University of North Carolina-Chapel Hill (UNC) violated assault survivors' rights under the Campus Sexual Assault Victims' Bill of Rights, the Clery Act, and the Family Educational Rights and Privacy Act (FERPA, 1974), as well as equal opportunity mandates under Title IX of the Education Amendments of 1972, Titles VI and VII of the Civil Rights Act of 1964, and Title II of the Americans with Disabilities Act. Melinda Manning, former UNC Associate Dean of Students, informed the *Huffington Post* in an interview that the disparate treatment through victim blaming and inappropriate questioning of victims of sexual misconduct was among the reasons for her resignation (Kingkade, 2013a). Manning's statement provided a public view of administrative obstacles that students encountered in attempting to report incidents of sexual misconduct and the failures by administration in implementing Title IX regulations. Annie Clark, another student from UNC, recounted seeking a counselor for help and being told, "Rape is like football, and you're the quarterback; when you look back on a game, Annie, how would you have done things differently?" (Kingkade, 2013b).

A 2014 news report stated that the University of Connecticut was ordered to pay \$1.28 million to settle a lawsuit filed by five students who charged that the university had treated their claims of sexual assault and harassment with deliberate indifference (Schlossberg, 2014). Columbia University watched 23 of its students file a federal

complaint alleging the institution mishandled sexual assault complaints in the same year (Iaboni, 2014). Attention was brought to the issue at Columbia University, as one student carried her mattress consistently with her on campus to represent the weight she carries with her everyday as she continues to attend school with the student who allegedly raped her. This was even after she, along with two other students attending Columbia University, filed complaints alleging the same student had attacked all of them, yet the alleged rapist had not been expelled (Schlossberg, 2014). In a 2006 case at Indiana University, a student appealed the university administration's decision, which banned the student's assailant from campus for the summer for inappropriate sexual contact (Nehring, 2014). The University of Kansas made news in 2014 when a student admitted to university officials that he had continued having sex with another student even after she had said "no" and asked him to stop. The student was found guilty of "nonconsensual sex," placed on probation, made to write a reflection paper, asked to attend counseling, and banned from university housing. The student who reported to the University of Kansas officials stated that the reporting process was as traumatic as her assault with punitive results (Kingkade, 2014). In 2015, a news headline covered a University of California, Santa Barbara student's formal announcement of plans to file a civil lawsuit against the University of California Board of Regents for Title IX violations in the mishandling of her sexual assault case (Wu, 2015). Additionally, Kingkade (2012) stated, "Students at Amherst College have put pressure on administrators over how their school handles reports of sexual assaults, as several first-person accounts from students suggest they have ignored serious allegations" (p. 1). Amherst students Angie Epifano, Dana Bolger, and Cat Bryars passionately spoke publicly to the college's inherent

administrative practice of closing ranks and systematically silencing reporters of sexual misconduct (Epifano, 2012; Mosbergen, 2012). In June 2013, Peter Yu sued Vassar College, claiming administrators mishandled the Title IX grievance process when they did not properly advise him of the policies or allow him an advisor or legal representation, further arguing that the college denied him due process throughout the sexual misconduct disciplinary process and had discriminated against him because of his sex (Sander, 2013). A similar complaint was filed against St. Joseph's University in July 2013 along with a federal lawsuit against Xavier University in August 2013, claiming that the university conducted fundamentally unfair hearings with administrators consistently withholding information and providing no guidance as to the appropriate process for addressing sexual misconduct on campus when one is accused of a violation of prohibited conduct (Sander, 2013). Students across the country testified to feeling expressly let down by the people and policies that were supposed to provide protection and guidance throughout their pursuit of higher education (Glaser, 2014; Grasgreen, 2013).

The *Chronicle*, *Inside Higher Ed*, *Huffington Post*, *Campus Times*, *Washington Post*, and various other university and city newspaper outlets across the nation continued to publish articles covering the voices behind several university allegations of mishandled reports of sexual misconduct by institution administration. With entities such as the *New York Times* brandishing articles entitled "Reporting Rape and Wishing She Hadn't" greatly highlighting the mishandling of reports of sexual misconduct by higher institutions, public attention to the matter continued to expand across the country (Bogdanich, 2014). The aforementioned media attention aided in increasing awareness

and nationwide public concern in holding institutions accountable for the implementation of Title IX (Beyer, n.d.; McMahon, 2008). In 2015, a documentary entitled “The Hunting Ground” sparked national intrigue and drew attention to what the film defined as a concerning epidemic as it focused on university administrative approaches and mishandling of reports of sexual misconduct occurrences on university and college campuses throughout the United States. This film depicts student recounts of navigating complex systems with little information to process or policy in their attempts to report incidents, being silenced by administrators, and university officials detailing the pressure of trying to handle incidents with an obligation to suppress reports provided (Dick & Ziering, 2015). The documentary moves to imply institutional administrators found and placed greater importance in ensuring the continuation of their athletic programs, brand and image in the media, associated donor dollars, and minimization of rape statistics depicted and detailed within their annual security reports than the true needs of upholding the safety and security of all students on campus (Dick & Ziering, 2015).

The documentary also demonstrated a change in the college attendees of today as it detailed UNC students aiding others in composing and preparing to file a Title IX complaint with the U.S. Department of Education OCR. Challenging the views and nonchalant approach the students thought they received on behalf of and through the administrative actions, the students felt it appeared as though administrators were unsure or unwilling to become involved in providing corrective action to safety concerns on campus. For example, 30 years ago a stalker may have been defined as merely persistent. However, updated societal standards and definitions communicated through federal and state law for behavioral characteristics and actions that constitute a violation challenge

the previous standards by which society defined sexual misconduct, causing a shift in society to acknowledge the transformation of expectations to address and prevent sex discrimination in all forms and therein garner a great deal of cultural change. In addition, the access to information is empowering expectations; students who report an incident of sexual misconduct expect more from their institution. These expectations include clear and understandable policies and procedures, accountability, adequate investigations, judicial fairness, and appropriate sanctioning (Beaver, 2017; Fedina, Holmes, & Backes, 2018; Koenick, 2014).

In the wake of what appeared as national organizational movements toward filing Title IX complaints with OCR, the *Boston Globe* ran articles with headlines reading “Lawsuits New Weapon Against Campus Rape” (Sloan & Fisher, 2010). The article postulated a showcased and patterned trend of litigation to be the next best route in amplifying the voices of students across the nation, with the utilization of litigation as the public tool to hold universities responsible for their actions, policies, and processes. Bair (2013) stated litigation serves as both a method for accountability and deterrence, and its purpose is to work toward a more permanent result that protects people before, during, and long after misconduct or injustice occurs.

Litigation has led Title IX, an equity law that focuses on issues of gender discrimination, to be readdressed in its efforts as the foundation for holding colleges and universities in receipt of federal funding accountable for their methodology and actions when addressing reports of sexual misconduct. As a federal law enacted in 1972, Title IX applies to all colleges and universities that receive federal financial assistance, either directly or indirectly, and prohibits discrimination on the basis of sex in education

activities, programs, and employment (Gomez & Smith, 2013). Applying equally to students, staff, and faculty, Title IX protects students and employees by indicating, “no person in the United States, shall on the basis of sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any education program or activity receiving Federal financial assistance” by any school employee, student, or third party (Gomez & Smith, 2013, p. 1). Gomez and Smith stated,

Title IX requires: that a school publish a non-discrimination statement; appoint a Title IX Coordinator; adopt and publish grievance procedures that are prompt and equitable and allow for adequate, reliable, and impartial investigation of complaints; use and enforce appropriate remedies; provide education and prevention programs; provide general training for all campus community members about the school’s policies and procedures; and specific training for implementers and adjudicators about the school’s grievance procedures and its response to complaints of sexual harassment and sexual violence. (p. 4)

Title IX also requires that a school’s grievance procedures be prompt and equitable. Policies must designate reasonably prompt timeframes for the major stages of the complaint process. Both the complainant and the respondent should be given periodic status updates, receive notification of the outcome, and be informed of his/her right to appeal. “A critical issue under Title IX is whether the school recognized that sexual harassment has occurred and took prompt and effective action calculated to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects” (U.S. Department of Education, OCR, 2001, p. iii). Mechanisms for remedies that address both individual and community safety, such as the implementation of no contact orders,

provision of academic support, and other varied equitable solutions or responses for both parties should be available as warranted. Grievance procedures must ensure an investigation that is adequate, reliable and fair, must apply a preponderance of the evidence standard (more likely to have occurred than not), and must balance the rights of the complainant and respondent. Under Title IX, if a school knows or reasonably should know about sexual harassment that creates a hostile environment, the school must eliminate the harassment, prevent its recurrence, and address its effects. Gomez and Smith (2013) reported,

A school violates Title IX if it has ‘notice’ of a sexually hostile environment and fails to take immediate and corrective action. A school is deemed to have notice if a responsible employee knew, or, in the exercise of reasonable care, should have known about the harassment. A responsible employee includes and employee who: (1) has the authority to take action to redress the harassment or any other misconduct by students or employees; or (3) a student could reasonably believe has the authority or responsibility to take action. (pp. 4-5)

According to the U.S. Department of Justice Overview of IX (n.d.),

The principal objective of Title IX is to avoid the use of federal money to support sex discrimination in education programs and to provide individual citizens effective protection against those practices. Title IX applies, with a few specific exceptions, to all aspects of federally funded education programs or activities. In addition to traditional educational institutions such as colleges, universities, and elementary and secondary schools, Title IX also applies to any education or training program operated by a recipient of federal financial assistance. (p. 1)

Gomez and Smith (2013) stated, “At its core, Title IX is about balance, equity, and fundamental fairness. It is both a sword and a shield, and when implemented properly, a holistic response to sexual misconduct” (p. 1).

In an effort to address the now unveiled and vocalized concern surrounding sexual misconduct in the educational system, Bazelon (2017) reported,

The U.S. Department of Education’s Office of Civil Rights issued a “Dear Colleague Letter” to colleges and universities making explicit their obligations under Title IX, which prohibits discrimination on the basis of sex. Sex discrimination, the OCR letter stated, includes “sexual violence,” defined as “physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent.” The letter reminded schools of their legal obligation “to take immediate and effective steps to end sexual harassment and sexual violence,” which included providing grievance procedures designed to result in a “prompt, thorough, and impartial” resolution of such complaints. Schools suspected of violating the letter’s interpretation of Title IX have found themselves under federal investigation. According to a recent article in the *San Francisco Chronicle*, more than 200 schools are awaiting word from the Department of Education on whether their policies are out of compliance, either in a particular case or systemically. An adverse finding could mean the loss of millions of dollars in federal funding—money that these schools rely on to survive. (Bazelon, 2017, p. 1)

Over 100 institutions underwent a Title IX investigatory review by the Office of Civil Rights for mishandling reports of sexual misconduct, not providing sufficient prevention

strategies, and lack of adequate policies (White House Task Force to Protect Students from Sexual Assault, 2014a).

The process by which the OCR arrived at slating the Title IX statute as the umbrella unit for addressing concerns of sexual misconduct developed over several years through various district and supreme court cases, discussed in greater detail later in this study, because the initial focus of Title IX did not include sexual misconduct. Beyond a moral responsibility to aid in addressing presented student concerns regarding the need to reduce sexual misconduct and violence on college campuses, there was a clear need for legislation and guidance for university administration. This would lead to the congruent positioning of milestone cases and written guidance that would bind sexual misconduct to Title IX law as a mechanism that prevented women from fully participating in educational opportunities and thereby was inherently discriminatory. Hitherto, this ideology was represented in 2011 as the U.S. Department of Education OCR issued a memorandum that would provide more specifically the regulations and implementation measures required for compliance of Title IX to extend to matters of sexual assault, domestic/dating violence, and stalking on campus and would require educational systems to actively engage and address these concerns (U.S. Department of Justice, n.d.). As mentioned above, the memorandum issued was deemed, better known, and recognized across the nation as a “Dear Colleague Letter” (DCL), or tool to aid institutions in understanding and implementing Title IX law (U.S. Department of Education, OCR, 2011). The DCL included suggestions, discussions of preventative strategies, recommendations, and detailed guidance for ensuring the address and obligation of the institutions to fully respond to and investigate any occurrence that could be reasonably

known as an incident of sexual misconduct. Furthermore, an exponentially large component was the DCL directive regarding the relationship among Title IX, FERPA, and the Clery Act. Additionally, it is within this memorandum that universities were required to employ and publish a Title IX coordinator to ensure Title IX implementation and compliance, prevention education, and training with this new federal guidance (U.S. Department of Justice, n.d.). This 2011 publication marked a turning point for all colleges and universities as they sought to meet the requested needs for addressing sexual and interpersonal misconduct, specifically as it relates to the imperative role of Title IX coordinator.

Charge to Uphold Regulations

In order to meet the implementation and compliance needs of the 2011 DCL, colleges and universities saw the obligations of the Title IX coordinator rise to new levels due to the newly mandated requirements slated to be upheld by the position. Prior to the aforementioned 2011 DCL guidance, there was no requirement to publish contact information for the individual tasked to ensure the needs for compliance under Title IX were executed and met. First, all federally funded institutions needed to revise or reform their policies and procedures for addressing sexual misconduct to align with the new regulations set out by the U.S. Department of Education according to the 2011 DCL. This included the distribution of a notice of nondiscrimination statement viewable or easily accessible for all community members, transparency and disclosure of information deemed to be or not to be confidential, university designees who would be required to report to the institution should they learn or be informed of any possible case of sexual misconduct, implementation of educational programming such as bystander intervention

charging students with the tools to step up and aid their peers when encountering concerning situations, and the charge of the Title IX coordinator to be designated to oversee investigation procedures and processes are fair and equitable for all parties involved (Sieben, 2011). The DCL communicated the role of the Title IX coordinator as the designee to lead an integrated and coordinated approach to Title IX compliance for institutions.

In addition, in the state of California, all institutions in receipt of state funding charge Title IX coordinators with upholding compliance and regulations set forth by the state of California and detailed in the California Education Code (Ed. Code) in congruence with the federal mandates as well. California statutes, however, include additives such as requiring institutions to develop memorandums of understanding with their local law enforcement agencies; duty to report any violent crime, hate crime, or sexual assault whether committed on or off campus to local law enforcement; concealing the identity of a victim without consent; the development of comprehensive policies and disciplinary procedures; campus referrals; outreach and programming; adherence to affirmative consent law; and comprehensive training programs. These statutes apply to the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, the Board of Directors of the Hastings College of Law, and the governing board of each private and independent postsecondary institution with more than 1,000 students that receives state Cal Grant funding (Title 3 Postsecondary Education, 1976). By providing the Title IX coordinator with this encompassing oversight, the legal mandates that also correlate such as the Clery Act and the Campus SaVE Act are conceptually married or intertwined and are therein

integrated and applied in a seamless manner with the institutions holistic approach to compliance.

It is within these roles and responsibilities that the significant importance placed upon Title IX coordinators to hold universities accountable to respond to the voice of the students is postulated. Cited in the *Chronicle of Higher Education*, Daniel Carter stated, “In the current environment being a Title IX coordinator can be a challenging assignment . . . But it’s an important challenge for higher education to take on” (June, 2014, p. 13).

Purpose of the Study

Demonstrations of deliberate indifference by institutions and the mishandling of reports of sexual misconduct by college and university administration has led to new government legislation and revised policies that mandate specific reporting and guidance for responses related to instances of sexual assault, sexual or gender-based harassment, dating or interpersonal relationship violence, domestic violence, and stalking. Media attention to lawsuits stemming from subpar administration handling of sexual misconduct incidents highlighted the need for a call to action. Newell (2012) asserted, “We are a nation founded on core values we share and care about. Leaders who violate the core values cannot expect people inside or outside their organization to follow. Failure to lead through core values means a failure to engender trust” (p. 21). Upon initial examination of the aforementioned leadership, there is an implied fault with the agent, the act itself, and the consequences of the aforementioned actions in the severed relationship of trust with the community. Such stated routines have the inherent ability to diminish the human aspect and present grave consequences (Morgan, 2006). Morgan (2006) stated,

“Human health is adversely affected by corporate practices that place profits before human welfare” (p. 292). This represents an excellent source point demonstrating the ugly face of an organization. He further declared that “although we are usually encouraged to think about organizations as rational enterprises pursuing goals that aspire to satisfy the interests of all, there is much evidence to suggest that this view is more an ideology than a reality. Organizations are often used as instruments of domination that further the selfish interests of elites at the expense of others, and there is an element of domination in all organizations” (Morgan, 2006, p. 293). This presents the ugly face of organizational achievement and exploitation (Morgan, 2006). Arment (2014) stated, “History shows that where ethics and economics come in conflict, victory is always with economics. Vested interests have never been known to willingly divest themselves unless there was sufficient force to compel them” (p. 61). According to Shafritz and Hyde (2012),

Despite the extensive literature on public service ethics, there is little recognition of the most fundamental ethical challenge to the professional within a technical-rational culture: that is, one can be a “good” or responsible administrator or professional and at the same time commit or contribute to acts of administrative evil. (p. 599)

The weight of responsibility is left to the organizational entities and the leadership within them. Litigation is described as taking root in three basic ideals: the foundation of holding others accountable who have committed wrongdoing, a method to deter those who might commit acts of wrongdoing in the future, and a pursuit of security for the future of individuals who have been affected by crime (Bair, 2013). Movements such as

#NotAlone and #MeToo unveil elite individuals who are protected by authoritative figures to the detriment of victims when financial incentives or public scrutiny may be the consequence. Litigation becomes the flare that refocuses the attention of those needing to change. Because of violations of governmental policies, institutions found themselves under investigation and facing public outrage for sacrificing the safety of their campus community. As colleges and universities saw themselves launched into a public push for corrective action, requesting greater expectation to embrace higher standards of accountability, ultimately the responsibility for colleges and universities to meet these expectations fell on the Title IX coordinator.

The purpose of this study was to investigate the effect, if any, of the role of the Title IX coordinator as a method of policy implementation through demonstration of a statistically significant difference in the number of cases of litigation for mishandled reports of sexual misconduct by administration across the 23 CSU System campuses. The objective was to examine the impact of the 2011 OCR guidance and mandated Title IX coordinator as administrative oversight for institutional compliance and accountability in addressing reports of sexual misconduct on college campuses through a quantitative analysis of litigation. The investigation utilized the number of cases of litigation to examine variances across the 23 California State University (CSU) System campuses before and after the Title IX policy revision in 2011. The purpose was to convey through the study the effectiveness of the 2011 guidance and the role of the Title IX coordinator in mitigating litigation resulting from administrations' mishandled reports of sexual misconduct as revealed in a number of cases of litigation before and after the 2011 Dear Colleague Memorandum and the communicated mandate of a published Title IX

coordinator across the 23 CSU System campuses. California saw an increase in exposed incidents as lawsuits being faced by various University of California (UC) institutions met front-page headlines stemming from university administration mismanagement of reports of sexual misconduct (University of California, n.d.). In a 2017 UC System report, details concerning 113 complaints of sexual misconduct between the years of 2013-2016 found to be true were released to the public (Shafer, Pickoff-White, & Lagos, 2017). The UC System found itself heavily criticized by the public for its slow response and deliberate decision to handle accused employees with deference and light punishment (Baskin, 2015). For example, Dean of UC Berkeley's Law School, Sujit Choudhry, was found responsible of serial sexual wrongdoing. That finding resulted in an apology to one individual and a 10% cut to his salary of approximately \$415,000. Additionally, after the former UC Vice Chancellor Fleming was found, under the standard of a preponderance of the evidence more likely to have occurred than not, to have inappropriately touched and kissed a former employee, Fleming was named by UC Chancellor Dirks an international ambassador for the institution's planned Global Campus in Richmond, sending a shocking interpretation of appropriate sanctions for poor behavior (Brekke, 2015). UC Berkeley Chancellor Dirks also faced criticism in the wake of accepting world renowned astronomer Geoff Marcy's resignation during an investigation of sexual harassment after it was revealed that the University had previously let Marcy off with a warning even though he had been found to have inappropriate contact with at least 4 female students since 2001 (Brekke, 2015; Faer, 2018; Ghorayshi, 2015). Although UC Berkeley was one institution to publicly demonstrate concern in its approach to addressing and remedying reported Title IX concerns, scandals involving

sexual misconduct incidents across the entire UC System were unveiled in the report. At UC Irvine, a Dean was allowed to take a demotion and stay on as faculty after being accused of sexually harassing a coworker. An associate professor at UCLA paid the University a fine of \$7,500 in lieu of suspension after being found to have pursued a student until she was afraid to attend classes. Additionally, a professor accused of sexually assaulting a female student at UC Santa Cruz opted to resign before being fired. Eventually UC agreed to pay this professor's accuser \$1.15 million (Gecker, Har, & Williams, 2017). With the examination of detailed accounts of incidents such as these occurring on campuses, it became important to address the safety of students across the United States. In 2014, Cal Poly student Melissa Giddens publicly criticized the University administration's handling of her report of sexual misconduct on Facebook and reported to the *San Luis Obispo Tribune* that several other students contacted her online concerning their mistreatment and concerns for how their cases were handled by Cal Poly administration as well (Sheeler, 2017). A CSU, Fullerton student was awarded \$92,000 by the CSU System to settle her case of sexual harassment by a professor (Lundstrom, 2018). From 2016 to 2018, the CSU System paid more than \$440,000 to settle claims of sexual harassment (Lundstrom, 2018). These reported concerns and outcomes called for additional research of effective policy implementation across the 23 CSU System campuses as related to Title IX instruction. The revision of Title IX through the 2011 DCL innovates several components to address the concerns being demonstrated, one of which requires all universities receiving federal funding to employ a Title IX coordinator. The mandated implementation of a Title IX coordinator arose as a policy to aid in holding universities accountable in their response to reports of sexual misconduct on

college campuses and oversight of Title IX compliance. The focus of this study is examining and analyzing the effect of the role of the Title IX coordinator as described within the 2011 DCL as it relates to litigation on the 23 CSU System campuses. The aim of the study is to analyze the effect of the Title IX coordinator as a method of policy implementation in decreasing the number of cases of Title IX litigation across the 23 California State Universities.

Research Design

The specific aim of the study was to describe the effect, if any, of the Title IX coordinator as a method of policy implementation on Title IX litigation cases across the 23 CSU System campuses. Chapter 2 provides an overview of case law and litigation that has shaped the Title IX policy to address sexual misconduct. This historical context is important to provide understanding in the origination and priorities identified for Title IX policy and its implementation. The cases discussed within the text move to convey the effects of litigation on policy creation, guidance, and implementation as a mechanism for providing change to a social structure as related to Title IX and sexual misconduct. The societal changes that are conveyed will help to clarify the necessity of appropriately implementing Title IX through the role of the Title IX coordinator as an effective method of providing corrective action and direct changes in social behaviors and administrative accountability. Additionally, the study navigated the evolution of the types of sexual misconduct defined and being reported through institutional annual security reports and the variety of behaviors constituting sexual misconduct indicated through the same evolution of Title IX policy fostered and shaped through litigation. Chapter 3 describes the effect of the Title IX coordinator on Title IX litigation across the 23 CSU System

campuses via a quantitative analysis. The researcher used a paired *t* test of litigation cases 6 years prior to the mandated requirement of a Title IX coordinator as communicated within the 2011 DCL on behalf of the U.S. Department of Education OCR, followed by an analysis of data to identify the changes if any within the number of litigation cases found 6 years after the implementation of a Title IX coordinator as stated in the 2011 DCL on behalf of the U.S. Department of Education OCR. This study was conducted in an effort to define the impact made by the Title IX coordinator on campus safety and university accountability in properly handling of reports of sexual misconduct on campus through the number of litigation cases filed under Title IX. Additionally, the researcher worked to utilize this study to report on policy implementation and the effect of the policy and the implemented role of the Title IX coordinator. The study was crafted to collectively research and identify the potential impact or stride being made toward safer CSU System campuses for students, faculty, staff, and other university constituents. Chapter 4 provides the framework for analyzing the data and information garnered from the quantitative analysis. Finally, Chapter 5 concludes the findings of the effects of the Title IX coordinator on Title IX litigation across the 23 CSU System campuses 6 years before and after the 2011 DCL on behalf of the U.S. Department of Education OCR.

Research Question

The following research question guided the study on the analysis of the effect of the implementation of Title IX coordinators on Title IX litigation across 23 CSU System campuses.

1. Does the mandated implementation of a Title IX coordinator decrease the number of related litigation cases across the 23 California State University (CSU) System campuses?

Hypothesis and Null Hypothesis

H₁ – There is no statistically significant difference in the number of litigation cases at the 23 CSU System campuses after the implementation of a Title IX coordinator.

H₀ – There is a statistically significant difference in the number of litigation cases at the 23 CSU System campuses after the implementation of a Title IX coordinator.

Significance of the Research

As the amendments to the Title IX Policy attempts to address university and institutional responses to reports of sexual misconduct, it is important to continue several methods of study into the effects of the Title IX coordinator, the Title IX Policy compliance manager, as an instrument of policy implementation and method of intervention. Former President Barack Obama (2014) stated, “Sexual violence is more than just a crime against individuals. It threatens our families, it threatens our communities; ultimately, it threatens the entire country. It tears apart the fabric of our society” (White House Task Force to Protect Students from Sexual Assault, 2014b, p. ii). Through this study, university constituents have the opportunity to assess the Title IX coordinator’s effect on litigation throughout the 23 CSU System campuses. Furthermore, information provided within the study aids in being able to measure a component of effectiveness of the mandated implementation of the Title IX coordinator. As Title IX coordinators are heavily charged with all aspects of Title IX compliance, measuring the

effectiveness of the Title IX coordinator is an important area of continued study for university and institutional stakeholders and constituents and for society as a whole.

The research provided through this study is not only timely but also extremely crucial. As the charge is not only to address the concern of sexual assault as a widely underreported crime whose processes of address continue to victimize and take a large toll on individuals but also to promote a safe learning environment and basic right to students across the country through adequate management when reports of sexual misconduct are brought forward, this structure supports a comprehensive approach to address acts of sexual misconduct and moves to ensure that all members within the institutional community have access to the education and employment they seek. When a student, staff member, or faculty member encounters an incident of sexual misconduct, the emotional, physical, and psychological impact may interfere with his or her school and work performance. As denoted within the concept of empowerment theory, when adequate and appropriate services are provided to victims/survivors, such factors are mitigated (Zimmerman, 2000). Therefore, institutions of higher education can best serve members of their community by ensuring properly executed Title IX compliance and working toward creating an environment intolerant of sexual misconduct. This timely research highlights the roles and responsibilities of the Title IX coordinator and the efficiency being provided through the mandated implementation of the coordinator. This research provides continued information as related to the effectiveness of Title IX policy implementation and is beneficial to individuals involved in Title IX policy construct at the federal level, university and institutional administrators, students, faculty, staff, and various communities at large.

Definitions of Terms

The following key terms originate from the California Education Code to address the scope of sexual misconduct as referred within the study (Title 1 General Education Code Provisions, 1982). These terms were gradually defined as applicable under Title IX by the U.S. Department of Education's OCR through guidance memorandums and DCL to outline the span and scope of behaviors addressed under Title IX policy for proper implementation and administration of mandates under Title IX of the Education Amendments of 1972 (U.S. Department of Education, OCR, 2011, 2018).

Affirmative consent. Affirmative consent means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved or the fact of past sexual relations between them should never by itself be assumed to be an indicator of consent.

A person who wants to engage in a specific sexual activity is responsible for obtaining affirmative consent for that activity. Lack of protest does not constitute affirmative consent. Lack of resistance does not constitute affirmative consent. Silence and/or passivity also do not constitute affirmative consent. Relying solely on nonverbal communication before or during sexual activity can lead to misunderstanding and may result in a violation of this policy. It is important not to make assumptions about whether a potential partner is consenting. In order to avoid confusion or ambiguity, participants

are encouraged to talk with one another before engaging in sexual activity. If confusion or ambiguity arises during sexual activity, participants are encouraged to stop and clarify a mutual willingness to continue that activity.

Affirmative consent to one form of sexual activity does not, by itself, constitute affirmative consent to another form of sexual activity. For example, one should not presume that affirmative consent to oral-genital contact constitutes affirmative consent to vaginal or anal penetration. Affirmative consent to sexual activity on a prior occasion does not, by itself, constitute affirmative consent to future sexual activity.

Affirmative consent may be withdrawn at any time through clear words or actions communicating a decision to cease the sexual activity. Once affirmative consent is withdrawn, the sexual activity must cease immediately.

Affirmative consent cannot be gained by taking advantage of the incapacitation of another when the person initiating sexual activity knew or reasonably should have known that the other was incapacitated. Incapacitation means that a person lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity.

Affirmative consent cannot be given by someone under the age of 18.

It shall not be a valid excuse to alleged lack of affirmative consent that the accused believed that the complainant consented to the sexual activity under either of the following circumstances:

- The accused's belief in affirmative consent arose from the intoxication or recklessness of the accused.
- The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the complainant affirmatively consented.

Coercion. Coercion is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to have sex. When a person makes clear a decision not to participate in a particular form of sexual contact or sexual intercourse, a decision to stop, or a decision not to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion was used, the following is considered: (a) the frequency of the application of the pressure, (b) the intensity of the pressure, (c) the degree of isolation of the person being pressured, and (d) the duration of the pressure.

Discrimination. Discrimination is any prohibited conduct resulting in distinction, preference, advantage for, or detriment to an individual or class of individuals compared to others that is based on a legally protected characteristic of sex, or gender, or a perception that an individual or class of individuals have such characteristics or associate with others who have, or are perceived to have, such characteristics, that adversely affects a term or condition of an individual's employment, education, living environment, or participation in a University activity, or is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a University activity. Examples of discrimination include, without limitation:

- Denying a person admission or employment based upon sex or gender;
- Denying raises, benefits, or promotions on the basis of sex or gender; and
- Subjecting a person to different academic standards, employment conditions, or treatment in the educational setting because of sex or gender

Gender-based harassment. Gender-based harassment includes harassment based on gender, sexual orientation, gender identity, gender expression or stereotyping, which

may include acts or threats of verbal, nonverbal, graphic, or physical aggression, intimidation, or hostility whether or otherwise when either condition outlined above for sexual harassment is present, even if the acts do not involve conduct of a sexual nature.

Incapacitation. Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking or using drugs. The impact of alcohol and other drugs varies from person to person.

A person who is incapacitated is unable, temporarily or permanently, to give affirmative consent because of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol, drugs, or medication or due to a temporary or permanent physical or mental health condition.

Intimidation. Intimidation is an implied threat that menaces or causes reasonable fear in another person of harm to that person's body, a member of the person's family, or reputation. A person's size, alone, does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g., blocking access to an exit).

Physical violence. Physical violence means that a person is exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.

Relationship violence. Relationship violence includes any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship.

Relationship violence may include any form of prohibited conduct, including sexual assault, stalking, and physical assault (as defined as follows).

- Physical assault is threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person.

Relationship violence includes “dating violence” and “domestic violence.” The Violence Against Women Act ([VAWA], 1994) defines the following:

- Dating violence to mean violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship would be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- Domestic violence to mean felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s act under the domestic or family violence laws of the jurisdiction.

Retaliation. Retaliation means any adverse action taken against a person for making a good faith report of prohibited conduct or participating in any proceeding. Retaliation includes threatening, intimidating, harassing, coercing, or any other conduct that would discourage a reasonable person from engaging in any process provided for and/or activity protected under this policy. Retaliation may be present even where there

is a finding of “no responsibility” on the allegations of prohibited conduct. Retaliation does not include good faith actions lawfully pursued in response to a report of prohibited conduct.

Sexual assault. Sexual assault includes any unwelcomed or nonconsensual contact of a sexual nature with another person including the following:

1. Penetration: Any sexual intercourse, however slight, with any object or body part by a person upon another person that is without consent and/or by force. This form of sexual assault includes vaginal or anal penetration by a penis, tongue, finger, or object or oral copulation (mouth to genital contact) no matter how slight the penetration or contact.
2. Sexual contact: Any other form of intentional sexual touching, however slight, with any object or body part performed by a person upon another person that is without consent and/or by force. Sexual contact includes the following:
 - Intentional touching of the breasts, buttocks, groin, or genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts; and
 - Making another touch the actor, another, or themselves with or on any of these body parts.

Acts without consent and/or by force refers to acts committed (a) by physical force, violence, threat, or intimidation; (b) by ignoring an objection; (c) without affirmative consent (as defined in this policy); (d) by causing another’s incapacitation through the use of alcohol or other drugs; or (e) by taking advantage of another person’s incapacitation, helplessness, or their inability to consent.

Persons under the age of 18 are legally incapable of consenting to any form of sexual contact.

Sexual exploitation. Sexual exploitation occurs when an actor engages in nonconsensual or abusive conduct not otherwise proscribed by which he or she takes sexual advantage of another for the actor's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited.

Sexual exploitation includes, but is not limited to, doing any of the following:

- Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give affirmative consent to sexual activity.
- Allowing third parties to observe private sexual activity from a hidden location or through recorded, photographed, or electronic means (e.g., Skype or live streaming of images) without consent of all participants.
- Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person's intimate parts, including genitalia, groin, breasts, or buttocks, in a place where that person would have a reasonable expectation of privacy).
- Recording or photographing private sexual activity or a person's intimate parts (including genitalia, groin, breasts, or buttocks) without consent of all persons depicted in the recording or photograph.
- Disseminating or posting images of private sexual activity or a person's intimate parts (including genitalia, groin, breasts, or buttocks) without the consent of all persons depicted in the images.

- Prostituting another person.
- Possession, production, distribution, sale, or purchase of child pornography.

Sexual harassment. Sexual harassment is any unwelcomed sexual advance, unwelcomed request for sexual favors, or other unwelcomed conduct of a sexual nature, whether verbal, nonverbal, graphic, physical, or otherwise, when either condition outlined below, is present:

1. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any university programs and/or activities or is used as the basis for decisions affecting the individual (often referred to as "quid pro quo" harassment); or
2. Such conduct creates a hostile environment. A "hostile environment" exists when the conduct is sufficiently severe or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from education or employment programs and/or activities at the college or university. Conduct must be deemed severe or pervasive from both a subjective and an objective perspective. In evaluating whether a hostile environment exists, consideration will consist of the totality of known circumstances, including, but not limited to the following:
 - The frequency, nature, and severity of the conduct;
 - Whether the conduct was physically threatening;
 - The effect of the conduct on the complainant's mental or emotional state;
 - Whether the conduct was directed at more than one person;
 - Whether the conduct arose in the context of other discriminatory conduct;

- Whether the conduct unreasonably interfered with the complainant's educational or work performance and/or university programs or activities; and
- Whether the conduct implicates concerns related to academic freedom or protected speech.

A hostile environment can be created by pervasive conduct or by a single or isolated incident if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of sexual assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, may not be sufficient to constitute a hostile environment.

Sexual misconduct. Sexual misconduct comprises a broad range of prohibited conduct of a sexual nature, including but not limited to sexual assault, stalking, sexual exploitation, relationship violence, sexual harassment or gender-based harassment, sexual or gender-based discrimination.

Stalking. Stalking is defined as engaging in an unwanted course of conduct of two or more acts directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress. Examples of stalking behavior are the following:

- Unwanted, intrusive, or frightening communications from the perpetrator by phone, mail, e-mail, text and/or social media.
- Leaving or sending the person unwanted items, presents, or flowers.

- Following or lying in wait for the person at places such as home, school, work, or recreation place.
- Making direct or indirect threats to harm the person, the person's children, relatives, friends, or pets.
- Damaging or threatening to damage the person's property.
- Harassing the person through the Internet.
- Posting information or spreading rumors about the person on the Internet, in a public place, or by word of mouth.
- Any other course of conduct in which the actor directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, harasses or communicates to or about a person or interferes with a person's property.

Threats. Threats are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to physically harm a person or the person's family members, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.

Timeline of enforcement actions.

- **1972 – Title IX of the Education Amendments Act:** Prohibits sex-based discrimination in higher education. “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” (Gomez & Smith, 2013, p. 4).

- **1990 – Jeanne Clery Act:** Initially called the “Crime Awareness and Campus Security Act” and later renamed in memory of slain student Jeanne Clery. The Clery Act is a consumer-protection law that aims to provide transparency about campus crime policy and statistics. Defines campus safety policy requirements and notification.
- **1994 - Violence Against Women Act (VAWA):** Established federal legal definitions of domestic violence, dating violence, sexual assault, and stalking.
- **2001 - Revised Sexual Harassment Guidance:** U.S. Department of Education Office for Civil Rights (OCR) guidance explored Title IX sexual harassment protections.
- **2011 - April 2011 Dear Colleague Letter:** Noting that sexual assault had become an epidemic on college campuses, OCR reiterated that Title IX universities must have adequate processes to address reports of sexual misconduct including the published mandate of a Title IX coordinator.
- **2013 - Campus SaVE Act:** signed into law as part of the Violence Against Women Reauthorization Act of 2013 mandating extensive “primary prevention and awareness programs” regarding sexual misconduct and related offenses.

CHAPTER 2: REVIEW OF THE LITERATURE

The best practice to broach responses in the event of a report of sexual misconduct is an area that still remains at the forefront of discussion for further study, growth, and development by university and institutional administrators. As institutions incur changes in regulations for policies, procedures, training, outreach, and sanctioning in conjuncture with new legislation, Title IX coordinators are tasked with being the policy-implemented change agent to move the institutional address of reports of sexual misconduct forward. Because litigation is the voice by which students across the country expressed discontent with the mishandling of reports of sexual misconduct by institutional leadership, the focus of this study was to examine the effects of a mandated Title IX coordinator as a method and tool of policy implementation, as reflected in a number of litigation cases.

In the practice of a centralized and holistic address of sexual misconduct, institutions of higher education had limited guidance and processes without consistent structure and true direction to educate the campus community of the steps required to report or file a Title IX complaint related to an incident of sexual misconduct or the institutional process for addressing such reports (McMahon, 2008). Title IX coordinators originated as a policy implementation addendum to the Title IX of the Education Amendments of 1972 in an effort to address sexual misconduct occurring on university campuses across the nation. This chapter discusses the occurrence of sexual misconduct incidents within institutions of higher education and the evolution of the definitions of behaviors deemed as prohibited conduct under Title IX. The development of legislation, formulation of policies, and litigation are all stated to be closely related. The discussion

highlights pivotal moments within history when litigation was utilized as a mechanism to promote change related to sexual misconduct. The discussion demonstrates the evolution of Title IX law and examines the implemented role of the Title IX coordinator and realms of compliance that the position is charged to oversee. As a means of understanding the role of the Title IX coordinator as a construct of policy implementation, it is important to understand the policies and procedures established to address sexual misconduct and the full scope by which the Title IX coordinator is tasked to ensure compliance. This includes the intersection of Title IX of the Education Amendments of 1972, VAWA, FERPA, Campus SaVe Act, and the Clery Act with the connected Annual Security Report. With this said, it is important to note the pertinent focus placed on the 2011 Dear Colleague Letter (DCL) that sought to shape the role of the Title IX coordinator as an integral intervention to addressing sexual misconduct and administrative accountability at colleges and universities nationwide (Wilson, 2017). Finally, the focus narrows to the additional guidance and instruction mandated by the state of California and communicated through system-wide Executive Orders provided by the Chancellor of the California State Universities System. The subject of this study is the largest collective of institutions in the United States and the first to implement a system-wide Title IX coordinator.

21st-Century Sexual Misconduct in Higher Education

In 2000, Fisher, Cullen, and Turner's *The Sexual Victimization of College Women* survey estimated that colleges with 10,000 students have the potential to expect more than 350 rapes per year. Additionally, half of all stalking victims are between the ages of 18 and 29 years, and women ages 16 to 24 years old experience the highest rate of

domestic violence victimization. Acts of sexual misconduct among U.S. college students still remain at a high level of concern with 20% of college-age women and 5% of college-age men being a victim (Clement, 2015; Fisher et al., 2000). In 1994, Warshaw demonstrated that one in four college women had been the victim of a completed or attempted rape and that in fully 84% of the attacks, the victim knew the perpetrator. In 1998, the National Violence Against Women Survey demonstrated that 83% of rape victims were less than 25 years old when assaulted (National Institute of Justice, n.d.). Additionally, the U.S. Department of Justice (2014) demonstrated that for the period of 1995 to 2013, females aged 18-24 continued to have the highest rate of sexual assault of any other age range, and Koss, Gidycz, and Wisniewski (1987) found that a woman's risk for being sexually assaulted was a staggering 25%. While statistically sexual assault primarily affects young women, they are not the only targets for crimes of sexual misconduct. Men, individuals with disabilities, members of cultural and religious minority groups, and lesbian/bisexual/gay/queer/transgendered individuals also experience sexual assault and do not report their victimization, with some of the aforementioned barriers previously discussed being the cause. This ideal leads to less than 5% of victims coming forward to report in an official capacity (Fisher et al., 2000). In spite of efforts to change these rates that have become a critical issue for all college and university campuses, the movement toward reducing the number of instances and increasing the number of reports to university personnel or law enforcement still appears to be frozen.

It is important to define and contextualize what is meant by sexual misconduct because this term was used over the course of this study. Sexual misconduct refers to a

set of policies and includes various sexual offenses. Therefore, offenses such as sexual assault, harassment, stalking, domestic violence, dating violence, and rape are commonly referred to as sexual misconduct and all inclusively fall under Title IX regulations.

According to Bohmer (1993), the widely used term sexual assault that is used in reference to sexual misconduct “is a general term that describes all forms of unwanted sexual activity” (p. 3). Throughout the years, several cases have moved to shape the way society views Title IX and its applicability. Most notably, expanding the derivative of sex discrimination under Title VI and VII of The Civil Rights Act can lead to a greater understanding of sex discrimination viewed through Title IX. Hence, this study through research must look at the cases that have propelled the approach to sexual misconduct on today’s college and university campuses.

Title IX, Title VI, Title VII

1960s

The Civil Rights Act of 1964 and the Higher Education Act of 1965 evolved to become the starting umbrellas under which the creation and residential affiliation of Title IX occurred. In 1964, The Civil Rights Act (1964) was commissioned:

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes. (p. 1)

The Civil Rights Act of 1964 housed titled mandates to ensure individuals across the United States would be afforded equal opportunities to obtain the aforementioned public services. Title VI of the Civil Rights Act of 1964 stated,

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. (p. 1)

In 1965 former President Lyndon Johnson created the Higher Education Act to expand the federal government's involvement in assisting with educational opportunities (U.S. Department of Health, Education, and Welfare, Office of Education, 1965). The act sought to target national problems of poverty and community development concerns of the time that faced lower and middle-income families, provide program assistance and resources for higher education institutions, and provide financial assistance to students to aid in the opportunity to attend and afford the cost of postsecondary education (Silbaugh, 2015; Zimmer, 2014). Silbaugh (2015) acknowledged that at this point in history, the Titles of The Civil Rights Act of 1964 omitted the word "sex" from its statute. It would not be until the reauthorization of the Higher Education Act in 1972 that the term *sex*, previously excluded from the stated titles of The Civil Rights Act of 1964, would address education (Silbaugh, 2015). During this historical time period, the Civil Rights Act of 1964 briefly addressed discrimination on the basis of sex through employment. Title VII of The Civil Rights of 1964 "prohibits discrimination in the terms, conditions or privileges of employment on the basis of an employee's race, sex, color, religion, or national origin" (p. 1). The Title highlights the definition of unlawful employment

practices for an employer to discriminate against any person based on the aforementioned characteristics. Peirce (1989) stated that “because of the lack of legislative history, the proper interpretation of ‘sex’ in Title VII is unclear” (p. 1076). During this period, the best explanation to describe how the term *sex* arose was solely through the examination of early cases brought under Title VII. These cases involved employers who excluded outright women for various employment opportunities via pregnancy policies, employment restrictions that would have a disproportionate impact on women, restrictions that were solely placed on women but not on men, and equity concerns for opportunities that would not be afforded to women at all (Grossman, 2012). For example, in *Rosenfeld v. Southern Pacific Co.* (1968), Southern Pacific attempted to declare that being male was a bona fide occupational qualification for the position of agent telegrapher and rejected women from the job opportunity. The U.S. Court of Appeals for the 11th Circuit rejected the employer’s exclusion of women on the stereotype basis that women were weak and could not be the basis for a bona fide occupational qualification; instead, an individual could only be excluded on individual inability to do the job not via group traits (Peirce, 1989). In *Dothard v. Rawlinson* (1977), Ms. Rawlinson failed to meet the height and weight requirements for a position where 41.13% of the female population but less than 1% of the male population would have been excluded from an employment opportunity based upon the regulations, which in turn established gender criteria. Additionally, in *Phillips v. Martin Marietta Co.*, the U.S. Supreme Court struck down the employer’s policy of refusing to hire women with preschool age children, further stating that persons of identical qualifications must be given the opportunity regardless of their sex (Peirce, 1989).

As sex discrimination was being addressed and found to be illegal in the workplace, it had yet to be deemed an illegal practice in education (Sandler, 2000; Suggs, 2005). Bernice Sandler, a faculty member at the University of Maryland in 1969, was rejected from more than seven job openings within her department for presenting herself too strong for a woman (Sandler, 2000). After consulting with her husband regarding what had occurred with Sandler's employment opportunities, Sandler realized she had been experiencing sex discrimination, yet knew there was no legal recourse. However, Sandler (2000) began to research addressed discrimination in employment within the desegregation of schools at the height of the Civil Rights Movement. In her research, Sandler found a presidential executive order that prohibited federal contracts from employment discrimination based on race, color, religion, or national origin. The executive order included a footnote indicating that President Johnson revised the order in 1968 to include prohibition of discrimination based on sex (Sandler, 2000). This allowed Sandler to come to the realization that since colleges and universities had federal contracts, they too were forbidden from sex discrimination in employment. Sandler moved to file a class action complaint with the Department of Labor, requesting a compliance audit of all educational institutions holding federal contracts; this was the first time an executive order was used for sex discrimination (Sandler, 2000). At this time, society began to see little guidance from legislation as to the total proper scope and interpretation of the term *sex* within Title VII of the Civil Rights Act.

1970s

In the mirrored perspective of the definition of the term *sex* being solely focused on gender represented in the genetic female form and of concerns regarding gender

inequality across educational institutions, Congress enacted Title IX of the Education Amendments in 1972. Title IX stated, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance” (Title IX, 1972). Furthermore, the amendment included the underlying principle conveyed through the communication that federal funds were not to be utilized by educational institutions to subsidize discrimination based on gender (Das, 2003). Yet, it was not until 1974 (codified in 1975) that society saw published regulations implementing the provisions under Title IX by the Secretary of the Department of Health, Education, and Welfare (HEW), later to be known as the Department of Education (Anderson & Osborn, 2008).

With the Education Amendments of 1974, the Secretary of HEW was required to prepare and publish proposed regulations implementing the provisions of Title IX of the Education Amendments of 1972, which included reference with respect to intercollegiate athletic activities, a reasonable provision considering the nature of particular sports relating to the prohibition of sex discrimination in federally assisted education programs. This address was an important component of the Title IX Policy Interpretation after Congress deleted a Senate floor amendment that would have exempted revenue-producing athletics, of particular concern for the National Collegiate Athletics Association (NCAA), from the jurisdiction of Title IX (U.S. Department of Education, OCR, 1979). The first applicable statutes of Title IX pertained to intercollegiate athletics providing regulations that dealt with reasonable opportunities for institutional awards for athletic scholarships in addition to “equal opportunity” afforded to both genders in

intercollegiate athletics (Das, 2003). According to the Policy Interpretation, “By the end of July 1978, the Department (HEW) had received nearly 100 complaints alleging discrimination in athletics against more than 50 institutions of higher education” (U.S. Department of Education, OCR, 1979, p. 3). The Policy Interpretation’s summary was as follows:

The following Policy Interpretation represents the Department of Health, Education, and Welfare’s interpretation of the intercollegiate athletic provisions of Title IX of the Education Amendments of 1972 and its implementing regulation. Title IX prohibits educational programs and institutions funded or otherwise supported by the Department from discriminating on the basis of sex. (p. 1)

The Policy Interpretation continued,

In attempting to investigate these complaints, and to answer questions from the university community, the Department determined that it should provide further guidance on what constitutes compliance with the law. Accordingly, this Policy Interpretation explains the regulation so as to provide a framework within which the complaints can be resolved, and to provide institutions of higher education with additional guidance on the requirements for compliance with Title IX in intercollegiate athletic programs. . . . This Policy Interpretation is designed specifically for intercollegiate athletics. However, its general principles will often apply to club, intramural, and interscholastic athletic programs, which are also covered by regulation. Accordingly, the Policy Interpretation may be used for guidance by the administrators of such programs when appropriate. This policy

interpretation applies to any public or private institution, person or other entity that operates an educational program or activity which receives or benefits from financial assistance authorized or extended under a law administered by the Department. This includes educational institutions whose students participate in HEW funded or guaranteed student loan or assistance programs. (U.S. Department of Education, OCR, 1979, p. 3)

The Policy Interpretation of 1979 became the first Title IX tool disseminated by the HEW to be known as guidance to aid in university compliance with the law. The guidance aspired to address equal opportunities as related to whether the selection of sports and levels of competition effectively accommodates the interests and abilities of members of both sexes, the scheduling of games and practice time, the provision of equipment and supplies, travel and per diem allowance, opportunity to receive coaching and academic tutoring, assignment and compensation of coaches and tutors, the provision of locker rooms, practice and competitive facilities, provision of medical and training facilities and services, publicity, the provision of housing and dining facilities and services, and how the aforementioned applied to the number of interested students proportionately for each gender by enrollment and participation in the institution's athletic programs (Anderson & Osborn, 2008). The goal postulated was to alleviate through an assessment and outlined process for governance any disparity with a consequence of loss of funding to the university should they not comply (Anderson & Osborn, 2008). Regardless of the structure of Title IX of the Education Amendments of 1972, during the beginning years of the enactment, courts did not allow plaintiffs to bring forward claims under the statute. The courts held that the plaintiffs, female student

athletes, could not bring a private claim under the Title IX umbrella because no private right of action was provided or afforded via that statute (Anderson & Osborn, 2008). However, in 1975 Geraldine Cannon was denied admission to the University of Chicago and Northwestern University medical schools. The universities had a policy of not admitting candidates older than 30 years of age unless they already had an advanced degree. Cannon argued that the policy as written was more likely to discriminate against women due to interruptions related to pregnancy and raising families. Cannon then filed a Title IX complaint with HEW.

In *Cannon v. University of Chicago* (1979), Cannon filed a sex discrimination lawsuit in federal court, arguing violation of the 14th Amendment, Civil Rights Act, and Title IX. District and Circuit Courts dismissed the Title IX claim, indicating the Title IX statute had neither an express nor implied private right of action. The case was appealed to the Supreme Court, and the Supreme Court ruled that there is an implied private right of action under Title IX. The Court indicated a reliance on legislative history, modeling of Title IX after Title VI of the Civil Rights Act of 1964, the stated underlying purpose of Title IX, and federal interest in discrimination to support its finding (*Cannon v. University of Chicago*, 1979). *Cannon v. University of Chicago* became a defining moment ruling that a private litigant would have every opportunity to bring forward a claim under Title IX (*Cannon v. University of Chicago*, 1979). Further stated, a victim of discrimination would have the ability to choose an alternative method of recourse, including taking a case directly to court without exhausting preexisting administrative options or relying solely on administrative process for relief. This option would put more institutions receiving

federal funding at risk of litigation for failure of compliance under the guidance and standards set forth by law.

Title VII Owns Sexual Harassment Law

Barnes v. Train is commonly recognized as the first case to address sexual harassment under Title VII though the terminology “sexual harassment” was not yet used (*Barnes v. Train*, 1974; McElroy, 2004; Silbaugh, 2015). An employee of the Equal Opportunity Division of the Environmental Protection Agency, Barnes received monetary compensation for back pay and loss of promotions when she claimed her job was eliminated when she refused to have sex with her employer (*Barnes v. Train*, 1974; McElroy, 2004; Silbaugh, 2015). During this same year Lin Farley was employed to teach a class on women and work at Cornell University. During a course-related discussion, the women in the class began to describe their experiences in the workplace. Many came forward to indicate they had either quit or had been fired from their place of employment after having been made to feel unbearably uncomfortable by the behavior of men. As Farley (1978) continued to hear this pattern of behavior described by women from all walks of life, she began to realize the extent of the problem. Farley discovered that this phenomenon of male harassment and intimidation of female workers in the workplace had not been described in the literature and was not publicly recognized as a problem (Farley, 1978). Carmita Wood, a former employee with Cornell University and administrative assistant to Boyce McDaniel, resigned after she developed physical symptoms related to stress caused by fighting off the persistent sexual advances and unwanted touching of McDaniel, her supervisor. Cornell denied Wood’s request for unemployment compensation benefit on the grounds that she quit for “personal reasons.”

Upon notification of this decision, Wood approached the Human Affairs Office, which was staffed by Liz Farley, to garner assistance. Wood together with Liz Farley, Susan Meyer, Karen Sauvigné, and other activists at the university's Human Affairs Office, formed a group called Working Women United. At a Speak Out event hosted by Working Women United, secretaries, mailroom clerks, filmmakers, waitresses, and factory workers shared their stories, revealing that the problem extended beyond the university setting. The women spoke of masturbatory displays, threats, and pressure to trade sexual favors for promotions. In April 1975, Lin Farley testified before the New York City Human Rights Commission Hearings on Women and Work, led by the Eleanor Holmes Norton. In the course of Farley's testimony, she would utilize the phrase "sexual harassment" in public for the first time. During this testimony, Farley also provided the first definition of the term as "unwanted sexual advances against women employees by male supervisors, bosses, foremen or managers" (Vardi & Weitz, 2016, p. 96).

In the 1976 case of *Williams v. Saxbe*, Diane Williams alleged that her employment record 6 months prior and working relationship with her supervisor at the U.S. Justice Department, Harvey Brinson, where she was employed as a public information specialist, was positive up until she refused a sexual advance made by Brinson. Immediately thereafter, Brinson engaged in a continuous pattern of harassment toward Diane including unwarranted reprimands, refusal to consider her recommendations and proposals, and refusal to inform Diane of matters for the execution and performance of her employment responsibilities (*Williams v. Saxbe*, 1976). These behaviors encompassed with their intended outcomes, eventually led to

the termination of Ms. Williams based on work performance. Ms. Williams elected to have a hearing conducted through the Equal Employment Opportunity Commission that would eventually find:

A review of the proposed termination notice and of Mr. Brinson's testimony concerning the merits of the reasons for complainant's termination shows that such reasons were not serious deficiencies in work performance and/or conduct. The alleged enumerated deficiencies occurring simultaneously with a rejection of personal advances based on sex, lends itself to an inference of sex discrimination. (*Williams v. Saxbe*, 1976, p. 656)

Furthermore, the Court indicated retaliatory actions of a male supervisor, taken because a female employee declined his sexual advances, constitutes sex discrimination within the definitional parameters of Title VII of the Civil Rights Act of 1964 (*Williams v. Saxbe*, 1976). *Williams v. Saxbe* became an instrumental component that propelled the Court to begin to recognize *quid pro quo* sexual harassment, or harassment that occurs when an employer requires an employee to submit to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature as a condition of employment, either implicitly or explicitly as a form of sex- or gender-based discrimination (*Williams v. Saxbe*, 1976).

Title IX Meets MacKinnon

Catharine MacKinnon, a Yale law student in the 1970s, wrote the 1977 theoretical framework postulating sexual harassment on campus was a form of discrimination due to its interference with a women's ability to attend college

(MacKinnon, 1979). MacKinnon put her theory to test when she advised a group of Yale students alleging harassment on campus in conjuncture with Nadine Taub of the Women's Rights Litigation Clinic at Rutgers School of Law representing the students in *Alexander v. Yale* (MacKinnon, 1979). In 1979, several female students enrolled at Yale, including a faculty member, filed a suit in the U.S. District Court for the District of Connecticut against Yale University. The plaintiffs conveyed that Yale was violating Title IX and H.E.W.'s Title IX regulations, claiming that the university's failure to combat sexual harassment of female students and its refusal to institute mechanisms and procedures to address complaints and make investigations of such harassment interferes with the educational process and denies equal opportunity in education (MacKinnon, 1979).

Ronni Alexander, a 1977 graduate of Yale College, alleged that she "found it impossible to continue playing the flute and abandoned her study of the instrument, thus aborting her desired professional career," because of the repeated sexual advances, "including coerced sexual intercourse," by her flute instructor, Keith Brion. Alexander further alleged that she attempted to complain to Yale officials about her harassment, but "was discouraged and intimidated by unresponsive administrators and complex and ad hoc methods." Margery Reifler, a member of the Class of 1980, alleged that Richard Kentwell, coach of the field hockey team, "sexually harassed" her while she was working as that team's manager, and that she "suffered distress and humiliation . . . and was denied recognition due her as team manager, all to her educational detriment." Reifler further alleged that she "wanted to

complain to responsible authorities of defendant about said sexual harassment but was intimidated by the lack of legitimate procedures and was unable to determine if any channels for complaint about sexual harassment were available to her.” Pamela Price, a member of the Class of 1979, alleged that one of her course instructors, Raymond Duvall, “offered to give her a grade of ‘A’ in the course in exchange for her compliance with his sexual demands,” that she refused, and that she received a grade of “C” which “was not the result of a fair evaluation of her academic work, but the result of her failure to accede to Professor Duvall’s sexual demands.” She further alleges that she complained to officials of Yale who failed to investigate her complaint and told her that “nothing could be done to remedy her situation.” Lisa Stone, a member of the Class of 1978, alleged that her discussions with a woman student who had been sexually harassed and the absence of an “established, legitimate procedure” for complaints of such harassment caused her “emotional distress,” deprived her of “the tranquil atmosphere necessary to her pursuit of a liberal education,” and put her “in fear of her own associations with men in positions of authority at Yale.” Ann Olivarius, a 1977 graduate, alleged that the absence of a procedure for complaining about sexual harassment “forced (her) to expend time, effort and money in investigating complaints herself, preparing them to be presented to responsible officials of defendant, and attempting to negotiate the complexities of ad hoc ‘channels.’” (*Alexander v. Yale*, 1979, p. 82).

Olivarius (2011) stated that Keith Brion, a professor of music and band director, who had assaulted multiple students and raped at least one, had stalked her at night as she was cleaning dorm rooms to prepare for campus events. When Olivarius reported the behavior to Yale administration, Brion's behavior went unchanged, he remained employed, his wife as the secretary of Olivarius's college master threatened to tamper with her files and scholarship applications. Olivarius (2011) also stated that Yale's deputy director of public affairs, Steve Kazarian, informed reporters of *Time* magazines falsely that Olivarius was flunking out as a summa graduate and soon-to-be Rhodes Scholar and provided false representation of Olivarius's sexual orientation as a lesbian. The University Secretary Sam Chauncey, whom Olivarius had been cordially meeting with for some time, called to inform Olivarius she was about to be arrested for libel. "You actually can't be arrested for libel, but I hadn't gone to law school yet, and I was alarmed" (Olivarius, 2011, p. 1).

Olivarius (2011) stated the following:

So we went to court, asking not for compensation but for a comprehensive reporting system (1) a declaratory judgment that Yale's policies and practices regarding sexual harassment violate Title IX and (2) an order enjoining Yale, among other duties, to institute and continue a mechanism for receiving, investigating, and adjudicating complaints of sexual harassment, to be designed and implemented under the supervision of the district court. We pioneered a new legal approach, arguing that the pattern of sexual harassment and assault that we experienced as female students hurt our access to education and constituted sexual discrimination, putting the University in

violation of Title IX. We argued in our complaint, failure to combat sexual harassment of female students and its refusal to institute mechanisms and procedures to address complaints and make investigations of such harassment interferes with the educational process and denies equal opportunity in education. (p. 1)

At the conclusion, the District Court granted Yale's motion to dismiss the claims of all but one plaintiff in *Alexander v. Yale* because the Court found their claims "tenuous," "conclusory," and "untenable on their face" (*Alexander v. Yale*, 1979). For Ann Olivarius and Lisa Stone, the Court held that they had not asserted claims "of personal exclusion from a federally funded education program or activity, or of the personal denial of full participation in the benefits of such a program or activity in any measurable sense" (*Alexander v. Yale*, 1979, p. 22). Under the belief that "(n)o judicial enforcement of Title IX could properly extend to such imponderables as atmosphere or vicariously experienced wrong," the Court held that Olivarius and Stone "advance(d) no persuasive claim that they have been deprived of cognizable Title IX rights" (*Alexander v. Yale*, 1979, p. 184). The court dismissed the allegations of Ronni Alexander, although Alexander alleged a "personal experience of sexual harassment" on the grounds that her graduation muted her claim for equitable relief absent the "sheer conjecture" that Alexander might someday wish to resume her study of the flute. The Court dismissed Margery Reifler, even though she too alleged a personal experience of sexual harassment because she had not complained to anyone at Yale. This left just one plaintiff, Pamela Price; she claimed that she'd been given a lower grade when she declined the sexual advances of a teacher. The Court held that "academic advancement conditioned upon

submission to sexual demands constitutes sex discrimination in education,” and it therefore allowed her claim to proceed to trial (*Alexander v. Yale*, 1979). Furthermore, at the conclusion of Price’s trial, the Court found “the alleged incident of sexual proposition did not occur and the grade of ‘C’ which Miss Price received on the paper submitted to Professor Duvall and the grade of ‘C’ which she received in his course did not reflect consideration of any factor other than academic achievement” (*Alexander v. Yale*, 1979). *Alexander v. Yale* plaintiff Ann Olivarius stated,

Our suit was thrown out on technical grounds. Mostly because all of the plaintiffs had graduated, we were found to be ineligible to bring suit, and one woman was found not to have a ‘quid pro quo’ case because the sexual proposition she endured from a male professor did not actually result in a better grade. (Olivarius, 2011, p. 4)

Although Alexander lost *Alexander v. Yale* on the facts, they won an important and landmark legal victory. This achievement was that the District Court held both that “academic advancement conditioned upon submission to sexual demands constitutes sex discrimination in education” and that Yale’s reporting, investigatory, and remedial processes for concerns of sexual harassment were inadequate (*Alexander v. Yale*, 1979, p. 185). This case was the first sexual harassment case brought under Title IX of the Education Amendments of 1972, it was also a catalyst in demonstrating the campus community climate in regard to sexual misconduct, the behavior and perspectives of administration, and lackluster processes within the university construct for receiving, investigating, and remedying concerns of sexual misconduct (Simon, 2003).

1980s

With the commencement of fall of 1980, the Equal Employment Opportunity Commission (EEOC) issued guidance recognizing that sexual harassment in the workplace is a form of sex discrimination prohibited by Title VII of the Civil Rights Act of 1964 (U.S. Equal Employment Opportunity Commission, 1990). The EEOC issued guidelines that included declarations of sexual harassment as a violation of Section 703 of Title VII, established criteria for determining when unwelcome conduct of a sexual nature constitutes sexual harassment, defined the circumstances under which an employer may be held liable, and suggested affirmative steps an employer should take to prevent sexual harassment (U.S. Equal Employment Opportunity Commission, 1999). The definitions in this guidance proved pertinent as MacKinnon (1979) declared that “lacking a term to express it, sexual harassment was literally unspeakable, which made a generalized, shared, and social definition of it inaccessible.” Additionally, in 1980, the Department of Education was created after HEW was split via the Department Organization Act into the Department of Education and the Department of Health and Human Services (U.S. Department of Education, 2010). The U.S. Department of Education encompassed an Office for Civil Rights (OCR) that was charged with the oversight of Title IX. This included the responsibility for investigating complaints and investigating institutional compliance (U.S. Department of Education, 2010). The OCR of the U.S. Department of Education moved to adopt its own definition of sexual harassment in a 1981 policy memorandum:

Sexual harassment consists of verbal or physical conduct of a sexual nature, imposed on the basis of sex, by an employee or agent of a recipient that denies, limits, provides different, or conditions the provision of aid, benefits, services or treatment protected under Title IX. (U.S. Department of Education, 2010, p. 1)

However, at this time the constitutional variances of sexual harassment were still being defined. The 1981 case of *Bundy v. Jackson* and 1986 case of *Meritor Savings Bank v. Vinson* were the catalysts to unveil these varied definitions of sexual harassment.

The 1981 case of *Bundy v. Jackson* was a District of Columbia Circuit Court opinion that established workplace sexual harassment as a method of employment discrimination under the Civil Rights Act of 1964. Sandra Bundy, an employee with the District of Columbia Department of Corrections, alleged she was sexually harassed by a number of fellow employees and supervisors throughout the course of her employment. Bundy stated that she was frequently propositioned, and supervisors regularly questioned her about her sexual proclivities and invited her back to various locations for sexual favors. When Bundy reported the concern to her supervisor's supervisor, he was alleged to have made a comment stating "any man in his right mind would want to rape you" and proceeded to proposition her himself (*Bundy v. Jackson*, 1981). Most notably of the offenders indicated by Bundy in stonewalling her complaints was Delbert Jackson, the director of the District of Columbia Department of Corrections. Upon filing of formal action, the District Court found that the harassment Bundy was experiencing was a "standard operating

procedure” and yet denied Bundy relief because there was no concrete action taken on the terms and conditions of Bundy’s employment. The Court of Appeals, however, reversed the lower court’s denial of relief, stating,

Though no court has yet so held, we believe that an affirmative answer follows ineluctably from numerous cases finding Title VII violations where an employer created or condoned a substantially discriminatory work environment, regardless of whether the complaining employees lost. (*Bundy v. Jackson*, 1981, p. 43)

With this, the case’s conclusion moved that Title VII should be construed broadly to extend beyond discrimination in hiring, firing, and promoting; sexual harassment, like racial harassment, can poison the atmosphere of employment and thereby violate Title VII. This would be the first constitution of sexual harassment as a conduit for a hostile work environment. Shortly after, *Meritor Savings Bank v. Vinson* (1986) also highlighted accompaniments of quid pro quo harassment and a hostile work environment and the Court’s recognition of the difference between the two.

Mechelle Vinson began her employment with Meritor Savings Bank as teller-trainee under the supervision of Sidney Taylor, a branch manager and vice president for Meritor Savings Bank. Based solely on merit, Vinson rose from teller-trainee to assistant branch manager. Vinson notified Taylor she would be taking sick leave indefinitely, and shortly after, Taylor fired Vinson for excessive use of that leave. Following the termination, Vinson sued, with Catharine MacKinnon serving as cocounsels, both Taylor and Meritor Savings Bank alleging sex discrimination in violation of the Civil Rights Act of 1964. Although Vinson indicated her

relationship with Taylor was initially strictly professional, Taylor began making unwelcome sexual advances toward Vinson shortly after she was hired. At trial, Vinson testified that she first refused Taylor's advances, but eventually agreed to engage in sexual intercourse with him because she feared losing her job. Over the course of several years, Vinson and Taylor continued to have sexual encounters; additionally, Vinson testified that Taylor fondled her in front of other employees, exposed himself to her at work, would follow her into the women's restroom when she would go in alone, coerce her to various locations demanding sexual favors, and forcibly raped her several times. Vinson never reported the harassment to Taylor's supervisors or filed an official complaint with Meritor Savings Bank leadership. Taylor denied the allegations and contended Vinson's accusations stemmed from a business dispute (*Meritor Savings Bank v. Vinson*, 1986). *Meritor Savings Bank v. Vinson* (1986) was the first case of its kind to reach the Supreme Court. The Supreme Court noted that not all harassment constitutes a Title VII violation. To fall within the Title VII prohibition, the harassment must be "sufficiently severe or pervasive" to alter the conditions of employment and create an abusive working environment. Because Vinson's allegations included not only pervasive harassment, but also forcible rape, the Court found that in this case, the harassment was actionable. Unfortunately, the Court did not elaborate on the degree of pervasiveness required to state a claim. Other courts have held that "isolated incidents," "mere flirtation[s]," and the "mere utterance of epithets" will not support a finding of harassment. The conduct complained of must "illegally poison the atmosphere . . . from the viewpoint of the reasonable victim" (*Meritor Savings Bank v. Vinson*, 1986, p. 65). To be actionable

under Title VII, sexual harassment must be not only severe but also unwelcome. The Court agreed with the appellate court's affirmance of the Bundy holding that an employee could establish a sexual harassment claim without a showing that she resisted her employer's sexual overtures.

In *Priest v. Rotary* (1986), the defendant in a sexual harassment case attempted to discover evidence regarding the plaintiff's past sexual history, to support his claim that the plaintiff had been the sexual aggressor in their relationship. The Court noted the similarity of position between a sexual harassment plaintiff and a rape victim. In granting the plaintiff's motion for a protective order, the Court stated that sexual harassment plaintiffs would appear to require particular protection from this sort of intimidation and discouragement if the statutory cause of action for such claims is to have meaning. Without such protection from the courts, employees whose intimate lives are unjustifiably and offensively intruded upon in the workplace might face the "Catch-22" of invoking their statutory remedy only at the risk of enduring further intrusions into irrelevant details of their personal lives in discovery, and, presumably, in open court.

The issue of liability posed an interesting dilemma for the Supreme Court. Title VII does not directly address the question of whether an employer is strictly liable for a sexually discriminatory work environment created or condoned by supervisory personnel. According to Bartels (1987), "In both quid pro quo and hostile environment cases involving racial and religious discrimination, both the courts and the E.E.O.C. have held employers strictly liable. In quid pro quo cases of sexual harassment, courts have found employers strictly liable, while in hostile environment cases, courts have required actual or constructive knowledge" (p. 586). Further explained, there would be two potential

approaches toward holding an employer responsible for sexual harassment. One, a strict liability approach, which holds that employers are always responsible for sexual harassment perpetrated by their employees and the other requiring knowledge of the harassment. The knowledge may be actual knowledge or it may be constructive knowledge, which means that the employer should have known due to the pervasive or extensive nature of the harassment (Bartels, 1987). This case allowed the Court to recognize hostile work environment sexual harassment claims as actionable.

Title IX Authority

Elaine Dove, a tenured teacher in North Haven public school system took a one-year leave of absence for maternity leave. Immediately upon completion of that leave, Dove preempted to return to work, but North Haven refused to rehire Dove. Following receipt of that knowledge, Dove filed a complaint with HEW for violation of Title IX. HEW began an investigation, but North Haven refused to cooperate, asserting that HEW lacked authority to regulate employment practices under Title IX. HEW notified North Haven it would be considering enforcement proceedings, which could result in North Haven's loss of federal funding. The District Court, however, found in favor of North Haven in its summary judgment (*North Haven Board of Education et al. v. Bell, Secretary of Education, et al.*, 1982). Soon after, Linda Potz, a former guidance counselor in the Trumbull school district filed a complaint with HEW alleging sex discrimination with respect to working conditions, job assignments, and a failure to renew her contract. HEW determined Trumbull had violated Title IX and required Trumbull to engage in a number of corrective actions

including, reinstating Potz to her position. Trumbull filed a lawsuit in federal court seeking to invalidate the decision and HEW's authority to address employment under Title IX. The same District Court cited its previous decision in *North Haven* and found in favor of Trumbull. The *North Haven* and Trumbull cases were consolidated on appeal, *North Haven Board of Education et al. v. Bell, Secretary of Education, et al.* of 1982, the Second Circuit reversed the previous decision, thereby indicating HEW has authority under Title IX to address employment discrimination. However, the Court did not render a decision as to whether HEW could terminate funding under Title IX for employment cases; therefore, the case was appealed to the Supreme Court. The U.S. Supreme Court cited a number of factors, but most prevalent was its inclusion of Title IX's legislative history, postenactment history, and language of "no person"; the Supreme Court determined that Title IX's broad directive that "no person" may be discriminated against on the basis of gender on its face includes employees as well as students (*North Haven Board of Education et al. v. Bell, Secretary of Education, et al.*, 1982). The Supreme Court citation clarified that employees of the educational system, just as students, must be protected against gender discrimination to maintain the overall spirit and effectiveness of Title IX.

In 1984, *Grove City College v. Bell*, a private college refused to execute an assurance of compliance with Title IX because it did not directly receive federal funding. By refusing all forms of federal, state, and local government assistance, Grove City College marketed itself as a truly independent institution. However, students at the college received federal financial aid in the form of Basic Educational Opportunity Grants (BEOGs) offered directly to those students in need via the

Department of Education and Guaranteed Student Loans (GSL) through the federal government (Anderson & Osborn, 2008; *Grove City College v. Bell*, 1984). Based on the institution being in receipt of these two forms of assistance, the Department of education felt Grove City College had an inherent obligation to comply with Title IX, yet Grove City College did not agree and refused to complete Title IX assurance of compliance. Citing that Title IX solely applied to the specific institutional departments in receipt of this assistance and to no other college departments or programs, such as athletics, allowed the college to maintain institutional preference and control over those programs or departments. The Department of Education stood firm that the college was a recipient of federal financial assistance and upon its refusal of compliance initiated administrative proceedings to declare the college as well as its students ineligible for funding, including BEOGs. The District Court ruled in favor of Grove City College and insisted the Department of Education did not have ground to take away the aid based on the institution's refusal to complete the Title IX assurance of compliance. The Department of Education appealed the District Court's ruling to the Supreme Court. The Supreme Court held that Title IX did apply to the college because its students received BEOGs and GSLs. However, more specifically, the Court declared that the college's financial aid program and not the entire college was the program or activity that received the federal funding, and therefore, BEOGs could be terminated because the college had refused to execute an assurance of compliance with Title IX. Under the *Grove City College* decision, unless the athletic department directly received federal funding, it did not have to comply with Title IX; Title IX enforcement would only be applied to the program

directly receiving the federal financial assistance. As related to Grove City College, the Supreme Court's ruling reiterated that since the financial-aid department was the only program in receipt of federal funds, it would be the only entity that was required to comply with Title IX. Yet, the Supreme Court still required Grove City College to submit the assurance of compliance with Title IX standards to the Department of Education to avoid consequent cancellation of federal funding. In the next three years, five courts found that Title IX claims could not be brought due to this lack of specific departmental financial funding (Anderson & Osborn, 2008; *Grove City College v. Bell*, 1984). *Grove City College v. Bell* played an integral part in the understanding of Title IX authority during this period. Further stated, the outcome of this case relayed to institutions that only specific units were required to comply, meaning, if the financial aid department were in receipt of federal funds, it would be the sole entity expected to maintain gender equity. Yet, an alternate department would be legally permitted to operate by whatever standard that unit deemed fit even if that standard discriminated against others on the basis of sex. Therefore, the Supreme Court's *Grove City College v. Bell* decision left women's athletic and physical education programs with no substantive protection under Title IX since most school sports programs receive no direct federal financial assistance. Without the boundaries set forth by Title IX, institutions utilized this concept when responding to financial pressures by cutting women's sports teams and reducing the budgets slated for women's athletic programs. Additionally, with this development, Carpenter and Acosta (2005) stated, "scholarships for female athletes were canceled at several colleges across the nation,

women's teams were slated for termination at others, OCR complaints were closed, and lawsuits dismissed" (p. 121).

In response to these cases, and seeking to restore Title IX to its intended focus, on March 22, 1988 Congress enacted the Civil Rights Restoration Act of 1987. The Act reiterates that Title IX should be interpreted through an institution wide, rather than a program specific, approach. Specifically in reference to schools, the Act provides that the term 'program or activity' and 'program' means all the operations and any part of them that is extended federal financial assistance of a college, university, or other postsecondary institution, or public system of higher education. The Act further defined the term "recipient" as any state or political subdivision thereof, or any public or private agency, institution, or organization, or other entity, to which directly or indirectly, such as through another entity or person by which federal financial assistance is extended, is subject to the guidelines set forth by Title IX (Civil Rights Restoration Act of 1987, 1988; Villalobos, 1990). Furthermore, the Civil Rights Restoration Act of 1987 clarified that entire institutions are mandated to Title IX and other federal antidiscrimination laws if any program or activity within the institution receives federal funding. Therefore, instead of focusing merely on the particular athletic department involved, if any part, program, or department of a college or university accepts federal funding, the department is subject to Title IX (Anderson & Osborn, 2008).

The transition afforded with the Civil Rights Restoration Act of 1987 once again allowed for students to bring forward concerns regarding sex discrimination in women's athletics opportunities and is deemed the starting point for Title IX's view

as a law focused on equity within athletics as opposed to its true origination in addressing discrimination across various platforms (Carpenter & Acosta, 2005, p. 121). Yet, it is through the address of sexual harassment via Title IX that continued to shape Title IX litigation.

1990s

In the case of *Franklin v. Gwinnett County Public Schools* (1992), Christine Franklin alleged that during her junior year (in 1986), an economics teacher and athletic coach in the Franklin County School system, Andrew Hill, engaged her in sexually explicit conversations, made phone calls to her home, forced kissing, and coercive sexual intercourse on school grounds. Additionally, Hill allegedly pulled her out of class on three occasions and engaged in sexual intercourse with her in a private office. Franklin further alleged that the behavior was reported to school officials with no action taken to end the alleged harassment and school officials encouraged Franklin not to press charges against Hill. In April of 1988, Hill resigned in exchange for the school district closing the investigation and with the agreement the complaints against him would be dropped (*Franklin v. Gwinnett County Public Schools*, 1992). However, in 1988, Franklin filed suit against the school district alleging sexual harassment under Title IX and the school district's failure to take appropriate action upon learning of the harassment. Due to Franklin now having graduated from high school rendering a coercive injunction useless, Franklin requested the opportunity to sue for monetary damages (Short, 2012; *Franklin v. Gwinnett County Public Schools*, 1992). The monetary reparation to right the alleged wrong proved to be more valuable as the Court demanded an end to

the concept presented that there would be no impact because Franklin was no longer a student. District and Circuit Court of Appeals dismissed the case, finding Title IX does not allow for award of monetary damages under its purview. In 1992, the U.S. Supreme Court in review of the Civil Rights Remedies Equalization Amendment of 1986 and the Civil Rights Restoration Act of 1987, reversed and remanded the decisions of the two lower courts and ruled monetary damages could be awarded for failure to comply with Title IX. Monetary damages, as stated in the opinion, could include back pay and restitution for areas of distress or prospective relief conflicts with sound logic (*Franklin v. Gwinnett County Public Schools*, 1992). Although *Franklin v. Gwinnett County Public Schools* did not address issues concerning the educational institution's liability, it further established the concept that sexual harassment constituted sex discrimination under Title IX and also provided a private right for recovery of monetary damages under Title IX. Notifying institutions that a failure to comply with Title IX could result in additional methods of financial consequences.

Title IX: Three-Part Tests

In 1996, U.S. Department of Education, OCR released the "Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test" providing guidance to institutions regarding the ways in which they were expected to provide nondiscriminatory opportunities for both sexes. The clarification sought to indicate that athletic opportunities needed to be proportionate to enrollment and must count all athletes receiving some benefits; institutions must be responsive in the addition and elevation of sports programming to meet the needs and interests of the underrepresented sex, and

accommodate potential interest. It also included the ruling that institutions could not cap or eliminate opportunities for the overrepresented sex to meet the compliance needs of the aforementioned standard (*Kelley v. Board of Trustees of Univ. of Ill.*, 1993). Yet, it was through the litigation of three significant cases, *Cohen v. Brown University* (1996), *Roberts v. Colorado State University* (1993), and *Favia v. Indiana University of Pennsylvania* (1993) involving gender discrimination through the elimination of women's varsity intercollegiate athletic programs that established precedence in the three benchmarks of (a) proportionality, (b) expansion, and (c) accommodation based on the aforementioned Title IX guidance that would allow athletics to become the primary focus of the Title IX Policy Interpretation (Das, 2003). In *Cohen v. Brown University* (1996), Brown University's athletic department demoted four varsity teams to club status due to less funding being needed for clubs; however, this action taken by the university directly affected the percentage of women who were involved in intercollegiate varsity sports. Finally, the District Court found that Brown violated Title IX regulations by failing to comply with the effective accommodation provision of the equal opportunity regulation. Furthermore, the Court of Appeals upheld the decision that all three benchmarks of the three-part test must be met in order to find a violation of Title IX (Das, 2003). In *Roberts v. Colorado State University* (1993), Colorado State University attempted to meet budget restrictions by eliminating its 55-member men's varsity baseball team and 18-member women's varsity softball team. The District Court found Colorado State University in violation by creating a disparity between participating female athletes as related to female undergraduate enrollment, did not demonstrate a history and continuing practice of program expansion to meet the needs of the discriminated gender, and failed to

effectively accommodate the interests and abilities of the discriminated gender in intercollegiate varsity sports. The District Court stood firm in asserting a financial crisis or budgetary concern could not be a reasonable occurrence to justify processes that would incur gender discrimination (Das, 2003). In the case of *Favia v. Indiana University of Pennsylvania* (1993), Indiana University of Pennsylvania failed to meet the benchmarks of the three-part test and demonstrated before the District Court that the University failed to eliminate the disparity on the hand of their female undergraduate students participating in intercollegiate athletics. In order to meet budget restrictions, teams were eliminated that would cause the university to fail at allowing substantial proportionality between the number of women enrolled as undergraduate students and the percentage of women participating in varsity athletics, a lack of expansion in the provision of athletic opportunities for the discriminated gender, and Indiana University of Pennsylvania provided a clear depiction to the Court of eliminating varsity athletic participation opportunities for the discriminated gender even though there was evidence of interest and ability in the women's programs (Das, 2003). The aforementioned cases catapulted the notion of Title IX addressing equity in multiple regards and the focus of athletics. However, it was through this scope that the establishment of a three-part test would be mimicked in Title IX's address for sexual misconduct.

In 1991, Alida Star Gebser, an eighth-grade student in Lago Vista Independent School District (Texas), joined a book club led by a teacher, Frank Waldrup. During book group discussion, Waldrup made a number of sexually suggestive comments to the students throughout the meetings. As Gebser reached ninth grade, she was assigned to two of Waldrup's classes and received tutoring services from Waldrup at her home. In

1992, Waldrup and Gebser began a sexual relationship that continued until spring 1993, when a police officer discovered them having sex in a car in the school parking lot. Gebser and Waldrup often engaged in sex during school hours, though not on school property, and no one at the school or in the district knew of the relationship. Upon his arrest, Lago Vista Independent School District fired Waldrup and the Texas Education Agency revoked his teaching license (*Gebser v. Lago Vista Independent School District*, 1998). Gebser and her mother sued Lago Vista Independent School District and Waldrup, making a number of state and federal claims, including seeking monetary damages for violation of Title IX. The Supreme Court created a high standard that a student must meet in order to prevail on a sexual harassment claim against the institution when an employee-student consensual relationship is the basis of the claim. The Supreme Court stated that monetary damages could not be recovered against the school unless the behavior had been reported to an official, the official had the power to alter the situation (“actual notice”), and a “deliberate indifference” had been demonstrated by the school. This would allow for an institution to be held liable; therefore, if no appropriate authority figure knew about the harassment, then the school in question was not liable under Title IX (*Gebser v. Lago Vista Independent School District*, 1998). Furthermore, *Gebser v. Lago Vista Independent School District* (1998) continued to define sexual harassment, the student to authoritative figure relationship, and became the established standard via the installation of a three-part test for institutional liability and duty to uphold Title IX under this standard. The three-part test included an official of the educational institution must have had “actual notice” of harassment; the official must have authority to “institute corrective measures” to resolve the harassment problem, and

the official must have “failed to adequately respond” to the harassment and in failing to respond, must have acted with “deliberate indifference.” With the ruling of *Gebser v. Lago Vista Independent School District* (1998), institutions continued to see the expansion of Title IX expectations.

Also occurring in 1992, a fifth-grade boy attempted to touch another student’s, LaShonda Davis’s, breasts and genitals and made statements such as “I want to get in bed with you,” and “I want to feel your boobs.” Similar conduct would continue to occur throughout the school year and into 1993. Each time Davis reported the conduct to her teacher, Davis’s mother also contacted the teacher and was allegedly told the principal was aware of the situation even though no disciplinary action was taken. A series of incidents continued between Davis and the male student in P.E. and other classes; for example, the same male student stuck a doorstop in his pants and acted in sexually suggestive manner toward Davis, rubbed up against her in suggestive manner, and again touched her breasts and genitals (*Davis v. Monroe County Board of Education*, 1999). Davis repeatedly reported incidents to teachers, and Davis’s mother also contacted the teachers multiple times, but still no disciplinary action was taken. Davis’s assigned seat was next to the male student throughout the harassing behavior and was not allowed to change seats while the behavior occurred. With that, Davis told her mother she “didn’t know how much longer she could keep [the male student] off her” (*Davis v. Monroe County Board of Education*, 1999, p. 395). Davis’s grades declined, and her father found a suicide note she had written. Others in class also faced harassment, and a group of students tried to complain to the principal but were allegedly prevented from doing so and told, “If [the principal] wants you, he’ll call you” (p. 395). Parents attempted to

intervene and had complained to three teachers and the principal (*Davis v. Monroe County Board of Education*, 1999). In May 1993, the principal told Davis's mother, "I guess I'll have to threaten him a little harder," and the male student continued to receive no method of discipline (p. 395). Davis's parents finally reported the harassment to the local sheriff, and the male student was subsequently charged with and pled guilty to sexual battery. It was then the abuse finally stopped, and the male student ultimately moved away. Davis's mother filed a Title IX complaint, which alleged that persistent harassment and deliberate indifference resulted in her daughter's inability to attend school and participate in activities. Finding in favor of Davis in *Davis v. Monroe County Board of Education*, the Supreme Court applied the same standards to find the institution liable for damages as in the *Gebser v. Lago Vista Independent School District* (1998) case, citing that the institution must have "actual notice" of the harassment and the institution must have responded to the harassment with "deliberate indifference." Additionally, the Supreme Court held, "Harassment must be severe, pervasive, and objectively offensive" and the indifference "systemic" to the extent that the victim is "deprived of educational opportunities or services" (p. 412). Justice O'Connor added a framework to determine deliberate indifference, stating that deliberate indifference constitutes a response that is "clearly unreasonable in light of the known circumstances" (*Davis v. Monroe County Board of Education*, 1999). *Davis v. Monroe County Board of Education* set the precedent by which institutions now had a duty to respond to student-to-student sexual harassment under the scope of Title IX.

2000s

In *Jackson v. Birmingham Board of Education* (2005), Roderick Jackson, the coach of girls' basketball team in the Birmingham Public School system, made complaints regarding what he believed to be inequitable treatment of his girls' team and the boys' team. Jackson explained his team would be forced to utilize an old gym with bent rims, wooden backboards, floors that were inadequate, and inadequate heating and cooling systems. Additionally, unlike the boys' team, Jackson's team was not offered transportation by the school and was denied access to funds donated by the City of Birmingham, weight facilities, expense accounts, and funds from ticketing and concessions (*Jackson v. Birmingham Board of Education*, 2005). Jackson repeatedly notified Ensley High School administration of the team's need for assistance to no avail. Jackson then took his concerns to the deputy superintendent of instruction with the Birmingham Public School System, contending that in opposition to his girls' team, the boys were practicing and playing in a regulation gym, being provided transportation to games, and receiving funding from the city and funds from the sale of tickets and concession. With no action taken and shortly after Jackson's formal complaint, Jackson was relieved of his coaching responsibility with Ensley High School (*Jackson v. Birmingham Board of Education*, 2005). Jackson believed that his termination was due to his complaints about the gender inequity he witnessed and subsequently filed a Title IX lawsuit against the school system for retaliatory actions. The District Court dismissed the complaint on the grounds that Title IX's private cause of action did not include claims of retaliation. District Court Judge T. Michael Putnam explained,

The “persons” being subjected to the illegal discrimination are the female members of the basketball team, not the coach; it is they who are being “denied the benefits of” the educational activity of basketball. Their coach has no standing to assert for them their claims of discrimination in the regard because he has suffered no personal loss or injury due to the discrimination. (*Jackson v. Birmingham Board of Education*, 2005, p. 165)

Further contending, Jackson ought to file a Title VII claim as a whistleblower, because the concern being addressed was employment benefits (*Jackson v. Birmingham Board of Education*, 2005). Jackson continued with an appeal to the U.S. Court of Appeals for the 11th Circuit, yet the District Court’s decision was upheld. It ruled that the ideal Title IX does not provide a private right of action for retaliation and Jackson was not in the class of persons protected by the statute. With the assistance of the National Women’s Law Center, Jackson moved to have his case heard by the U.S. Supreme Court. The Supreme Court ruled that Title IX does indeed cover retaliation claims, especially when an individual complains of sex discrimination and the complaints result in a method of retaliation, further certifying Title IX’s private cause of action (*Jackson v. Birmingham Board of Education*, 2005). This decision helped to confirm the protection against retaliation of those who report sex discrimination and enacted the inclusion of protection against retaliation across all antidiscrimination laws (Carpenter & Acosta, 2005; *Jackson v. Birmingham Board of Education*, 2005).

Growth of Definition and Scope

As the courts continued to enforce the structure and applicability of Title IX, the method by which society defined sex continued to expand over the years as well. In

Putman v. Board of Education of Somerset Independent School (2000), *J. L v. Mohawk Central School District* (2010), and *Pratt v. Indian River Central School District* (2010), students confronted their respective educational institutions for failure to prevent and remedy sexual or sex-based harassment and discrimination for failing to conform to gender stereotypes (appearance or behavior associated with being either male or female) and actual or perceived sexual orientation. These cases moved to clarify that sex discrimination under Title IX includes both harassment based on biological sex and harassment based on a failure to conform to gender stereotypes (*J. L v. Mohawk Central School District*, 2010; *Putman v. Board of Education of Somerset Independent School*, 2000; *Pratt v. Indian River Central School District*, 2010).

With the expansion of the definition of the term *sex*, an understanding for those deemed underrepresented or in need of additional protections under Title IX proliferated (Carpenter & Acosta, 2005). In *Lopez v. Metropolitan Government of Nashville* (2010), students aboard a special education bus were experiencing incidents of sexual assault while en route within the Nashville Public School District. The case further established institutional responsibilities to uphold Title IX in connection with all services provided for students. This also included institutional responsibility for not only the behaviors of authoritative figures such as teachers, professors, coaches, and the like but also an expansion to institutional responsibility for student-on-student sexual harassment. As with the case of *Williams V. Board of Regents of The University System of Georgia* (2006), University of Georgia (UGA) student Tiffany Williams agreed to have consensual sex with another student, Tony Cole. Unbeknownst to Tiffany, another student Brandon Williams, with Cole's permission and previous agreement, was waiting

in the closet. As Cole left for the restroom, Brandon Williams proceeded to exit the closet and sexually assault Tiffany Williams. As the incident occurred, Cole was on the phone with another student, Steven Thomas, whom he invited to come participate; Thomas then arrived to sexually assault Tiffany Williams as well (*Williams V. Board of Regents of The University System of Georgia*, 2006). Tiffany Williams reported the incident to police who reported the incident to the UGA's Director of Judicial Programs. Although the alleged students' actions constituted sexual harassment under university policy, the policy also indicated sexual harassment between students who were not employees of the university should be treated as a disciplinary matter, reported to the office of student affairs and not dealt with under the university sexual harassment policy. Cole, Brandon Williams, and Thomas were charged with disorderly conduct under UGA's Code of Conduct and suspended from their sports teams (*Williams v. Board of Regents of The University System of Georgia*, 2006). Williams moved forward with a suit against the UGA Board of Regents, the UGAA president, the UGA basketball coach, and UGA athletic director for violations under Title IX. Williams alleged that former UGA Head Basketball Coach James Harrick, Athletic Director Vince Dooley, and UGA President Michael Adams were personally involved in recruiting and admitting Cole under a "special admission" policy that required presidential approval by Adams even though he was not academically qualified to attend UGA and knew Cole had a history of disciplinary and criminal problems involving harassment of women at other colleges (*Williams V. Board of Regents of The University System of Georgia*, 2006). In addition, Williams sought an injunctive relief ordering the implementation of policies and procedures to protect students like her from student-on-student sexual harassment

prohibited by Title IX (*Williams V. Board of Regents of The University System of Georgia*, 2006). Williams's case was essentially dismissed by the District Court and reversed on appeal to conclude with an out-of-court settlement. Yet, the key components resulting for Title IX were the establishment that a delay in taking immediate corrective action and knowledge of previous criminal history could be established as deliberate indifference and create the risk of discriminatory conduct (*Williams V. Board of Regents of The University System of Georgia*, 2006), mirroring the rationale found in *Simpson v. University of Colorado Boulder* (2007).

In *Simpson v. University of Colorado Boulder* (2007), the University of Colorado at Boulder (CU) had an established practice of pairing visiting football recruits with what would usually be a female ambassador to entertain the recruits and show them a good time during their campus visit (*Simpson v. University of Colorado Boulder*, 2007). Anne Gilmore and Lisa Simpson were planning an evening at Simpson's off-campus apartment when another student asked whether four players from the football team could attend, which Simpson agreed to. More than 20 football players and recruits arrived with at least one of the players having an understanding that the purpose of going to Simpson's apartment was to provide recruits with an opportunity to engage in sexual intercourse. Later that evening both Simpson and Gilmore awoke intoxicated and being sexually assaulted by multiple football players (*Simpson v. University of Colorado Boulder*, 2007). Both Simpson and Gilmore did not report the occurrence to the university; however, they filed a lawsuit under Title IX alleging the university athletic department was aware of the behavior and numerous incidents concerning alcohol consumption and sexual assaults perpetrated by football players and recruits. Furthermore, the athletic department created

a known risk of sexual harassment, assault, and discrimination against female students and hitherto had demonstrated deliberate indifference (*Simpson v. University of Colorado Boulder*, 2007). The case was dismissed at the District Court because Simpson and Gilmore had not informed the university prior to their Title IX suit to validate deliberate indifference. However, the Court of Appeals ruling moved to redefine deliberate indifference, indicating an inclusion for failure to train for obvious risks, such as sexual harassment, within a school program (*Simpson v. University of Colorado Boulder*, 2007). With the conclusion of this ruling, the university agreed to settle and pay \$2.5 million to Simpson and \$350,000.00 to Gilmore (*Simpson v. University of Colorado Boulder*, 2007).

In *Jennings and Keller v. University of North Carolina at Chapel Hill* (2007), Jennings alleged University of North Carolina (UNC) Head Soccer Coach Anson Dorrance engaged in sexually explicit conversations with members of his team. This included Dorrance making sexually objectifying comments about the players' bodies, asking them about their sexual activities, expressing his sexual fantasies about certain players, and behavior that constituted a sexual advance toward at least one player on Dorrance's soccer team. Dorrance personally recruited Jennings to the soccer team in 1996; however, after Jennings met with Susan Ehringhaus, the Assistant to the Chancellor and Senior University Counsel to inform her of Dorrance's actions and following Ehringhaus' advisement to talk to Dorrance about the issues, Jennings alleges that Dorrance continued with the inappropriate behavior, and subsequently Dorrance cut Jennings from the soccer team. Jennings' father wrote to Ehringhaus questioning the behavior and actions of Coach Dorrance and called for action to be taken by the

University (*Jennings and Keller v. University of North Carolina at Chapel Hill*, 2007). The athletic director and Dorrance conveyed the alleged inappropriate communication toward players on the team was mere teasing and no wrongful behavior had occurred yet informed Jennings' father Dorrance would discontinue the communication going forward. Jennings filed suit alleging sexual harassment and deliberate indifference on the part of UNC administrative officials. When news of the suit reached the UNC campus community Jennings was threatened, harassed, and informed by UNC officials that her safety on campus was not a guarantee, forcing Jennings to finish her senior year at an alternate location in order to be awarded her degree. UNC moved for summary judgment (judgment entered by a court for one party and against another party without a full trial), the District Court granted, and the Fourth Circuit affirmed their motion holding that Dorrance's conduct was not sufficiently "severe, pervasive and objectively offensive" (*Jennings and Keller v. University of North Carolina at Chapel Hill*, 2007). The *en banc* (all judges of the Court together) panel rejected the rulings of the lower courts regarding Jennings' Title IX claim against UNC and the § 1983 personal liability claims against the coach and general counsel. Jennings settled her claims against UNC for \$375,000, a required annual review of the UNC sexual harassment policy, and a requirement that Dorrance participate in annual sensitivity training (*Jennings and Keller v. University of North Carolina at Chapel Hill*, 2007). The application of § 1983 is important; § 1983 provides a private right of action against an official in his or her individual capacity for depriving an individual of his or her federal civil rights while acting in an official capacity (*Jennings and Keller v. University of North Carolina at Chapel Hill*, 2007). The findings of *Jennings and Keller v. University of North Carolina at Chapel Hill*

demonstrated the gravity of university administrative responsibility to uphold the Title IX statute and the acknowledgment other types of enforcement such as § 1983 may be encountered. Cases unfolding within the judicial system displayed the evolution of Title IX and the expanding scope of the statute. Additionally, the cases represented the need for the U.S. Department of Education OCR to provide guidance clarifying the expectations set forth within the Title IX statute, responsibility of institutions, and appropriate requirements for adequate implementation.

OCR Guidance and the Title IX Coordinator

As the judicial system continued to establish the parameters of Title IX, the U.S. Department of Education OCR continued to issue written guidance to assist institutions in understanding the existing law, arising changes, and structural concepts for adequate implementation as a cohesive outline to generate effectiveness and efficiency of Title IX nationwide. In 1997, OCR issued the *Sexual Harassment Guidance 1997*, the first written guidance discussing expectations in reference to sexual misconduct. The *Sexual Harassment Guidance 1997* affirmed Title IX applicability to all public and private educational institutions that receive Federal funds to include elementary and secondary schools, school districts, proprietary schools, colleges, and universities and uses the term *schools* to encompass all said institutions, programs, activities, and operations. The guidance reiterated sexual harassment as a form of prohibited sex discrimination, including quid pro quo harassment and hostile environment sexual harassment and stated Title IX protects students in relation to all of the academic, educational, athletic, extracurricular, and other school programs offered whether on campus or sponsored programming by the school at a location elsewhere. The *Sexual Harassment Guidance*

1997 also required institutions to have grievance procedures through which students can complain of an alleged concern of sex discrimination and asserted Title IX protection extends to any person both male and female, employees, students, and third parties. The 1997 guidance also noted that Title IX does not prohibit discrimination based on sexual orientation, cover sexual harassment directed at gay and lesbian students, or recognize gender-based harassment, which may include acts targeting an individual of one sex but not involving conduct of a sexual nature. In addition, liability for the school as it relates to sexual harassment was established within the 1997 guidance. Stated within *Sexual Harassment Guidance 1997*, a school will always be liable for an instance of quid pro quo sexual harassment by a school employee whether or not it knew or should have known. A school will also assume liability for sexual harassment by its employees that is sufficiently severe, persistent, or pervasive enough to limit a student's ability to participate or benefit from any educational programming, thereby constituting hostile environment sexual harassment, when the employee is seen or perceived to have acted with authority or a student held a reasonable belief of apparent authority held by an employee. Yet, a school will only assume liability under Title IX with regard to peer or third-party student harassment if a hostile environment exists in the school's programs or activities, the school knew or should have known, and the school failed to take action (U.S. Department of Education, OCR, 1997). As a method for early detection and effective corrective action, schools were required to adopt, publish, and disseminate policy and procedures against sex discrimination. Institutions without such would be in violation of Title IX and could be viewed as lackluster in their effort to remedy sexual harassment with no method by which employees or students could view a statement

against such behavior or an avenue to report when incidents occurred (U.S. Department of Education, OCR, 1997). As set forth in *Sexual Harassment Guidance 1997*, the U.S. Department of Education OCR will look to resolve concerns at respective institutions when called and consider the following: whether a school has a policy prohibiting sex discrimination and effective grievance procedures under Title IX, whether the school appropriately investigated or responded to allegations of sexual harassment, and whether the school took appropriate or immediate action to remedy quid pro quo or hostile environment harassment. OCR finds these steps to be the school's responsibility, with or without a harassed individual's complaint. With each of these steps taken, OCR will consider a concern resolved and take no further action in monitoring the school for compliance (U.S. Department of Education, OCR, 1997).

In response to *Gebser v. Lago Vista Independent School District* (1998) and *Davis v. Monroe County Board of Education* (1999) Supreme Court rulings, OCR issued a revision to the *Sexual Harassment Guidance 1997* in January of 2001 (Anderson, 2012; U.S. Department of Education, OCR, 2001). The *Gebser and Davis* ruling prompted the *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties of 2001* (U.S. Department of Education, OCR, 2001). The revision provided a broader definition of the concept of a responsible employee; a responsible employee would include any employee who has the authority to take action in addressing sexual misconduct or discrimination and who would also have the duty to report to appropriate school officials the harassment or sexual misconduct by students or employees or an individual who a student could reasonably believe has such an authority or responsibility (Anderson, 2012; U.S. Department of Education, OCR, 2001). Title IX

regulations also required institutions to designate at least one employee to coordinate its efforts to comply with and carry out required responsibilities for regulations regarding Title IX statute implementation. This individual would be referred to as the Title IX coordinator. The *Revised Sexual Harassment Guidance* stated,

It continues to be the case that a significant number of students, both male and female, have experienced sexual harassment, which can interfere with a student's academic performance and emotional and physical well-being. Preventing and remedying sexual harassment in schools is essential to ensuring a safe environment in which students can learn. As with the 1997 guidance, the revised guidance applies to students at every level of education. School personnel who understand their obligations under Title IX, e.g., understand that sexual harassment can be sex discrimination in violation of Title IX, are in the best position to prevent harassment and to lessen the harm to students if, despite their best efforts, harassment occurs. One of the fundamental aims of both the 1997 guidance and the revised guidance has been to emphasize, that in addressing allegations of sexual harassment the good judgment and common sense of teachers and school administrators are important elements of a response that meets the requirements of Title IX. (U.S. Department of Education, OCR, 2001, p. ii)

In January of 2006, OCR Assistant Secretary for Civil Rights Stephanie Monroe, issued the first "Dear Colleague" letter in reference to sexual misconduct to more than 20,000 universities, colleges, and school districts reaffirming the importance of Title IX compliance and the potential loss of federal funding should institutions fail to adequately

comply. This communication marked the first event by which the “Dear Colleague” letter was utilized as a method to reiterate, clarify, further define, and convey new regulations as related to Title IX. The “Dear Colleague” letter henceforward was stamped and viewed as an important governing document for institutional guidance to maintain federal compliance. OCR began to issue guidance via the “Dear Colleague” letter in 2007 to address single-sex educational regulations, the application of the three-part test to high school athletics, the treatment of pregnant students in the context of athletic scholarships, and bullying in elementary and secondary schools as discriminatory harassment (U.S. Department of Education, OCR, 2007).

The next “Dear Colleague” letter to address sexual misconduct arrived during the Obama Administration. It was the first letter to explain Title IX requirements pertaining to sexual harassment with the inclusion of sexual violence, physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent because of the use of drugs or alcohol or a disability, to include rape, sexual assault, sexual battery, and sexual coercion as a method of sex discrimination (U.S. Department of Education, OCR, 2011). As stated in the DCL,

The statistics on sexual violence are both deeply troubling and a call to action for the nation. A report prepared for the National Institute of Justice found that about 1 in 5 women are victim of completed or attempted sexual assault while in college. The report also found that approximately 6.1 percent of males were victims of completed or attempted sexual assault during college. According to data collected under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) 20 U.S.C. § 1092(f), in 2009, college

campuses reported nearly 3,300 forcible sex offenses as defined by the Clery Act. Additionally, the likelihood that a woman with intellectual disabilities will be sexually assaulted is estimated to be significantly higher than the general population. The Department [OCR] is deeply concerned about this problem and is committed to ensuring that all students feel safe in their school, so that they have the opportunity to benefit fully from the school's programs and activities. (U.S. Department of Education, OCR, 2011, p. 2)

The DCL (U.S. Department of Education, OCR, 2011) explained an institution's responsibility to respond promptly and effectively to sexual misconduct in accordance with the requirements of Title IX by providing guidance on a school's obligation apart from any separate criminal investigation by local or other law enforcement entity to investigate and address sexual misconduct, requirements to publish a policy against sex discrimination, the adoption and publication of grievance procedures, acknowledgment of proactive preventative efforts, education, and programming such as bystander intervention that schools can utilize to prevent sexual misconduct on their campuses. It also highlighted the interplay between Title IX and other legal requirements such as the Family Educational Rights and Privacy Act (FERPA, 1974), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ([Clery Act], 1990), and the Violence Against Women Act of 1994 (VAWA), the remedies and enforcement strategies that may be used by institutions to respond to reports, and the public designation of a Title IX coordinator (Dunn, 2014; U.S. Department of Education, OCR, 2011; Wilson, 2014). The 2011 DCL is described as a "Come to Jesus Moment" when then Vice President Joe Biden indicated this moment as the first time an administration

acknowledged sexual assault as not only a crime but also a violation of a woman's civil rights (Biden, 2018; Larkin, 2016). The DCL reaffirmed institutions' previous obligations conveyed within the 2001 guidance but changed the tone by which OCR asked for compliance (U.S. Department of Education, OCR, 2011).

When conducting Title IX enforcement activities, OCR seeks to obtain voluntary compliance from recipients. When a recipient does not come into compliance voluntarily, OCR may initiate proceedings to withdraw Federal funding by the Department or refer the case to the U.S. Department of Justice for litigation. (Busch & Thro, 2018, p. 26; U.S. Department of Education, OCR, 2011, p. 1; Larkin, 2016, p. 1)

The 2011 DCL marked the first definition of the Title IX coordinator with expected roles and responsibilities in writing and the obligation to publish, prominently display on the institutions' website, and otherwise widely distribute to all students, employees, applicants for admission or employment, the parents of elementary and secondary students, and other necessary constituents the name or title, office address, telephone number, and e-mail address for the recipient's designated Title IX coordinator. With the commencement of this new instruction, the Sieben (2011) began to track federal investigations of universities and colleges for possible violations of the Title IX gender-equity law related to the mishandling of reported sexual harassment and violence, estimating some 344 open investigations since the release of the 2011 DCL. The Association of Title IX Administrators (ATIXA) believed the 2011 DCL to have created an entirely new profession and new field with the required published mandate of a Title IX coordinator and role expectations (ATIXA, n.d.; Wiersma-Mosley & DiLoreto, 2018).

The U.S. Department of Justice (2014) further iterated that the “Title IX Coordinator’s responsibilities are critical to the development, implementation, and monitoring of meaningful efforts to comply with Title IX” (p. 1).

The Title IX Coordinator

The DCL provided the first written definition of the Title IX coordinator:

The Title IX regulations require a recipient to notify all students and employees of the name or title and contact information of the person designated to coordinate the recipient’s compliance with Title IX. The coordinator’s responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints.

The Title IX Coordinator or designee should be available to meet with students as needed. If a recipient designates more than one Title IX coordinator, the notice should describe each coordinator’s responsibilities (*e.g.*, who will handle complaints by students, faculty, and other employees). The recipient should designate one coordinator as having ultimate oversight responsibility, and the other coordinators should have titles clearly showing that they are in a deputy or supporting role to the senior coordinator. The Title IX coordinators should not have other job responsibilities that may create a conflict of interest. For example, serving as the Title IX coordinator and a disciplinary hearing board member or general counsel may create a conflict of interest. Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient’s grievance procedures operate. Because sexual

violence complaints often are filed with the school's law enforcement unit, all school law enforcement unit employees should receive training on the school's Title IX grievance procedures and any other procedures used for investigating reports of sexual violence. In addition, these employees should receive copies of the school's Title IX policies. Schools should instruct law enforcement unit employees both to notify complainants of their right to file a Title IX sex discrimination complaint with the school in addition to filing a criminal complaint, and to report incidents of sexual violence to the Title IX coordinator if the complainant consents. The school's Title IX coordinator or designee should be available to provide assistance to school law enforcement unit employees regarding how to respond appropriately to reports of sexual violence. The Title IX coordinator also should be given access to school law enforcement unit investigation notes. (U.S. Department of Education, OCR, 2011, pp. 7-8)

The aforementioned definition encapsulated the sole amount of information provided for the expectations of a Title IX coordinator until OCR's next publication 4 years later. In response to institutional requests as many worked to transition their Title IX efforts to meet the demands of the 2011 DCL, OCR published the April 29, 2014 "Questions and Answers on Title IX and Sexual Violence" (Q&A 2014; U.S. Department of Education, OCR, 2014). The Q&A 2014 was meant to further clarify the legal requirements articulated in the DCL 2011 and 2001 *Revised Sexual Harassment Guidance* and provide additional recommendations for institutions as OCR investigations revealed more about institutional needs under Title IX. The Q&A 2014 sought to provide a greater definition of the expansive nature of the Title IX coordinator:

A Title IX coordinator's core responsibilities include overseeing the school's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. This means that the Title IX coordinator must have knowledge of the requirements of Title IX, of the school's own policies and procedures on sex discrimination, and of all complaints raising Title IX issues throughout the school. To accomplish this, subject to the exemption for school counseling employees, the Title IX coordinator must be informed of all reports and complaints raising Title IX issues, even if the report or complaint was initially filed with another individual or office or if the investigation will be conducted by another individual or office. The school should ensure that the Title IX coordinator is given the training, authority, and visibility necessary to fulfill these responsibilities. Because the Title IX coordinator must have knowledge of all Title IX reports and complaints at the school, this individual (when properly trained) is generally in the best position to evaluate a student's request for confidentiality in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students. A school may determine, however, that another individual should perform this role. If a school relies in part on its disciplinary procedures to meet its Title IX obligations, the Title IX coordinator should review the disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX. In addition to these core responsibilities, a school may decide to give its Title IX coordinator additional responsibilities, such as: providing training to students, faculty, and staff on Title IX issues; conducting

Title IX investigations, including investigating facts relevant to a complaint, and determining appropriate sanctions against the perpetrator and remedies for the complainant; determining appropriate interim measures for a complainant upon learning of a report or complaint of sexual violence; and ensuring that appropriate policies and procedures are in place for working with local law enforcement and coordinating services with local victim advocacy organizations and service providers, including rape crisis centers. A school must ensure that its Title IX coordinator is appropriately trained in all areas over which he or she has responsibility. The Title IX coordinator or designee should also be available to meet with students as needed. If a school designates more than one Title IX coordinator, the school's notice of nondiscrimination and Title IX grievance procedures should describe each coordinator's responsibilities, and one coordinator should be designated as having ultimate oversight responsibility.

(U.S. Department of Education, OCR, 2014, pp. 10-11)

The definition expounded on the weight and scope of oversight charged to the Title IX coordinator to ensure compliance. Based on the continued concerns represented within OCR's ongoing institutional investigations, a DCL on Title IX coordinators to institutions was published on April 24, 2015 to reiterate the imperative nature of the role:

In our enforcement work, OCR has found that some of the most egregious and harmful Title IX violations occur when a recipient fails to designate a Title IX Coordinator or when a Title IX Coordinator has not been sufficiently trained or given the appropriate level of authority to oversee the recipient's compliance with Title IX. By contrast, OCR has found that an effective Title IX Coordinator often

helps a recipient provide equal educational opportunities to all students. (U.S. Department of Education, OCR, 2015, p. 1)

The publication served as evidence of OCR's belief in the Title IX coordinator as a method of policy implementation to address sex discrimination within educational institutions, guiding and instrumenting compliance with Title IX. This was also inclusive of the intersectionality of other applicable laws as the justice system further developed and defined sexual misconduct as a holistic approach to transform response to and remedies for sexual misconduct within institutions across the nation.

These Laws Apply

The DCL of 2011 examined the importance of interplay between Title IX and other legal requirements such as FERPA (1974), the Clery Act (1990), and VAWA (1994) that Title IX coordinators must acknowledge and utilize within their work to ensure the expectations of Title IX compliance and guidance are met. In 1986, Jeanne Clery was a student at Lehigh University when she was raped and murdered in her dormitory, Stoughton Hall, by fellow student Joseph M. Henry (Clery Center for Security on Campus, n.d.; Jeanne Clery Act, 2008). After the incident, Jeanne Clery's parents (the Clerys) learned there had been 38 violent crimes to include rape, robbery, and assault on the Lehigh campus in the few years leading up to Jeanne's death. The Clerys sued Lehigh for \$25 million, contending Lehigh University officials were aware of the escalating crime rate and more than 100 incidents of the dorm doors being propped open without taking action (O'Dell & Ryman, 2016). The incident was settled out of court with Lehigh declaring to increase security, implement the use of access cards, and an undisclosed sum of money. The Clerys utilized the monies to establish an advocacy

organization, Security on Campus, and lobbied state legislatures and Congress to require colleges to report campus crimes (O'Dell & Ryman, 2016). The Clery Act is a federal statute enacted in 1990 that requires all educational institutions that receive federal financial assistance, directly or indirectly, to record campus crime statistics and safety policies. In addition, these security reports must be disclosed to current and prospective students as well as employees. In 1992, the Clery Act was amended to include that records kept by campus police or security for law enforcement purposes as not confidential education records under federal law's FERPA (1974). FERPA governs access to students' educational information or records afforded to public entities, forbidding the disclosure without the consent of the student or student's parent when the student is not 18 years of age (FERPA, 1974; U.S. Department of Education, OCR, 2001). Campus police or security law enforcement records shared with educational officials for conduct code violation proceedings become protected as part of a student's educational record and personally identifiable educational records are protected under FERPA. Both the Clery Act and Title IX require institutions to provide both parties with written information regarding the outcome of a complaint of sexual misconduct. According to U.S. Department of Education OCR (2001),

FERPA may be relevant when the person found to have engaged in harassment is another student, because written information about the complaint, investigation, and outcome is part of the harassing student's education record. Title IX is also relevant because it is an important part of taking effective responsive action for the school to inform the harassed student of the results of its investigation and whether it counseled, disciplined, or otherwise sanctioned the harasser. This

information can assure the harassed student that the school has taken the student's complaint seriously and has taken steps to eliminate the hostile environment and prevent the harassment from recurring. The Department currently interprets FERPA as not conflicting with the Title IX requirement that the school notify the harassed student of the outcome of its investigation, i.e., whether or not harassment was found to have occurred, because this information directly relates to the victim. It has been the Department's position that there is a potential conflict between FERPA and Title IX regarding disclosure of sanctions, and that FERPA generally prevents a school from disclosing to a student who complained of harassment information about the sanction or discipline imposed upon a student who was found to have engaged in that harassment. FERPA is also relevant when a student accuses a teacher or other employee of sexual harassment, because written information about the allegations is contained in the student's education record. The potential conflict arises because, while FERPA protects the privacy of the student accuser, the accused individual may need the name of the accuser and information regarding the nature of the allegations in order to defend against the charges. The 1997 guidance made clear that neither FERPA nor Title IX override any federally protected due process rights of a school employee accused of sexual harassment. (U.S. Department of Education, OCR, 2001, pp. vii-viii).

As part of the Violent Crime Control and Law Enforcement Act of 1994 (U.S. Congress, House Committee of Conference, 1994), Congress passed the Violence Against Women Act of 1994 (VAWA) to address and recognize crimes associated with

domestic violence, sexual assault, and stalking. Then Senator of Delaware, Joe Biden, worked on the culminating effort to focus on provisions to address sexual assault and battery prevention and funding for evidentiary matters, resources, and services for victims (Legal Momentum, 2018). In its original enactment in 1994, VAWA sought to restructure the address of the criminal justice system responses to domestic violence, including education and training for victim advocates, health professionals, law enforcement, prosecutors, and judges regarding violence against women. The reauthorization of VAWA in 2000, 2005, and 2013 expanded to include the requirement to address not only domestic violence, but sexual assault and stalking as well and established federal legal definitions of domestic violence, dating violence, sexual assault, and stalking. The reauthorizations provided grant funding opportunities, federal funding for rape crisis centers and hotlines, the rape shield law preventing the introduction of past sexual behavior of victims as a negation of sexual assault complaints, legal aid, protections against eviction, financial assistance for victims, immigrant and minority focus, and improved access to services and resources (Legal Momentum, 2018). The reauthorization of VAWA in 2013 is also referred to as the Campus Sexual Violence Elimination Act ([Campus SaVE], 2013). The Campus SaVE Act amended the Clery Act to include additional requirements for the scope of reporting, response, and prevention education requirements concerning rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking. The required Annual Security Report per the Clery Act is mandated to include policy statements, crime statistics, and information about prevention programs in place must be posted and distributed annually by October of each year beginning in 2014 (Campus SaVE Act, 2018). The importance of understanding the

interplay between Title IX and other legal requirements such as FERPA (1974), the Clery Act (1990), VAWA (1994), and the Campus SaVE Act (2013) imperatively demonstrate the scope of impact as stated within the responsibility guidelines of the Title IX coordinator to ensure Title IX compliance, implying a causal relationship and expectation of change with the implementation of the Title IX coordinator.

California and the CSU System

The state of California iterated additional legal provisions based on the relevant provisions of the federal regulations implementing Title IX of the Education

Amendments of 1972:

It is the policy of the State of California, pursuant to Section 200, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies. (Title 1 General Education Code Provisions, 1982, p. 1)

The state of California's *Educational Equity: Sex Equity in Education: Federal Title IX* (Assembly Bill 1538; 2015) added,

The department shall post on its Internet Web site, in both English and Spanish and at a reading level that may be comprehended by pupils in high school, the information set forth in the federal regulations implementing Title IX of the Education Amendments of 1972 public schools, private schools that receive federal funds and are subject to the requirements of Title IX, school districts, county offices of education, and charter schools shall post in a prominent and

conspicuous location on their Internet Web sites all of the following: The name and contact information of the Title IX Coordinator for that public school, private school, school district, county office of education, or charter school, which shall include the Title IX Coordinator's phone number and email address. The rights of a pupil and the public and the responsibilities of the public school, private school, school district, county office of education, or charter school under Title IX, which shall include, but shall not be limited to, Internet Web links to information about those rights and responsibilities located on the Internet Web sites of the department's Office for Equal Opportunity and the United States Department of Education Office of Civil Rights, and the list of rights specified in Section 221.8. And, an Internet Web link to the United States Department of Education Office for Civil Rights complaints form, and the contact information for the office, which shall include the phone number and email address for the office. (p. 1)

The governing boards of each community college district or independent postsecondary institution, Trustees of the California State University, and the Regents of the University of California, are also required to adopt a policy concerning sexual assault, domestic violence, dating violence, and stalking both on and off campus; enter into memoranda of understandings, agreements, or collaborative partnerships with existing on-campus, community-based organizations, and local law enforcement; issue a statement outlining procedures when reporting or receiving a report of a sexual misconduct incident; implement comprehensive prevention and outreach programming regarding sexual misconduct; and ensure the Title IX coordinator plays an integral role in assisting California's campuses in adhering to Title IX (*Student Safety: Sexual Assault*, 2014).

The state of California guidance via the education code established a paralleled response to the federal requirements for Title IX compliance. The California State University (CSU) System is the largest system for higher education in the country with 23 campuses consisting of more than 45,000 employees and close to 450,000 students. In response to the required needs to meet Title IX federal and state compliance, the CSU System was the first to appoint a system-wide Title IX compliance officer to work collaboratively and with a provision of consistency across the 23 CSU System campuses (The California State University, n.d.; “CSU Hires First-Ever Systemwide Title IX Compliance Officer,” 2014). Chancellor Timothy White utilized the Title IX coordinator to establish Executive Orders 1095, 1096, 1097, and 1098 to provide direction on implementing Title IX of the Education Amendments of 1972 (U.S. Department of Justice, n.d.); the Violence Against Women Reauthorization Act of 2013 (which amends the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act, commonly known as the Clery Act) under its Campus SaVE Act provision; Title IV of the 1964 Civil Rights Act; California laws provided through the California Education Code regarding equity in the Higher Education Act (U.S. Department of Health, Education, and Welfare, Office of Education, 1965); and the governor’s *California Campus Blueprint to Address Sexual Assault* (Jones, 2004), in congruence with all other applicable state, federal laws, and related regulations (Jones, 2004; The California State University, n.d.). The CSU Executive Order 1095 conveys the required designation of an additional Title IX coordinator at each of the 23 institutions as an extension of the system-wide coordinator, with authority across all campus-based divisions and programs, to report to a vice president or higher and monitor, supervise, and oversee overall campus-wide

implementation of and compliance with Title IX and all related executive orders, including coordination of training, education, communications, and administration of complaint procedures for employees, students, and third parties in the areas of sex discrimination, sexual harassment, domestic and dating violence, stalking, and all instances of sexual misconduct (White, 2015). In a CSU system-wide meeting, Chancellor White (2015) stated the CSU system would be unable to meet and live up to the educational mission of the institution without the dedicated efforts of the Title IX coordinator. The statement provided by Chancellor White aids in further indicating the role of a Title IX coordinator is an integral component essential to keeping the campuses safe places for students, faculty, and staff to learn, educate, and work. White also acknowledged the shortcomings of administration; when one member of the community is victimized, it diminishes all within the system, and the important role of the Title IX coordinator and his or her duty to not only act as a colleague but also as mentor, trainer, and enforcer. This notion affirms the implementation in the wake of the 2011 DCL of a published Title IX coordinator as a key element to garner change in administrative address and oversight in response to incidents of sexual misconduct.

Theoretical Framework

The role of the public administrator is defined as a servant of the people who serves others and the community, seeking to do the greatest amount of good for the greatest number of individuals, paying close attention to the ethical considerations that may present themselves (Shafritz & Hyde, 2012). A proverb for public administrators, Woodrow Wilson stated,

You are not here merely to make a living. You are here to enable the world to live more amply, with greater vision, and with finer spirit of hope and achievement. You are here to enrich the world. You impoverish yourself if you forget this errand. (Woodrow Wilson School of Public & International Affairs, n.d., p. 1)

Across the nation, students have a right to pursue their education in a safe environment and therefore, administration has a duty to work to ensure that possibility. Policies, procedures, and programming being created should promote greater accountable efficiency and effectiveness as they are for the betterment of all of society (Shafritz & Hyde, 2012). The lawsuits encapsulating media spotlight and thereby drawing greater attention to this area of study are composed of students demonstrating how university administration has failed them in taking the charge of protecting them on campus. In an effort to address this concern, Title IX policy has called for the implementation of a Title IX coordinator to oversee compliance in addressing reports of sexual misconduct on campus. According to Burns (1978), “Moral leadership emerges from, and always returns to, the fundamental wants and needs, aspirations and values of the followers” (p. 4).

Implementation Theory

Pressman and Wildavsky (1973) defined the term implementation as the fulfillment, process, or accomplishment of executing a decision or plan through its relationship to official documented policy with “the ability to forge subsequent links in the causal chain so as to obtain the desired results” (p. xv). O’Toole (1995) indicated that policy implementation is a direct and specified connection between governmental

intentions and realized fruition of that vision. O'Toole further stated that implementation of policy is the establishment of governmental intention and direction to take action or stop something that ultimately has an impact on society at large. The concerns with the mishandling of reports of sexual misconduct by university administration demonstrated a need to redirect the goals and tactics by which sexual misconduct was to be addressed on college campuses. The larger ideal of working to combat sexual misconduct was iterated as being lost in administrative efforts perceived as trying to create reputable and sustainable prominent education institutions free from the negativity that is criminal acts and concerns for safety with little true regard for combating the issue. Given a public institution's mission and charge to fuel economic growth, the efficacy of adequate and properly implemented policies regarding sexual misconduct across state institutions is imperative, especially with 62% of all students pursuing a bachelor's degree enrolled at public colleges and universities (Nelson, Naimi, Brewer, & Wechsler, 2005). Howlett and Ramesh (2003) posited that the implementation of a policy becomes an imperative part of the policy cycle in general and greatly concerns government ability to put policies into effect. Pressman and Wildavsky (1973) stated, "The apparently simple and straightforward is really complex and convoluted" (p. 93). In order for organizations to realize the desired outcomes, policies must be effectively implemented. In an effort to aid institutions in combating the threat of sexual misconduct, structure began with the creation of Title IX by the Department of Education and therefore, the U.S. government.

A top-down model of policy implementation conditions policy implementation should not be left to chance, and policymakers must also consider this concept (Hill, 2005). The focus is on who holds the power to elicit the desired outcome as stated within

Title IX Policy. Pressman and Wildavsky (1973) affirmed the relevance of exploring the realms for attaining desired outcomes when programs are not being implemented as intended and demonstrated when university administrative actions are not reflective of Title IX policy goals and construct. With OCR's reported observation through internal and external investigations of several university administrator's actions across the country signifying incapability in being able to bring Title IX policy to preferred fruition and ends, the position of the Title IX coordinator was created. O'Toole (2000) described this method of implementation as "what develops between the establishment of an apparent intention on the part of the government to do something, or stop the doing something, and the ultimate impact in the world of action" (p. 266). The need for effective implementation of Title IX policy demonstrates the craftsmanship by policymakers' move to insert this role as a mandated part of the Title IX policy required for universities and reaffirmed through the April 2011 DCL on behalf of the U.S. Department of Education OCR. Mazmanian and Sabatier (1983) posited the guidance of top-down policy implementation with the identification of problem policy objectives and the establishment of the policy to provide a structure to guide the action to aid the implementation process. The nature of this position would be a method of policy implementation to ensure the necessary processes for Title IX legal compliance would be carried out as set forth within the outlined communication of Title IX Policy. In order to preserve rights afforded through the policy, mechanisms of enforcement are necessary (Stone, 2002). Pressman and Wildavsky (1973) expressed that by implementing an individual as an addendum to the policy construct, policymakers have the opportunity to combat challenges to successful policy implementation. Title IX policy structure for

implementation necessitates a conduit to initiate and sustain the cohesiveness of multiple decision points and clearances required to implement, which in the creation of the Title IX coordinator were afforded.

CHAPTER 3: METHODOLOGY

Overview

Title IX applies to institutions that receive federal financial assistance and is inclusive of state and local educational agencies, vocational rehabilitation agencies across the 50 United States, the District of Columbia, and territories and possessions of the United States. This includes approximately 16,500 local school districts, 7,000 postsecondary institutions, charter schools, for-profit schools, libraries, and museums that have an obligation to uphold Title IX policy (National Center for Education Statistics [NCES], 2016; U.S. Department of Justice, n.d.). On November 1, 2014, more than 80 institutions of higher education were under federal investigation for possible violations of Title IX as administrators were found to have mishandled reports of sexual misconduct (Lewontin, 2014). OCR began tracking sexual misconduct Title IX complaints in 2009, and since then the number of complaints filed against institutions of higher education tripled from 2009 through April of 2014 (Newman & Sander, 2014). Many of these complaints garnered media attention as they brought a proliferation of adjacent lawsuits, and with the establishment of *Cannon v. University of Chicago* in 1979, cases were brought forth without an initial complaint to OCR. In an effort to address the concerns found, the role of the Title IX coordinator was created as an implementation method of legal compliance and intervention tool through the 2011 Dear Colleague Letter (DCL) under Title IX.

The purpose of this study was to investigate the effect, if any, of the role of the Title IX coordinator as a method of policy implementation through demonstration of a statistically significant difference in the number of cases of litigation for mishandled

reports of sexual misconduct by administration across the 23 CSU System campuses. National media attention surrounding the number of litigation cases due to administrative response and the mishandling of reports of sexual misconduct drove a need to review and implement policies and strategies to combat such concerns; one state and federal accountability initiative to aid in corrective action and Title IX compliance was the implementation of the Title IX coordinator (Sander, 2014). Title IX, a federal law enacted in 1972, indicates that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” either directly or indirectly by any school employee, student, or third party (Gomez & Smith, 2013, p. 4). This study examined the effectiveness of the 2011 guidance and role of the Title IX coordinator as an implemented tool of policy intervention in mitigating litigation as a result of administration mishandled reports of sexual misconduct revealed in a number of cases of litigation before and after the 2011 DCL and communicated mandate of a published Title IX coordinator across the 23 California State University (CSU) System campuses. The study research question inquired whether the mandated implementation of a Title IX coordinator as communicated in the 2011 DCL decreases the number of related litigation cases across the 23 CSU System campuses. It involved an examination of the number of Title IX litigation cases across the 23 CSU System campuses from 2005 to 2017. Rao (1980) and Stafford (2011) described quantitative analysis as an effective research method to study the correlation between two variables in an effort to show causality even with limited cause and effect. This chapter includes the research question and hypotheses along with

a description of the research methodology including the sampling procedure and population, instrumentation, and subsequent procedures for data collection and analysis.

Research Question

1. Does the mandated implementation of a Title IX coordinator decrease the number of related litigation cases across the 23 California State University (CSU) System campuses?

Hypothesis and Null Hypothesis

H₁ – There is no statistically significant difference in the number of litigation cases at the 23 CSU System campuses after the implementation of a Title IX coordinator.

H₀ – There is a statistically significant difference in the number of litigation cases at the 23 CSU System campuses after the implementation of a Title IX coordinator.

Research Design

The goal of this study was to examine the 2011 DCL mandate of a publicized Title IX coordinator as a tool of policy implementation or method of intervention on the number of litigation cases filed under the Title IX policy across the 23 CSU System campuses. The required implementation of a Title IX coordinator as emphasized within the 2011 DCL has been in effect for a number of years with limited research or quantifiable evidence related to the possible points of impact the role of the Title IX coordinator may pose as a structure for legal compliance and institutional accountability. This research study used a quantitative analysis consisting of a quasiexperimental design. A quasiexperimental outline allowed for the test of the casual intervention on a population that has not been randomly selected and for which random assignments of participants to the independent variable conditions is not possible (Campbell, Stanley, &

Gage, 1963; Creswell, 2014). Quasiexperimental designs allow for research by which there are practical constraints, limitations to control, and exposure may be unethical whereas the researcher would know the stimulus the subject would be exposed to, such as mishandled reports of sexual misconduct referenced in this study, may cause harm to the participants (Millsap & Maydeu-Olivares, 2009). This study consisted of a one-group before-and-after model reflected as follows:

O₁ X O₂

Whereas within the demonstration, an ‘O’ represents the observation of number of cases of litigation before and after the DCL, ‘O₁’ is the time period before the intervention, the introduction of the 2011 DCL and mandated published intervention of a Title IX coordinator, reflected as ‘X’ and measured again after the intervention of ‘X’ reflected as ‘O₂’ with time progressing from left to right (Millsap & Maydeu-Olivares, 2009; Shadish, Cook, & Campbell, 2002). Further stated, the one-group pretest-posttest design illustrates the observation and assessment prior to the introduction of any intervention program to the individuals within the group, (the 23 CSU System campuses), the intervention item that is subsequently introduced, (the 2011 DCL and published Title IX coordinator), and after a second assessment is obtained as the posttest (Millsap & Maydeu-Olivares, 2009; Shadish et al., 2002).

McCusker and Gunaydin (2015) defined quantitative research best realized as the relationship between an independent variable and an outcome as quantitative research is objective, measuring results of statistical data collected through the analysis of baseline data that are preexisting and compared to data that are postintervention. For the purpose of this study the researcher analyzed the independent variable such as litigation cases and

a dependent variable that is the 2011 Dear Colleague guidance and mandated publicized implementation of a Title IX coordinator. The timeline employed reflected a preperiod from 2005 to 2010, a middle-of-study year intervention benchmark at 2011, and a postperiod from 2012 to 2017. A quantitative method was chosen as the most appropriate to answering the research question by collecting numerical data that were analyzed statistically to provide evidence of changes over time (Vogt, 2007). Creswell (2014) stated that analyzing numerical data of measured variables through statistical procedures allows for quantitative research to examine the relationship among variables. A qualitative design using a survey of attitudes, opinions, behaviors, or characteristics was determined not appropriate for this study (Creswell, 2009). This study examined the possible impact of the role of the Title IX coordinator and is not inclusive of the Title IX coordinator's perspective of the role.

Population and Sample

The NCES posited that there are more than 7,000 institutions of higher education in the United States (NCES, 2016). Title IX applies to institutions that receive federal financial assistance and is inclusive of state and local educational agencies and vocational rehabilitation agencies across the 50 United States, the District of Columbia, and territories and possessions of the United States (NCES, 2016; U.S. Department of Justice, n.d.). The Public Policy Institute of California (2016) shows the CSU System as the largest university system in the nation. The CSU System comprises more than 45,000 employees and more than 450,000 students spanning 23 campuses extending across the entire state of California (see Figure 1). The figure displays the location of each CSU institution utilized within this study. This study examined data collected from CSU

Bakersfield, Cal Maritime, Channel Islands, Chico, Dominguez Hills, East Bay, Fresno, Fullerton, Humboldt, Long Beach, Los Angeles, Monterey Bay, Northridge, Pomona, Sacramento, San Bernardino, San Diego, San Francisco, San José, San Luis Obispo, San Marcos, Sonoma, and Stanislaus. The CSU System was utilized as a nonrandom sample to denote the attribution of the Title IX coordinator and litigation for mishandled reports of sexual misconduct. Creswell (2009) defined a sample as inclusive of a representative portion of a population used in making a generalization in a research study. For the purpose of this study, the nonrandom sample comprised students, faculty, and staff who filed litigation cases against the CSU System under Title IX. The researcher chose this purposive method of sampling to garner a different perspective in the evaluation of the role of the Title IX coordinator. The main goal of this sample selection allowed the study to focus on the particular characteristics of the population of interest, which are those persons across the CSU System campuses who have experienced an incident of sexual misconduct and filed a lawsuit against the CSU System for a violation of policy under Title IX. Due to the nature of the study and the limited access allowable to the researcher as a need to protect participants, this method of sampling is most appropriate to answer the research question for the study.

This population spanning the 23 CSU campuses is generalizable to most institutions of higher education and served as a sample of accessibility for the researcher. Table 1 lists the number of students and employees between the years of 2005 and 2017 across the CSU System.



Figure 1. Image of CSU System campus layout. From CSU Campuses, by Cal State Online, n.d. (<https://www.calstateonline.net/Cal-State-Campuses>). Copyright 2018 by Cal State. Reprinted with permission.

Table 1

CSU System Population

Year	# of students	# of employees
2005	405,282	44,083
2006	417,112	45,852
2007	433,017	47,124
2008	437,088	47,029
2009	433,054	44,340
2010	412,372	42,884
2011	426,534	43,938
2012	436,560	44,364
2013	446,530	45,460
2014	460,200	47,417
2015	474,571	49,294
2016	478,638	50,840
2017	484,297	52,163

Data Collection

According to the CSU System guidelines and pursuant to the California Constitution, Article I, Section 3, subdivision (b) and the California Public Records Act ([CPRA], n.d.) provide that members of the general public may request a state agency to disclose its public records. CSU, as a public agency, has a legal obligation to respond within 10 days of receipt of any informal or formal request. The Chancellor's Office is the centralized governing unit for all 23 CSU System campuses. As headquarters, all cases of litigation are filed through the Chancellor's Office of the General Counsel, and this office is also the designated department responsible for all public record requests for information related to the CSU System as a whole. In coordination with the Office of the General Counsel, a request for public records can be fulfilled to any citizen. This study utilized a public records request by the researcher to the CSU Chancellor's Office of the General Counsel, centralized location for administrative oversight for the CSU System to retrieve data directly from the source through the annual Office of the General Counsel reports to the CSU Board of Trustees. The Office of the General Counsel provides annual reports to the Board of Trustees regarding status of any litigation confronting the CSU System. Data provided to the researcher were compiled by the Chancellor's Office of the General Counsel, personal and private information were redacted, as were records pertaining to pending litigation to which the CSU System is a party until the litigation has been finally adjudicated or otherwise dismissed in coordination with the CPRA (n.d.). Information received is solely in numeric value and does not include any information related to individuals named within the litigation cases.

Validity and Reliability

Trochim and Donnelly (2006) indicated reliability supports the validity of a study to be repeated over time using the same instrument and procedure as used in the original study. The reliability of this study limited itself to the reliability of the established measure. The archived CSU Chancellor's Office and Office of the General Counsel data formed the basis of analysis and conclusions from this study. Such data elements are those reported to the Board of Trustees and information available to the general public as allowed and required by the CPRA (n.d.). Information reported is considered true and accurate under penalty of laws against false reporting.

Data Analysis

Permission to conduct the study was obtained from the Institutional Review Board (IRB) before any collection data began. This study utilized the Statistical Package for the Social Sciences (SPSS) to analyze the data using a paired *t* test. This study used hypothesis testing to assess statistical differences in means. SPSS was utilized to produce output tables to display any observed differences of statistical significance. The *t*-test analysis is used to determine whether there is a real mean difference between the number of cases of litigation for mishandled reports of sexual misconduct before and after the 2011 DCL and mandated published Title IX coordinator. In order to make a decision about the relationship, the level of significance has been set at .05 (Hagen, 1997). This value was compared to the probability value of the test statistic whereas if the probability value was .05 or less, it was concluded that the presence of a Title IX coordinator has an impact on the number of cases of litigation.

Limitations

The use of a quasiexperiment provides a limitation to the study due to the researcher's lack of control over extraneous variables. The use of randomization is absent and makes determining the root cause of a causal relationship between the Title IX coordinator and litigation difficult (DiNardo, 2008). A true experiment would not be an appropriate method for this course of study as it resolves to the participants encounter with mishandled reports of sexual misconduct and experienced incidents of sexual misconduct. The safety and confidentiality of the participants would be of concern within a true experiment. In addition, there may be alternate reasons for demonstrated differences between the number of Title IX litigation cases across the 23 CSU System campuses before and after the 2011 mandated implementation of the Title IX coordinator. With the continued evolution of legal requirements and the education of society on policy and compliance, constituents are afforded increased knowledge of available resources and processes that aid the reports and handling of incidents of sexual misconduct. Although the Title IX coordinator is the centralized entity for institutional accountability and compliance, Title IX policy structure is a collaborative effort across the campus (U.S. Department of Education, OCR, 2017). Providing administrators across the campus with information related to Title IX policy also influences how the campus community responds and reports incidents of sexual misconduct (McMahon 2008). This limits the study's ability to demonstrate true cause and effect as a sole result of the intervention method. Records pertaining to pending litigation to which the CSU System is a party until the litigation has been finally adjudicated or otherwise dismissed in coordination

with the CPRA (n.d.) were also eliminated and considered an additional limitation of the study.

Delimitations

The scope of the study focused on the number of Title IX litigation cases across the CSU System campuses. The study does not include a qualitative analysis of individual Title IX coordinators at each respective campus location within the CSU System to eliminate attitudes, opinions, behaviors, or characteristics that were determined not appropriate for this study (Creswell, 2009).

Summary

Chapter 3 provided a description of the method of the study used to determine whether there was a statistical difference between the numbers of Title IX litigation cases filed across the 23 CSU System campuses from 2005 to 2017 after the 2011 mandate of a published Title IX coordinator. The research method chosen for the study was a quasiexperimental design that examined the differences in cases filed and reported through the CSU Chancellor's Office of the General Counsel. Quantitative procedures in the quasiexperimental study involved collecting, calculating, and examining the reported cases (Creswell, 2009).

A quasiexperimental design supported the data collection of measuring preexisting data of one group and comparing data that were postintervention. This study reviewed the number of Title IX litigation cases across the 23 CSU System campuses before the 2011 mandate and compared the acquired data to that of the same group after the 2011 intervention of the DCL mandated Title IX coordinator on number of cases of Title IX litigation.

CHAPTER 4: FINDINGS

The purpose of this quasiexperimental quantitative analysis via a one-group pretest-posttest study was to further research the effect of the 2011 DCL and published mandate of a Title IX coordinator. Specifically, the study examined the number of cases of Title IX litigation 6 years prior and 6 years after the 2011 implementation intervention across the CSU System campuses to determine whether the number of Title IX litigation cases differed across the CSU System campuses between the years prior to and after the 2011 intervention. A paired t test was employed to measure and compare any difference of statistical significance in the before and after data.

In this chapter, the results of the public records request and the data analysis are presented. The chapter is reported in reference to the research question, hypothesis, and null hypothesis posed in Chapter 1. The participants and the results of the paired sample t test are given. A Quantile-Quantile Plot (Q-Q Plot) was also performed to determine common distribution and in order to substantiate the findings of the paired sample t test. The chapter concludes with an evaluation and interpretation of the results and findings.

Results

The litigation data for this study were obtained via public records request from the CSU Chancellor's Office of the General Counsel. The initial request presented by the researcher to the Chancellor's Office of the General Counsel returned extremely limited results that eliminated the possibility of producing a quantitative analysis. The initial request solicited the number of Title IX litigation cases and a time frame from 2007 to 2015. The researcher worked with the Chancellor's Office of the General Counsel to modify the existing request to further define the term litigation beyond the common

terminology of litigation referenced under the Department of Education's Office for Civil Rights' Title IX Policy. The California Public Records Act ([CPRA], n.d.) and the CSU System public records request procedure indicates the CSU is not required to create documents that do not already exist and the CSU will assist in identifying available records (Cal State Online, n.d.). The modified public records request to the Chancellor's Office of the General Counsel requested the number of Title IX litigation cases filed, inclusive of any cases mediated, settled, or dismissed and provided through the CSU Board of Trustees Annual Litigation Report. This included the acknowledgment of the CPRA (n.d.) whereas records pertaining to pending litigation to which the CSU as a public agency is a party or to claims made pursuant to Division 3.6 (commencing with Section 810) are records exempt from public disclosure until the pending litigation or claim has been finally adjudicated or otherwise settled. The modification allowed for the Chancellor's Office of the General Counsel to produce quantifiable data for this study to be conducted.

The study focused on a singular group consisting of the CSU System campuses before and after the 2011 DCL and published mandate of a Title IX coordinator intervention and spans all 23 CSU System campuses with respect to the number of Title IX litigation cases filed from 2005 to 2017. Data were provided from the CSU Office of the General Counsel's archived database and then uploaded into SPSS statistical software for analysis. A paired *t* test was used to compare the mean differences between the pretest and posttest data points. The aim of the study was to determine whether changes to the number of Title IX litigation cases were statistically significant and included a demonstration of statistical difference when comparing the number of Title IX litigation

cases prior to and after the 2011 DCL and published mandate of a Title IX coordinator. The paired t test was extremely useful in comparing two means, 6 years before and 6 years after the implementation intervention.

Assumptions

The data meet the requirements for a paired sample t test. Field (2009) indicated a parametric procedure, or procedure that estimates unknown parameters such as the paired sample t test, makes several assumptions. These assumptions conclude the dependent variable is continuous, the observations are independent of one another, the dependent variable is approximately normally distributed, and the dependent variable does not contain any outliers. Outliers consist of rare data points that appear far away from the majority of the data and have the potential to bias the results (Field, 2009). One method to address such an occurrence is to remove such data points, and the Q-Q plot determined that was not a necessary procedure within this study. The following displays the results of the tests used in the study.

Comparison of the Means

The following SPSS tables display comparison results of the means using the paired sample t test for the CSU System campuses. The test was used to analyze data for a preintervention period of 2005-2010 and a postintervention period of 2012 to 2017 for the number of Title IX litigation cases filed across the CSU system campuses. The Q-Q plot was used to affirm the two data sets came from a population with a common distribution. This was determined by the points following a strongly linear line by lying on a straight line that was displaced upward from the 45-degree reference line. Gnanadesikan (1997) believed the Q-Q plot to be a more powerful approach than

comparing histograms of the two samples. Since it is not possible to determine the median of either of the two distributions being compared by inspecting a Q-Q plot, a paired sampled t test was deployed with the use of SPSS software. The following SPSS tables display comparison of the means using the paired sample t test for the number of Title IX litigation cases filed across the CSU System campuses.

Table 2 displays the paired samples statistics for the number of cases of Title IX litigation filed for the CSU System campuses for the preimplementation mean = 3.5000, $N = 6$, standard deviation = 1.87083, and standard error mean = .76376. Table 2 also displays the paired samples postintervention mean = 6.6667, $N = 6$, standard deviation = 3.14113, and standard error mean = 1.28236.

Table 2

Paired Samples Statistics

Pair #	Sample	Mean	N	SD	Std. error mean
Pair 1	Preintervention	3.5000	6	1.87083	.76376
	Postintervention	6.6667	6	3.14113	1.28236

Table 3 displays the paired samples correlations. Pair 1 pretest versus posttest, $N = 6$, correlation = .613, and Sig. = .196. Table 4 displays the paired samples t test for Pair 1 pretest versus posttest, mean = -3.16667, standard deviation = 2.48328, standard error mean = 1.01379, 95% confidence interval of the difference lower = -5.77271, upper = -.56063, $t = -3.124$, $df = 5$, Sig. (2-tailed) = 0.26.

Table 3

Paired Samples Correlations

Pair #	Sample	<i>N</i>	Correlation	Sig.
Pair 1	Preintervention & postintervention	6	.613	.196

Table 4

Paired Samples Test

Pair #	Sample	Paired differences					<i>t</i>	<i>df</i>	Sig. (2-tailed)
		Mean	<i>SD</i>	Std. error mean	95% confidence interval of the difference				
					Lower	Upper			
Pair 1	Pre & post	-3.16667	2.48328	1.01379	-5.77271	-.56063	-3.124	5	.026

Figure 2 reflects the comparison of before and after data for magnitude of Title IX litigation cases, with the exclusion of the 2011 implementation of the DCL and mandated published employment of a Title IX coordinator. The comparison of the data through a paired sample *t* test for a preintervention period of 2005-2010 and a postintervention period of 2012 to 2017 for the number of Title IX litigation cases filed across the CSU system campuses sought to answer the following research question.

Research Question

1. Does the mandated implementation of a Title IX coordinator decrease the number of related litigation cases across the 23 California State University (CSU) System campuses?

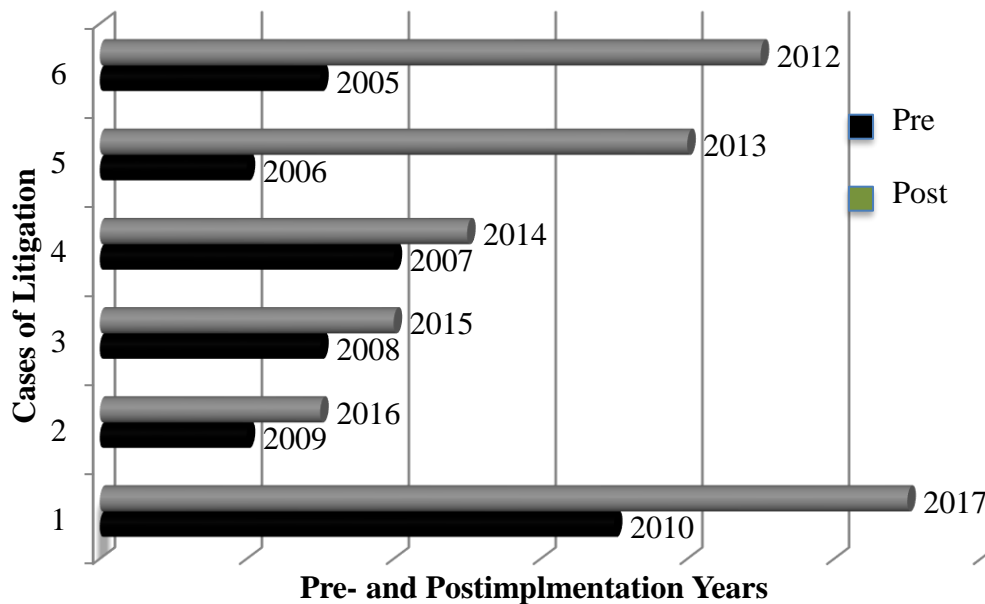


Figure 2. Pre- and postimplmentation years.

Hypothesis and Null Hypothesis

H₁ – There is no statistically significant difference in the number of litigation cases at the 23 CSU System campuses after the implementation of a Title IX coordinator.

H₀ – There is a statistically significant difference in the number of litigation cases at the 23 CSU System campuses after the implementation of a Title IX coordinator.

The method applied to test the hypothesis that there is not a statistically significant difference between the number of Title IX litigation cases filed before (preintervention) and after (postintervention) the 2011 DCL and published mandate of a Title IX coordinator implementation was that a paired sample *t* test was performed across the entirety of the CSU System campuses. Using SPSS to analyze the number of Title IX litigation cases filed across the CSU System campuses 6 years before implementation and 6 years after implementation, the results demonstrate a paired sample *t* test Sig. (2-tailed) = .026, which is less than .05. The results of this analysis allowed the researcher to

conclude there is a statistically significant difference between the preintervention period and postintervention period data for the number of Title IX litigation cases filed across the CSU System campuses between 2005 and 2017 and reject the null hypothesis, $p < .026$.

Evaluation of Findings

The study conducted was a quasiexperimental quantitative analysis that researched the effect of the 2011 DCL and published mandate of a Title IX coordinator as a method of policy implementation and intervention on the number of Title IX litigation cases filed across the CSU System campuses. A paired sample t test was employed to measure the upward or downward trend in Title IX litigation. This study used a window of comparison, six years before the 2011 DCL and publish mandate of a Title IX coordinator (preintervention) and 6 years after the 2011 DCL and published mandate of a Title IX coordinator (postintervention) as opposed to a shorter window that may have inhibited the assessment of implementation. The CSU System campuses were chosen as an ideal population for this study because the organization is the largest collective of institutions in the United States and the first institution to implement a system-wide Title IX coordinator.

The research question asked whether the mandated implementation of a Title IX coordinator decreased the number of related litigation cases across the 23 California State University (CSU) System campuses. The results of the study concluded a statistically significant difference between the number of Title IX litigation cases filed prior to and after implementation of the 2011 DCL and published mandate of a Title IX coordinator in an upward trend. Therefore, stating the mandated implementation of a Title IX

coordinator did not decrease the number of related litigation cases across the 23 CSU System campuses, the number of Title IX litigation cases filed actually increased. Hogsten (2017) reported that incidents of sexual misconduct have also experienced an increase over the last several years that does not likely attribute to an increase in the number of incidents of sexual misconduct but to more individuals being willing to come forward to report incidents. The National Institute of Justice (n.d.) believed legal reforms and the growth in services available to individuals are influential in increasing the actions taken by victims of sexual misconduct. This ideal is inclusive to the transition and development of Title IX policy through cases of litigation. Additional resources being afforded such as *Cannon v. University of Chicago* (1979) becoming a defining moment enacted that a private litigant would have every opportunity to bring forward a claim under Title IX. *Franklin v. Gwinnett County Public Schools* (1992) further established that sexual harassment constitutes sex discrimination under Title IX and also provided a private right for recovery of monetary damages under Title IX. The pattern outlined that as legal recourse and educational resources continue to become available, the number of Title IX cases of litigation abound with the probability of a continued upward trend.

A notable aspect of this research is the quantifiable results measured and insight into the role of the Title IX coordinator as a method of intervention and tool of policy implementation for institutional accountability. The quantifiable results measured federal regulation under the 2011 DCL and published mandate of a Title IX coordinator and the statistical significance related to the number of cases of Title IX litigation filed across the CSU System campuses. Utilizing this method was important in providing an avenue to

highlight areas the CSU Chancellor's Office of the General Counsel should continue to assess in the number of cases of Title IX litigation across the campuses outside of a qualitative perspective on behalf of the Title IX coordinator. The study was useful in showing that the number of cases of Title IX litigation filed across the CSU System campuses preintervention and postintervention was a positive trend upward. According to results of the study, the number of cases of Title IX litigation filed is an area that should be of continued focus.

Summary

A number of the results from the data collection to the implementation of the study were illuminating throughout the journey. Title IX policy language employs the term litigation to be an exhaustive and inclusive definition for cases that may have also been mediated, settled, or dismissed whereas the term's applicability within the public records request to the Chancellor's Office of the General Counsel provided an initial inhibitor to results provided. The expectation was that the sole use of the term would have provided intended results within the initial request and is of importance to note. In addition, the Chancellor's Office of the General Counsel does not in itself track and report to the general public trends in litigation across the CSU System although data are gathered for use within the Board of Trustees Annual Litigation Report. Research would need to be continual to capture changes in data as additional cases are closed.

Based on the results of the study, it is clearer that additional research is needed in this area. Additional research could focus on extending the postevent period, the study could also be duplicated to include additional cases that were filed within the respective before and after windows for this study that were legally restricted from public disclosure

until conclusion of litigation. Before the paired sample t test was performed, the evidence seemed to indicate there should have been a decrease in the number of cases of Title IX litigation filed. The literature revealed that the Title IX coordinator as a method of intervention aids in holding institutions more accountable for Title IX policy as a method of implementation under the Title IX federal mandate. The Title IX coordinator being deployed as an implemented tool to aid in a holistic approach to upholding Title IX regulations, would indicate that the number of cases of Title IX litigation for violations of Title IX would decrease. This study posits continued research into the role of the Title IX coordinator is a necessity.

CHAPTER 5: CONCLUSION

Litigation is entrenched as the process of using the legal system to seek administrative or judicial decisions with the potential to clarify or modify laws and societal practices. When laws and practices violate human rights, individuals can use litigation to try to claim their rights, garner clarity surrounding the content of specific rights through local and national courts and administrative agencies, or use it as a tool for law reform. The formulation of policies, legislation development, and litigation are all closely related activities. The National Center for Higher Education Risk Management (NCHERM), approximates 60% of Title IX lawsuits brought forward by victims and 40% brought forward through the U.S. Department of Education Office for Civil Rights (OCR) complaints to be successful, with the average award to be about \$200,000.00 for those who see a jury and many other cases that are settled out of court that the public never hears anything about (Hattersley-Gray, 2012). Lawsuits for mishandled reports of sexual misconduct by college and university administration as a violation of Title IX continue to draw media attention as litigation presents itself to be a viable method for aggressive institutional and societal change. The first settlement after *Davis v. Monroe County Board of Education* (1999) under Title IX against a college was \$75,000.00 in 2000; now settlements are reaching closer to the potential of the \$19.1 million jury verdict against California State University (CSU), Fresno in 2008. Even with a subsequent judge reduction to \$6.6 million, the cost of compliance for institutions to address their responsibility under Title IX is apparent (*Brzonkala v. Virginia Polytechnic Institute and State University, 1997*; Hostetter & Anteola, 2007; Lipka & Wolverton, 2007).

Title IX of the Education Amendments of 1972 sought to eliminate, prevent, and remedy instances of sex discrimination in educational activities, programs, and employment and applies to all colleges and universities that receive federal financial assistance. The amendment provided a testament stating “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance,” either directly or indirectly, by any school employee, student, or third party (Gomez & Smith, 2013, p. 4). According to the *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (U.S. Department of Education, OCR, 2001),

Title IX requires: that a school publish a non-discrimination statement; appoint a Title IX Coordinator; adopt and publish grievance procedures that are prompt and equitable and allow for adequate, reliable, and impartial investigation of complaints; use and enforce appropriate remedies; provide education and prevention programs; provide general training for all campus community members about the school’s policies and procedures; and specific training for implementers and adjudicators about the school’s grievance procedures and its response to complaints of sexual harassment and sexual violence. (p. iii)

Sexual misconduct remains among the highest underreported crimes across the nation. It is described as a wicked problem, difficult to define and therein inherently unsolvable, this problem is encroaching horrendously on college campuses with varying degrees of influential policy turning into actionable behavior (Breitenbecher, 2000; Brubaker, 2009; Weber & Khademian, 2008). Across the nation, the number of women

sexually assaulted during their college years is deemed to be one in five college women (Bradley et al., 2009; Clement, 2015; Edwards, 2009; Exner & Cummings, 2011; Milhausen et al., 2006; Suzuki, 2013). As individuals sought avenues to report incidents of sexual misconduct, news outlets highlighted occurrences where victims were met with institutional administrators who placed greater importance on ensuring the continuation of their athletic programs, brand and image in the media, associated donor dollars, and minimization of rape statistics depicted and detailed within their annual security reports than the true needs of upholding the safety and security of all students on campus. This indifference led to mishandled reports of sexual misconduct (Dick & Ziering, 2015). In an effort to address sexual misconduct with adherence to and compliance of Title IX policy across the nation, the role of the Title IX coordinator was created as a method of policy implementation for a holistic approach to institutional accountability. The need for effective implementation of Title IX policy demonstrates the craftsmanship by policymakers' move to insert this role as a mandated part of the Title IX policy required for universities and reaffirmed through the April 2011 Dear Colleague Letter (DCL) on behalf of the U.S. Department of Education OCR. A top-down model of policy implementation posits policy implementation should not be left to chance and policymakers must also consider this concept (Hill, 2005).

Purpose of the Study

The purpose of this study was to investigate the effect, if any, of the role of the Title IX coordinator as a method of policy implementation through demonstration of a statistically significant difference in the number of cases of litigation for mishandled reports of sexual misconduct by administration across the 23 CSU System campuses.

National media attention surrounding the number of litigation cases due to administrative response and the mishandling of reports of sexual misconduct drove a need to review and implement policies and strategies to combat such concerns; one state and federal accountability initiative to aid in corrective action and Title IX compliance became the implementation of the Title IX coordinator (Sander, 2014). DeGroff and Cargo (2009) indicated the process of policy implementation is influenced by structural changes in public administration where government decisions are transformed into programs, procedures, regulations, or mandates, the restructuring of accountability relationships in service delivery, or practices aimed at social betterment.

This study examined the effectiveness of the 2011 DCL guidance and role of the Title IX coordinator as an implemented tool of policy intervention in mitigating litigation as a result of administration mishandled reports of sexual misconduct revealed in the number of cases of litigation 6 years before (preintervention) and 6 years after (postintervention) the 2011 DCL and communicated mandate of a published Title IX coordinator across the 23 CSU System campuses. The research question for this study inquired whether the mandated implementation of a Title IX coordinator as communicated in the 2011 DCL decreased the number of related litigation cases across the CSU System campuses and involved an examination of the number of Title IX litigation cases across the CSU System campuses from 2005 to 2017.

Research Question

1. Does the mandated implementation of a Title IX coordinator decrease the number of related litigation cases across the 23 California State University (CSU) System campuses?

Hypothesis and Null Hypothesis

H₁ – There is no statistically significant difference in the number of litigation cases at the 23 CSU System campuses after the implementation of a Title IX coordinator.

H₀ – There is a statistically significant difference in the number of litigation cases at the 23 CSU System campuses after the implementation of a Title IX coordinator.

Methodology

The research method chosen for the study was a quasiexperimental design that examined the differences in the number of cases of Title IX litigation filed and reported through the CSU Chancellor’s Office of the General Counsel. Quantitative procedures in the quasiexperimental study involved collecting, calculating, and examining the reported cases measuring preexisting data of one group and comparing data that were postintervention (Creswell, 2009). This study utilized a public records request by the researcher to the CSU Chancellor’s Office of the General Counsel, centralized location for administrative oversight for the CSU System to retrieve data directly from the source through the annual Office of the General Counsel reports to the CSU Board of Trustees. Data provided to the researcher were compiled by the Chancellor’s Office of the General Counsel, personal and private information were redacted, personal and private information were redacted, as were records pertaining to pending litigation to which the CSU System is a party until the litigation has been finally adjudicated or otherwise dismissed in coordination with the California Public Records Act ([CPRA] n.d.). A paired *t* test was employed to measure and compare any difference of statistical significance in the before and after data. This study used hypothesis testing to assess statistical differences in means. SPSS was utilized to produce output tables to display

any observed differences of statistical significance. The results of the analysis allowed the researcher to conclude there is a statistically significant difference between the preintervention period and postintervention period data for the number of Title IX litigation cases filed across the CSU System campuses between 2005 and 2017 and reject the null hypothesis, $p < .026$. The results also demonstrated an increase in the number of cases of Title IX litigation during the analysis period.

Findings Related to the Literature

The literature review yielded several articles where litigation affected the development of Title IX policy. *Cannon v. University of Chicago* (1979) became a defining moment enacting that a private litigant would have every opportunity to bring forward a claim under Title IX. *Alexander v. Yale* claimed that the university's failure to combat sexual harassment of female students and its refusal to institute mechanisms and procedures to address complaints and make investigations of such harassment interferes with the educational process and denies equal opportunity in education (MacKinnon, 1979). *Bundy v. Jackson* (1981) was a District of Columbia Circuit Court opinion that would establish workplace sexual harassment as a method of employment discrimination under the Civil Rights Act of 1964. *Meritor Savings Bank v. Vinson* (1986) highlighted accompaniments of quid pro quo harassment and a hostile work environment and the Court's recognition of the difference between the two. *Franklin v. Gwinnett County Public Schools* (1992) further established that sexual harassment constituted sex discrimination under Title IX, and also provided a private right for recovery of monetary damages under Title IX. *Gebser v. Lago Vista Independent School District* (1998) continued to define sexual harassment, the student to

authoritative figure relationship, and became the established standard via the installation of a three-part test for institutional liability and duty to uphold Title IX under this standard. *Davis v. Monroe County Board of Education* (1999) set the precedence by which institutions now had a duty to respond to student-to-student sexual harassment under the scope of Title IX. *Jackson v. Birmingham Board of Education* (2005) helped confirm the protection against retaliation of those who report sex discrimination and enacted the inclusion of protection against retaliation across all antidiscrimination laws (Carpenter & Acosta, 2005; *Jackson v. Birmingham Board of Education*, 2005). As litigation continued to shape the landscape of Title IX policy, the U.S. Department of Education OCR (1997) developed the *1997 Sexual Harassment Guidance*, the first written guidance discussing expectations in reference to sexual misconduct. In addition, in response to *Gebser v. Lago Vista Independent School District* (1998) and *Davis v. Monroe County Board of Education* (1999) Supreme Court rulings, OCR issued a revision to the *1997 Sexual Harassment Guidance* in January of 2001 (U.S. Department of Education, OCR, 2001; Anderson, 2012). In, 2006 the “Dear Colleague” letter was stamped and viewed as an important governing document for institutional guidance to maintain federal compliance and set the precedence for the significance of the 2011 DCL. The DCL explained an institution’s responsibility to respond promptly and effectively to sexual misconduct in accordance with the requirements of Title IX (U.S. Department of Education, OCR, 2011).

Each of the aforementioned moments helped to unveil the effects of litigation on Title IX policy. The literature revealed the Title IX coordinator as a method of intervention to aid in holding institutions more accountable for Title IX policy as a

method of implementation under the Title IX federal mandate. The results of the study concluded a statistically significant difference between the number of Title IX litigation cases filed prior to and after implementation of the 2011 DCL and published mandate of a Title IX coordinator in an upward trend. Therefore, stating the mandated implementation of a Title IX coordinator did not decrease the number of related litigation cases across the 23 CSU System campuses; the number of Title IX litigation cases filed actually increased.

Implications

The research question examined the relationship between the difference in the number of Title IX litigation cases before (preintervention) and after (postintervention) and the Title IX coordinator as a method of policy implementation. The results of the study demonstrated an increase in the number of litigation cases for the review period of 2005 to 2017. Based on the results of the study, it is clear that additional research is needed in this area.

Recommendations for Further Research

Additional research moving forward could focus on extending the postevent period. The study could also be duplicated to include additional cases that were filed within the respective before and after windows for this study that were legally restricted as records pertaining to pending litigation to which the CSU System is a party until the litigation has been finally adjudicated or otherwise dismissed in coordination with the CPRA (n.d.). The study would benefit from deploying a researcher with greater access to data contained within the restricted scope of information. This study aimed to move away from a qualitative approach frequently discovered in the research capturing the

perspectives, attitudes, and opinions of individuals occupying the role of the Title IX coordinator and their assessments of said responsibilities or experiences. Additional research to study the efficiency and effectiveness of the role of the Title IX coordinator would prove beneficial as institutions are mandated to employ this position with limited information and data related to demonstrated benefits.

Conclusions

The focus on Title IX has grown over the years, ranging from sex discrimination in athletics to sexual misconduct occurring at institutions of higher education across the nation. Title IX law seeks to eliminate, prevent, and remedy instances of sex discrimination in educational activities, programs, and employment and applies to all colleges and universities that receive federal financial assistance. Title IX reflects a method by which the government moves to administer an action that will have an impact on an issue and ensure change through policy implementation and seeks to better society by providing the greatest amount of good for the greatest number of individuals. The aim of this study was to explore an avenue by which to examine the effect of the role of the Title IX coordinator. As litigation addresses societal issues and shapes policies and legislation as a method of corrective action, the assumption that would be reasonably deduced is when an influx of litigation has occurred for mishandled reports of sexual misconduct, the implementation of an intervention to address deficiencies would result in a decrease in the number of cases brought forward. The fact that there continues to be an upward trend in the number of cases of litigation calls for the research to be continued to assess true cause and effect.

This study helps to express the need to continue to garner more information regarding the possible impacts of the role of the Title IX coordinator. Is this a role that is bringing the level of value and accountability intended when brought forward as a mandated role for policy implementation, is a question that researchers will need to continue to explore. This study is solely the beginning of the conversation.

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