

**EXPLORATIONS OF INSTITUTIONAL BETRAYAL WITHIN TITLE IX  
PROCEDURES AS A RESPONSE TO ON-CAMPUS SEXUAL MISCONDUCT**

**BY**

**KYLEE JOELLE OCAMPO**

**THESIS ADVISOR:**

**CHARLES ANTHONY SMITH, PH.D.**

**PROFESSOR OF POLITICAL SCIENCE AND LAW**

**THE UNIVERSITY OF CALIFORNIA, IRVINE**

**JUNE 2022**

### **Acknowledgments**

Firstly, I would like to extend my gracious thanks to Professor Tony Smith for agreeing to supervise my thesis and for having great amounts of faith, trust, and patience in my independent research conduction. In addition, I would also like to give my thanks and appreciation to Professor Davin Phoenix, the director of the Political Science Program at UC Irvine, who was always able to find creative ways in pushing each of the cohort members in the right direction to help us succeed in crafting a successful project. Both of their immense knowledge and plentiful experience have encouraged me in all the time of my academic research and daily life. I would also like to show gratitude and appreciation towards the Undergraduate Research Opportunities Program (UROP) at UC Irvine for granting me the funds needed to conduct my research smoothly. Within the Political Science Honors cohort, I would like to thank my peer, Angelene Obedoza, for taking the time in editing, commenting, and proofreading my work, especially during its primary, drafting stages. I would like to express my gratitude to my parents and my partner; as it is without their tremendous understanding and encouragement in the past academic year that it would be impossible for me to complete my study. Finally, I would like to humbly extend my gratitude to the survivors that agreed to be vulnerable with me and trust me with a piece of their lives for the purpose of contributing to identifying solutions to prevent unresolved trauma. Without each one of their individual demonstrations of strength and courage, this study would be nowhere close to finished or possible. Their persistence has been my main motivator in pursuing this research thesis, and with that, I hope to shed light on their powerful voices in a society where they are usually silenced.

**Abstract**

For this thesis, I will examine several personal experiences coming from student survivors of on-campus sexual assault while highlighting the ways that the continuation of trauma and emotional harm inflicted on survivors can be traced to institutional betrayal and lack of restorative justice rooted in the alterations within Title IX's federal procedures during the Trump administration. I aimed to identify parallels between the personal recollections of student survivors of on-campus sexual violence within higher education institutions. My sample includes eight undergraduate students and one graduate student, all identifying as female. Besides engaging each story individually, the exploration of these findings bring attention to how institutions demonstrate a consistent lack of transparency with survivors who file a complaint against their offender; thus, raising the questions of why institutions are enforcing their policies loosely and why offenders continue to roam campus after being charged with a formal complaint. The accounts of each survivor showcase the realities of coping with the burden of dealing with the traumas of sexual violence and being forced to deal with the administrative challenges of the Title IX process. The study and its findings showcase the importance and call for reform within federal elements of Title IX to challenge institutional betrayal and to ensure better protection for student survivors of on-campus sexual assault and harassment.

**Introduction**

Examining the scope of a civil conflict can come with clashing challenges within the investigation process in analyzing every element that is tied into the issue at hand. Every miniscule detail contributes a great amount of significance to each story. Certain circumstances call for very certain procedures, most notably when it involves the possible violation of state-mandated

regulations. The implementation of a set code of rules and regulations within the setting of an educational institution makes it increasingly difficult to not only enforce the code of amongst all students and staff, but also makes it challenging to merely have the school body simply gain awareness and acknowledgement of every single rule that is expected of every member of the institution to abide by and the process that entails. The set procedure and general scope of Title IX can fit within the category of a broad set of regulations with the general purpose of protecting students and staff from sex and gender-based discrimination. According to the Office for Civil Rights, Title IX specifically states 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" (U.S. Dept. of Education, 2020). Within the umbrella of Title IX's broad intention of prohibiting sex and gender-based discrimination lays a plethora of topics that can be considered violations of Title IX, the most frequent being sexual assault and harassment. The rule was only recently amended to include sexual assault and harassment into the realm of Title IX, and in doing so, prompted educational institutions to provide certain protocol in response to claims of sexual assault on campus in way that is consistent with Title IX's prohibition against sex and gender discrimination.

Many schools nationwide utilize a differing set of standards in their own respective enforcement of Title IX and their reception of complaints from survivors, but one main factor remains consistent within the controversy amongst the administrative response to Title IX claims: the concern over how Title IX procedures are counterintuitive in their aim to provide support to those who come forth to share their own experiences regarding sexual assault and harassment. The issue stems from various cases of survivors being compelled to go forth with protocols that put them out of their comfort zone merely for the purpose of closing a case that was already opened,

or cases where survivors had their cases ignored, and moreover, cases that were left unheard from survivors who were aware of the pressing nature of Title IX and avoided involvement with the process due to discomfort and uncertainty of whether or not having Title IX interfere with personal sexual trauma would be beneficial or taxing. Consistent pressure and interference from educational authorities on one's sexual trauma can be a significant factor that can contribute to the mental, emotional, and physical wellbeing of a survivor of sexual assault, and with that, prompted my interest in analyzing how Title IX procedures in different campuses have impacted survivors. Based on the complex history of responses to Title IX complaints along with my own personal experience with the Title IX protocols, I narrowed down my general research topic of the examination in the effects and impacts of Title IX procedures on survivors to the question of whether or not Title IX enforcements are effective in protecting victims from prejudice and/or biased factors, and if alternatives are needed to replace this particular type of statutory protection.

## **Background**

### ***Title IX and Student Conduct Codes***

Title IX of the Education Amendments of 1972 prohibits sex discrimination in higher educational institutions/HEIs to ensure that all students are provided equal access to educational opportunities at their institution. Maybe best known for paving the way for women athletes, the law also makes sure girls and women have equal access to academic offerings and on-campus housing—and that they are safe from sexual harassment and assault. One of the written requirements embedded within Title IX is that HEIs take effective action in response to reports of sexual misconduct that blockades students from efficiently and generally participating in education. This legislation requires that HEIs receiving federal funding have a Title IX office along

with the responsibility of formatting a formally structured mechanism for receiving student reports of misconduct and to appropriately investigate them (U.S. Dept. of Education, 2020). The demand for compliance with this policy was emphasized in President Obama's 2011 Dear Colleague Letter accompanied by guidelines for Title IX practice.

After the appointment of Betsey DeVos as the U.S. Secretary of Education, proposed amendments to Title IX were submitted in November of 2018 (Butler et al., 2019). Her changes to Title IX regulations include narrowing down the definition of sexual harassment and/or violence that requires HEIs to ignore misconduct until it becomes repeated and severe: the exclusion of off-campus conduct, and new requirements for Title IX grievance procedures, including the cross-examination of survivors. What constitutes "fair procedure" in a school proceeding to suspend or expel a student depends on whether it is gender-based violence or not. If a male student physically or sexually assaults a female, he is entitled to greater procedures than if he assaults a male peer. Specifically, he is entitled to "a hearing, live testimony, and the full panoply of trial-like procedures," (Acting, 2021)—including now live cross examination. The law is currently a two-track system which requires an opportunity to cross-examine parties and witnesses only in gender-based disciplinary proceedings and continues to perpetuate the false message that women who report their assault, abuse, or rape are lying. Additionally, while the pre-DeVos guidance advised colleges to use a preponderance of evidence standard, otherwise referring to the way allegations would have to be proven when HEIs find it is more likely than not that sexual misconduct occurred, institutions are expected to find and present clear and convincing evidence. The new standard encourages mini trials, giving an advantage to wealthier perpetrators who have the money to hire their own attorneys.

### *Patriarchy, Politics, and Police*

Historically, sexual misconduct and violence has been theorized as a form of patriarchal violence that is directed at womxn collectively due to their gender. It is crucial to recognize that Title IX was generally created to combat gender discrimination, and not including sexual harassment (Saguy, 2003). In the 1970s, feminists fought to have sexual harassment legally recognized as a form of gender discrimination due to its role in reinforcing institutionalized sexism. Therefore, gender has long been central to our understanding of sexual harassment as a social and structural problem that reproduces the collective disempowerment of a particular group in society.

The Court of Appeal case law has developed such that there are now two tracks for school disciplinary proceedings based on the type of misconduct. One track—involving proceedings over misconduct not involving gender-based violence—does not mandate the strictures of a court trial, let alone mandatory cross-examination. The other track—involving sexual assault and domestic violence—requires quasi-criminal trial proceedings, which is detached from this Court's precedent. Because the majority of gender-based survivors are womxn, the result is a separate and unequal proceeding that penalizes women.

It is estimated that 15 to 25 percent of college and university students in North America will experience sexual assault during some point in their academic journey (Lichty et al., 2008). Through the development of a feminist consciousness, survivors of sexual violence may see the patriarchal realities of society and the political aspects of their assault, which in turn can lift feelings of blame and thereby promote healing and mental health. Healing is particularly facilitated through the development of a personal narrative of one's assault experience. The advancement of a female consciousness permits womxn to fully perceive the patriarchal reality of society and view the political aspect of their assault, which may alter perceptions of shame (Kelland, 2016).

The widespread confusion about universities' roles in dealing with sexual violence casts Title IX as an anomaly. While everyone else is stuck dealing with the police, students seem to have an extra option unavailable to others: they can report sexual violence using campus proceedings and federal agencies. Today's student movements against sexual misconduct forcefully articulate the need for anti-discrimination law as a desperately needed alternative to the criminal justice system. For many, a criminal trial isn't even an option; but when it is, it's also often inadequate. Anti-discrimination law prohibits a broader range of conduct than do state criminal codes, which sometimes fail to recognize forms of verbal and emotional abuse ranging from lewd comments in the workplace to psychological violence against an intimate partner. Further, abuse against many male and queer survivors, recognized under Title IX, are essentially ignored by some criminal laws, which tend to presume female survivors and male perpetrators.

### ***Restorative Justice***

While there is no set definition for restorative justice, restorative justice in practice is the collaborative process wherein the harmed party and the offender participate in a dialogue to find ways to repair harm, educate the offender, and heal the relationship between the parties, which can be expressed through restorative conferencing (Vail, 2020). This method was designed particularly in response to cases of sexual and gender-based misconduct. There are four basic principles of restorative justice. First, the process must provide a space for inclusive decision making. Inclusive decision-making invites the presence of offenders, survivors, and community members to “articulate the harms they experienced and what needs they have” (Karp, 2008) Inclusive decision-making attempts to correct the passive approach that occurs in courtrooms and in student disciplinary proceedings, in which offenders can act as observers listening to the allegations made

against them while also suggesting the possibility that the offender can repair the harm. Further, it attempts to give both the survivor and offender an outlet of expression by permitting both parties to discuss their individual experiences and perspectives. Second, there must be active accountability: the offender must take responsibility and makes amends for the actions they took while also allowing the offender to listen and participate in discussion about the harms they produced. Third, the offender must repair the harm they created. This differs from the criminal legal system and student conduct proceedings, which do not require that the offender take active responsibility for their actions, and thus enable offenders to distance themselves from the impact of their actions. To repair the harm, the offender is asked to address how justice can be restored to the survivor and community rather than focusing on punishment. The goal of repairing the harm is not to make the offender suffer, but to compensate in reparations due to the damage that has occurred and to restore the survivor and the community to a state of wellbeing. Fourth, restorative justice focuses on rebuilding trust and creating an environment in which the harmed parties can be safe again. Restorative justice recognizes that rebuilding relationships is necessary for the wellbeing of the survivor and of the community.

### ***Effects of Institutional Betrayal***

Research suggests that Title IX investigations are damaging to those who report and fails to protect student survivors while also lacking the promise and follow-through of restorative justice through an absence of proactive action by the HEI, coined as institutional betrayal (Know Your IX, 2021). Institutional betrayal in Title IX investigations is a relatively new concept and area of exploration, but the mounting evidence of HEIs failure to respond and/or mishandling of cases via

Office of Civil Rights complaints of Title IX violations shows that additional research is warranted to further develop this concept through the experiences of student survivors.

As applied to HEIs, institutional betrayal can occur when a student is dependent on the institution for things that may be tied to their survival and/or upward mobility, such as education, financial, or preventing sexual violence from continuing. Institutional Betrayal occurs when the institution or agents of the institution fail to acknowledge or respond to interpersonal trauma/harmed experienced or fail to provide affirmative action on behalf of the survivor's interests in response to the harm they experienced and disclosed within the context of the institution (Smith & Freyd, 2013). This betrayal or inaction by the institution can include behaviors or responses of individuals and/or the institution, but also the policies and procedures implemented. This keeps the institution and/or its agents from acting in pursuit to meet the needs of the survivor or from preventing the harm from occurring in the first place. The relationship experienced between a HEI and students resembles that of interpersonal relationships in terms of its members trusting the institutional environment to be safe (Platt et al., 2009) and depend on the institution for their safety (Smith & Freyd, 2014). When the institution fails to protect its members and to acknowledge interpersonal trauma, institutional betrayal occurs (Courtois & Ford, 2009). Research concerning Title IX student experiences imply that Title IX is not efficiently practiced in ways that fully protect student survivors, but are instead, actively harmful to their well-being (Stader & Williams-Cunningham, 2017). Rather the Title IX procedures are used as a means of protecting the institution itself and its liability (Cruz, 2021).

The concept and foundation of institutional betrayal can be traced back to federal case precedent that sets the example for HEIs to lag in fully protecting the well-being of their student survivors. In *Cummings v. Premier Rehab Keller, P.L.L.C.*, the Supreme Court of the United States

held that a plaintiff suing under Title IX, the Rehabilitation Act, which is designed to ban disability discrimination, and the Patient Protection and Affordable Care Act (ACA) are not eligible or able to be used to recover emotional distress damages because the scope of available solutions under these statutes is limited to only those solutions generally available for a contract (Teeter, 2022). The decision in *Cummings* will have an immediate impact on the valuation of lawsuits where a plaintiff claims discrimination by a HEI under Title IX that of which survivors will not be able to recover emotional distress damages and the scope of recovery will be limited to traditional compensatory damages, like out-of-pocket costs a plaintiff has experienced due to discrimination.

## **Methods**

For my research study, I aimed to have my participant pool consist of university students currently enrolled at any college institution who have either went through the Title IX reporting process themselves. To collect study participants, I drew my participants by distributing a flyer on social media platforms and through the UCI CARE March newsletter. In order to reach out to willing participants, I had those who were interested in participating in my study fill out a screening questionnaire that was hyperlinked in the publicized flyer to gauge who will be eligible to move onto the interviewing/data collection stage of the participant process. To verify student eligibility, I asked for students to provide their school emails at the institution they were enrolled at. Due to my specific aim in observing and analyzing the information from enrolled college students a part of a particular vulnerable population, I utilized judgmental sampling for my study. I expected to have a majority of my sample participants consist of students attending the University of California, Irvine, female, and for the age range of participants to be 18-25 years old. I aimed to reach an approximate range of 10-15 participants for my research participant pool.

Since I aimed to primarily produce a description of individual variables as they exist within a specific group, I used a descriptive, interpretative research method to assess the effects and significance of the Title IX procedures on survivors. With my study being interpretative, I have planned to collect and analyze a list of written, verbal responses obtained by interviewing each individual in the group being studied. My data can be qualified as qualitative data, and therefore, will be interpreted verbally by the interview responses from each participant.

My data collection process started by creating an online screening questionnaire through Google Forms and producing well-written, straight-forward questions that were used to narrow down the identification of those who can pass through to the interview process. Those who identify as college-enrolled students who are a survivor that has been through the Title IX reporting process were sent a follow-up email that included a calendar link to schedule a one-hour virtual interview slot via Zoom. Before the virtual interview, participants were provided with protocol to assure the safety and guidelines for the research study, such as complete permission for a participant to withdraw from the study if they wish to do so at any time. Participants were also provided a copy of the questions expected to be asked during the interview.

I began to distribute the link to my screening questionnaire a month before first conducting interviews by posting the flyer on my personal Instagram and Twitter and was able to have the UCI CARE office include my flyer on the March 2022 newsletter in order to ensure personalized responses from participants. For those who passed the screening questionnaire, I administered one-hour Zoom interviews with each participant and while also providing each interviewee with a set of approximately ten questions to answer. I screen and audio recorded each interview and enabled the live transcript function to save my video recording and written copy of each participant's verbal responses. I made sure to instruct each interview to keep their cameras off to ensure anonymity

and confidentiality of answers, and consequently referred to each participant as “Participant A, B, C...” in the description of my findings to maintain the confidentiality of their identities. Since I have used a descriptive, interpretative research strategy to analyze the impacts of Title IX reporting procedures on a vulnerable population, I have additionally applied self-report measures to determine whether the impact could be considered positive, negative, or neutral to the sample population.

Once interviews were transcribed, the interviewers read the transcripts to check for accuracy. After having written the findings for the study, I sent the results section to the interview participants to check that their experiences were accurately presented and quotations appropriately contextualized. I offered the participants the opportunity to directly edit the text or provide suggestions for how they would like to see the text revised and then sent the revised results back to the participants who requested changes to confirm their agreement with the changes.

## **Findings**

### ***Sample Population***

My sample population consisted of  $N = 9$  sexual violence survivors who reported to the Title IX office at their HEI. My sample primarily consisted of cisgender women ( $N = 9$ ; 100%). Most of my sample consisted of undergraduate students at the time of their contact with their HEI Title IX office ( $n = 8$ ; 88%), four of whom were enrolled in University of California, Irvine and three enrolled in Rice University. The remaining sample ( $n = 1$ ; 11%) had contact with a Title IX office as both an undergraduate and graduate student regarding two different sexual violence experiences at two different institutions. I did not inquire during interviews about the circumstances of their sexual violence experience, but participants shared their relationship to the person who perpetrated

the harm as it related to their Title IX experience: 1 participant shared that they were harmed by a coworker in their department ( $n = 1$ ), 6 participants ( $n = 6$ ) were harmed by a fellow student, and 2 participants ( $n=2$ ) shared they were harmed by an ex-friend. All participants self-initiated their report either to the Title IX office directly or to a mandated reporter, either intentionally or unintentionally.

### *Qualitative Findings*

For the most part, study participants noted that they were met with unjust process or outcome where their complaints were either ignored, dismissed, or met with inaction by the institution ( $n = 8$ ). The Title IX guidelines from the 2011 Dear Colleague letter recommended that investigations have “prompt” resolution of 60 days from the report filed (U.S. Dept, of Education, 2020). Most of the participants’ investigations took place under these regulations, with all nine of the participants noting issues with exceeding this time frame and problems related to a lack of transparency regarding deadlines. Participant A noted; “I was not really let in on what was happening or what happened”, in reference to meetings and conferences their Title IX coordinator attended in relation to their case. It was common for participants to feel betrayed by drawn out investigations because they felt like their experience was not taken seriously and not prioritized. In the cases of the study's participants, their prospective Title IX offices failed to take prompt or timely action in response to the reports filed but expected participants to review documents and respond with little to advanced notice and a quick turnaround time. Yet, Title IX offices repeatedly surpassed timelines without any known consequence.

Many participants reported to the Title IX office expecting support and resources to help alleviate effects of the harm they experienced. However, all but one of our participants were met

with the proper support resources to meet their needs (n = 8). Participant C was the one participant who did not receive the resources in terms of healing and coping, behind that they were the only participant who filed a criminal report over an administrative report.

On several occasions, many participants commented about the HEI's failure to address their physical safety concerns regarding the person who harmed them (n = 8). Even though participants made their safety concerns known to the Title IX office, they were often not addressed leaving survivors to navigate campus safety on their own. Three participants (n=3) specifically mentioned how they were forced to relocation their residencies rather than their offender.

When the Title IX office failed to act or respond adequately to complaints, the process and impacts of the investigational burden frequently fell on the survivor. Survivors report to the Title IX office with the expectation of an investigation and accommodations, and when this does not follow through, it is the survivor that suffers. Consequently, survivors were often left with a significant amount of work to move the investigation forward, thus, inducing incredible amounts of emotional labor into each survivor through feelings of being "distressed, overwhelmed, fearful, and sick" (n = 9, 100%). Six participants noted that the investigative process triggered similar emotions akin to their actual sexually traumatic experience, almost as if they were "reliving the experience all over again", making it exponentially difficult to go through and often rethinking if they should proceed.

In these situations, participants felt betrayed by the HEI because Title IX failed to protect them and treated them differently in the process. Participant E specifically referred to how they "didn't feel like it was taken seriously or actually enforced". The secrecy and lack of transparency of Title IX processes allows for survivors to be treated differently, even those at the same institution with the same experiences.

For some of the study population, (n = 3), institutional betrayal was not only exposed through inaction or adequate responses but was further exemplified to experiences of retaliation or penal response for filing a formal complaint with the Title IX office. Participant D specifically notes that they notice “survivors are doing the right thing, even if it’s in a system that [punishes] you for doing the right thing”. “I was always concerned that he [professor who harmed her] could do something.” When Participant A was experiencing retaliation for the report they filed to Title IX, this was when the participant felt the most "ignored, uneasy, and uncomfortable", in observation of how the Title IX procedures did little to nothing to protect survivors who come forth to speak. This speaks to the culture previously referenced, where Title IX encourages students to report their traumatic experiences, but then fail to fully protect them from retaliation.

To further determine if the Title IX procedure and process was effective in providing support and safety for on-campus survivors, final questions to conclude the interview and each participant's experiences were asked about whether or not the participant would recommend Title IX services to a friend, peer, or colleague if they have experienced some type of power-based violence, having been through the procedures themselves. Eight of the participants (n=8) shared that they would discourage a friend or acquaintance from the reporting process in their description as "daunting, overwhelming, and unpredictable". The remaining participant, Participant B, would refer a friend to their services only for the reason if their circumstances of doubt were unbearable if they were to leave their trauma unaddressed; however, Participant B also recognized and empathizes that such a scenario is incredibly rare, and usually survivors who file formal complaints are left with little substance. Participant E personally shared that following their investigation, “nothing has really been solved and there has been no justice”.

### *Limitations*

There are several limitations to this research study that must be addressed, acknowledged, and explained. First, my sample population was incredibly minimal and narrow, which leaves room for clear sample bias being that 88% of the participants were females who have attended UC Irvine. I did not include more specified questions in the interview process regarding student demographics to potentially address some racial/ethnic and age diversity. Though I attempted to mostly focus on whether participants consider themselves survivors of sexual violence on campus, their answers do not reflect the composition of students who experience harm on campus. This may be due to low Title IX reporting overall, particularly among students of color (Lindquist et al., 2016). Additionally, I did not give participants the opportunity to share and express their sexual orientation and/or identity as an international student, as these were areas that though I deeply consider significant factors that can make students more vulnerable, regrettably overlooked.

Second, my research findings reveal that some survivors that participated in the study felt that their case was not prioritized as much as others or at all throughout their investigative process with Title IX. Being that these findings are based on the perceptions of the survivor, and while their feelings are valid, I did not systemically assess differential treatment due to my failure to interview administrative employees and on-campus Title IX coordinators, and thus, cannot ascertain whether this treatment was indeed discriminatory or solely overlooked. These preliminary findings add to extend research on differential treatment of students within Title IX processes focused on campus sexual assault (Smith et al., 2016) and the body of research showing that investigatory systems like the criminal legal process progress cases differently based on case and personal characteristics (Venema et al., 2019) which may apply to Title IX as well.

Third, I failed to ask the study participants regarding the specific outcome they desired from their respective Title IX investigation. I aimed to conduct the research study to dive deeper into the ways that Title IX procedures do not fully support survivors but did not directly gauge what personalized satisfaction from the investigative process looked like to each participant. The questions I did ask led many participants to share what their expectations looked like prior to the start of their complaint process and throughout, which largely surrounded ideas of validation, accountability, safety, and support. However, I, as a research student, cannot empirically state what survivors desire from this process, but this is essential information in making decisions about how HEIs can adequately respond to survivors.

### **Implications**

While successful resolutions of Title IX suits are often represented as unqualified victories in the name of gender equality, this study finds that the current interpretation, implementation, and enforcement of Title IX has compromised the realization of meaningful educational goals that lead to sexually safe campuses. The execution of Title IX procedures is crucial to provide open services to students, staff, and faculty who are seeking support, guidance, and access to cope through sexual misconduct. However, as shown by the consistent pattern of discomfort, uneasiness, and fear scattered throughout the study findings, there is an obvious discrepancy between Title IX's primary goal of enforcing efficient methods to support students who have experienced sexual misconduct and the execution. The current state of the Title IX procedures within HEIs is untenable. Institutions should restore what was it originally striving to achieve: a “fair procedure”, that of which does not require formal proceedings parallel to that of a criminal trial, but in a way that does not deem a survivor's circumstances as invaluable. As explained in detail by student participants

who experienced the trauma of being sexually assaulted and harassed, forcing victims to relive the most horrible moments of their lives to harm their credibility can be worse than the assault itself. It is also incredibly crucial to recognize that this is but a small population of student survivors, and their shared results are not unique or special cases in any way, but rather, a small glimpse into the realities of coping with sexual traumas from a student's perspective. Additionally, the implementation of criminal trial procedures, such as cross-examination of the survivor and their witnesses in a hearing, will not solve the gender-based violence problem that infects college campuses across California and the United States. To the contrary, cross-examination and similar procedures in non-criminal administrative disciplinary proceedings will make the problem graver by making survivors less likely to report and by re-traumatizing the survivors who do come forward. And none of this is revolutionary—far from it. European countries, as well as certain specialized United States court proceedings, utilize an investigatory model without cross examination (Braun, 2021). If these procedures are good enough for criminal defendants in Germany or to deprive a parent of his or her parental rights in the United States, it satisfies the common law right to fair procedure in a private or public school. Requiring cross-examination for only witnesses and parties in gender-based claims appear to be nothing more than an unintentional adoption of the false claims that women and girls who report their assault, harassment, or rape are lying.

It has been over forty years since Title IX was signed into U.S. federal law, and times have evolved tremendously. Consequently, Title IX also needs to be reformed to serve the needs of womxn and society today. It needs to impose both a higher standard of evidence and more severe consequences for sexual harassment and especially assault, to better parallel penalties found in the real world. Expulsions are mostly considered commonly in the face of academic misconduct, and

the same standard should be applied to that of sexual misconduct in higher educational institutions, for the simple reason that the presence and even mere thought of an offender is not only triggering and traumatic for survivors, but is a threat to the remainder of student body and a demonstration of how the institution continues to permit and allow the continuation of sexual violence on campus without penalty.

Title IX is intended to protect all students' access to education, but both lack of transparency and drawn-out investigations can make it challenging for survivors to speak out against their assaulters. The process of both reporting and surviving can be as traumatizing as the original incident of sexual violence, as highlighted and described by the study participants. This includes extensive victim-blaming, discouragement from reporting, and procedural issues that lead to broken trust and overall institutional betrayal between survivors and schools. It is imperative once again that the university take action to prioritize sexual assault prevention and community support for survivors to ensure a safe space at the very least for survivors to roam freely and navigate their education in a safe manner with a community to rely on. This heavy burden should not rest solely on the students to navigate blindly and on their own in the way that it currently does. Regardless of the pandemic and long gap in on-campus living, survivors are counting on the administration and their HEI's promise of safety, concern, and care towards their individual selves to maintain momentum in the struggle to improve federal Title IX policies. These continuing problems of inconsistency, lack of transparency, and absence of concrete, assertive action embedded within the interpretation and implementation demand close attention to the scope of actionable Title IX claims as well as concentrated efforts to ensure that the procedural rights of the accused are respected.

## **Revisions and Alternative Resolutions**

These issues presented can be resolved with simple revisions to the law. There should be stricter guidelines on investigatory boards and committees regarding their composition, so the investigatory bodies appointed by schools do not favor one side or the other in any given case. Students who are accused of assault and found guilty beyond a reasonable doubt should be expelled and turned over to the authorities if the survivors themselves makes the personal, individual decision to pursue matters within the criminal justice sphere. Survivors should also be fully informed of their options after an assault, and schools should be required to actively encourage reporting assaults and seeking medical examination afterwards. The most profound impact of *Cummings* may prove to be in two specific types of Title IX lawsuits. First, *Cummings* will impact cases brought by survivors of third-party sexual assault who claim an institution was deliberately indifferent to the risk of sexual assault. Prior to *Cummings*, the most significant element of damage in such cases was typically emotional distress resulting from the sexual assault itself, which plaintiffs often asserted should be valued in hundreds of thousands if not millions of dollars. With the emotional distress theory of damage no longer available, *Cummings* may result in fewer such lawsuits being filed, more modest settlements, and/or diminished verdicts for those cases that proceed to trial.

These revisions would finally address sexual assault under Title IX with the same gravity as it is addressed in the criminal system. As long as womxn feel unsafe and uncomfortable with coming forward about assault on campus, and as long as committees are perceived as being unfair to one party or another, the environment in schools and the United States in general will remain unhealthy. However, if federal sexual assault policy attains uniformity no matter where the assault takes place and is fair, the situation will improve, and everyone in the country will benefit. There

is no reason that offenders. should be allowed to remain on school campuses and infiltrate student campuses that are designed to be safe spaces for students to freely enjoy the privileges of HEIs, and there is no reason to jump to conclusions about such a serious matter either. Title IX desperately needs to be revised to reflect the reality of sexual assault, so it can become the solution to the problem and not just another problem in a flawed system.

It is critical that HEIs efficiently reform and reverse their federal procedures that were previously altered from the Trump administration in ways to guarantee more protection and psychological support in ways that do not hinder, prevent, or interfere with survivor's participation to the institution and own education. Being that many student survivors undergo varying levels of emotional trauma that goes in and with their sexual trauma, they are in dire need of psychological support and services that they can rely on. Many have felt that they are not sufficiently supported psychologically by their schools, and they have felt uncomfortable in their consideration and process of reporting their assaults and/or harassments. There needs to be major federal policy changes in Title IX because Title IX is harmful as it is.

## References

- Abigail Cope Saguy. (2003). *What is sexual harassment? from Capitol Hill to the Sorbonne*. University Of California Press.
- Acting, B. (2021, February 21). *KNIGHT v. SOUTH ORANGE CO / 60 Cal.App.5th 854 (2021) / 20210210025 / Leagle.com*. Leagle. <https://www.leagle.com/decision/incaco20210210025>
- Braun, K., & Iliadis, M. (2021, March 25). *Sexual assault victims can easily be re-traumatized going to court — here's one way to stop this*. The Conversation. <https://theconversation.com/sexual-assault-victims-can-easily-be-re-traumatized-going-to-court-heres-one-way-to-stop-this-157428>
- Butler, L., Lee, H., & Fisher, B. (2019). Less safe in the ivory tower: campus sexual assault policy in the trump administration. *Victim & Offenders*, 14(8), 979-996.
- Courtois, C. A., & Ford, J. D. (2009). *Treating complex traumatic stress disorders (adults): An evidence-based guide*. NY: Guilford Press.
- Cruz, J. (2021). The constraints of fear and neutrality in Title IX administrators' responses to sexual violence. *The Journal of Higher Education*, 92(3), 363-384. <https://doi.org/10.1080/00221546.2020.1809268>
- Kelland, L. "A Call to Arms: The Centrality of Feminist Consciousness-Raising Speak-Outs to the Recovery of Rape Survivors." *Hypatia* 31.4 (2016): 730-745. Print.

Know Your IX. (2021). *The cost of reporting: Perpetrator retaliation, institutional betrayal, and student survivor pushout*. Advocates for Youth.

Lichty, L., R. Campbell, and J. Schuiteman. "Developing a University-Wide Institutional Response to Sexual Assault and Relationship Violence." *Journal of Prevention & Intervention in the Community* 36 (2008):1-2. Print.

Lindquist, C.H., Crosby, C.M., Barrick, K., Krebs, C.P., Settles-Reaves, B. (2016). Disclosure of sexual assault experiences among undergraduate women at historically black colleges and universities (HBCUs). *Journal of American College Health*, 64(6), 469-480.

Platt, M., Barton, J., & Freyd, J. J. (2009). A Betrayal Trauma Perspective on Domestic Violence. In E.E. Stark, & E. S. Buzawa (Eds.), *Violence against women in families and relationships* (pp. 185-207). Greenwood Press.

Smith, C. P. & Freyd, J. J. (2013). Dangerous safe havens: Institutional betrayal exacerbates sexual trauma. *Journal of Traumatic Stress*, 26(1), 119-124.

Smith, C. P. & Freyd, J. J. (2014). Institutional betrayal. *American Psychologist Journal*, 69(6), 575–587.

Smith, C.P., Cunningham, S.A., & Freyd, J.L. (2016). Sexual violence, institutional betrayal, and

psychological outcomes for LGB college students. *Traditional Issues in Psychological Studies*, 2(4), 351-360.

Stader, D. L., & Williams-Cunningham, J. L. (2017). Campus sexual assault, institutional betrayal, and Title IX. *The Clearing House*, 90(5-6), 198–202.

Teeter, D. (2002, April). *Legal Alert / Supreme Court Holds That Emotional Distress Damages Are Not Available Under Title VI, Title IX, and Other Spending Clause Statutes.*

Www.huschblackwell.com. <https://www.huschblackwell.com/newsandinsights/supreme-court-holds-that-emotional-distress-damages-are-not-available-under-title-vi-title-ix-and-other-spending-clause-statutes>

U.S. Department of Education (2020, January 17). Title IX Regulations Addressing Sexual Harassment. <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>

Vail, K. (2019). The failings of Title IX for survivors of sexual violence: Utilizing restorative justice on college campuses. *Washington Law Review*, 94, 2085-2118.

Venema, R.M., Lorenz, K., & Sweda, N. (2019). Unfounded, cleared, or cleared by exceptional means: Sexual assault case outcomes from 1999 to 2014. *Journal of Interpersonal Violence*.