

THE CHANGING WORLD OF  
TITLE IX:  
ONE CAMPUS'S RESPONSE

by

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ABSTRACT

In 2018, Betsy DeVos, United States Secretary of Education released a revised Title IX policy in regard to sexual assault reporting and investigation on college campuses. It was opened for public comment before the announcement of a set of revised guidelines which have not yet been released. The subject of this research project was the potential impact of the new policy guidelines on the willingness of victims to report, as well as the fairness of the investigation process on college campuses. To carry out the research, one college campus was selected as a case study. An interview methodology was used to elicit responses from two officials at this University who are charged with Title IX responsibilities. The principal findings from the study were (1) that the officials believed that the guidelines had been too hastily adopted, (2) that as a result, there is a lack of clarity as to their implementation, (3) that the new guidelines are likely to result in fewer reports, (4) that some of the procedural aspects of the guidelines, particularly the cross-examination requirement, may result in re-traumatization of sexual assault victims, and (5) that the guidelines' implementing of legal counsel into the process may pose issues of unequal treatment due to economic disparities.

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## GLOSSARY

Case Study: an intensive analysis of an individual unit (such as a person or community) stressing developmental factors in relation to environment

Civil Rights Laws: guarantee rights for individuals to receive equal treatment and prohibits discrimination in a number of settings, including education, employment, housing, lending, voting, and more.

Title IX: a federal civil rights law passed as part of the Education Amendments of 1972.

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.

'Dear Colleague' Letter: a formal advisory sent by a federal administrative official to provide guidance in the enforcement of law or policy to those charged with its implementation."

## *Chapter 1*

### *Introduction and History: The Passage and Early Years of Title IX*

#### **Introduction**

Title IX is now widely known for its applicability to sex-based discrimination, but its first interpretation was as a law that changed American high school and college sports. Before Title IX, women's sports were at a disadvantage compared to men's due to unequal funding and facilities. Old gym facilities would often be retired to the women when a new gym was built, women's teams would be forced to hold fundraisers in order to afford traveling while men's teams had school-sponsored chartered transportation. Women referees often made half of what a male referee was paid (Ware, 2007). That was the world of scholastic and collegiate sports pre-Title IX. The year before Title IX was enacted, fewer than 295,000 girls participated in high school sports, and fewer than 30,000 women competed in intercollegiate sports. Women often saw less than 2% of the athletic budgets at their respective schools (Ware, 2007).

Title IX of the Education Amendments Act of 1972 is quite short. Title IX is only thirty-seven words, but thirty-seven words that changed the face of sports and opportunities for girls and women: "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". The real force behind Title IX was originally the general discrimination that young women faced through the educational experience. Title IX was meant to fill in a gap that remained after Title VII

banned discrimination based on race, sex, national origin, and religion in employment, since Title VII did not apply to educational institutions. Title IX was meant to change the way that women experienced their education, but no one had any idea that its largest initial impact would be seen in sports, and its later impact in sex discrimination in general in educational institutions (Ware, 2007).

### **Implementation**

“Too strong for a woman.” were the exact words that are credited with starting Title IX. Bernice Sandler recollects in *Title IX: A Brief History with Documents* (Ware, 2007, pp. 35). Bernice had asked why she was not considered for any of the open full-time positions at the University of Maryland where she had been teaching part-time for several years. A colleague said that her qualifications were great, but she came off as “too strong for a woman”. Bernice came to understand that what had happened to her was true sex discrimination. Eventually, she filed a complaint by calling the Office of Federal Contract Compliance at the Department of Labor. She was connected with the Director immediately, and this began a movement that would change the world for girls and women across the nation (Ware, 2007).

Under the guidance of the Women’s Equality Action League (WEAL), Bernice started a national campaign to end discrimination in the educational setting. WEAL requested investigations into admission quotas to both undergraduate and graduate programs, financial assistance, hiring practices, promotions, and salary differentials because they said that this was an “industry-wide pattern” (Ware, 2007). Bernice and WEAL colleagues provided

Representative Edith Green with an extensive body of information including a list of people willing to testify about sex discrimination in the educational setting.

Congresswoman Green followed up by conducting Hearings, which presented testimony about the hardships faced by women at colleges and universities. For example, women needed a higher grade point average in order to be admitted to undergraduate schools, and the percentage of women admitted to a professional school was often capped.

Representative Green introduced legislation in 1970 that was part of a larger act on higher education. It proposed to amend Title VII of the Civil Rights Act to protect employees of education institutions, Title VI to address sex discrimination in federally assisted programs, and the Equal Pay Act to protect executives, administrators, and professionals. In the Senate, Senator Birch Bayh of Indiana drafted and introduced a similar bill. A Senate-House conference committee reconciled the two bills, and President Richard Nixon signed them into law on June 23, 1972 (Ware, 2007). It was hoped that Title IX would change the deep-seated beliefs that limited girls' opportunities and outcomes. Research has shown that girls tend to suffer "micro-inequalities", which is why it was so important to enact a policy that combatted stereotyping, socialization, and other factors that interfere with equitable outcomes (Valentin, 1997).

After Title IX was passed in 1972, the Department of Health, Education, and Welfare took time to develop and issue guidelines and rules for the implementation (Ware, 2007). The staff assigned soon realized how contentious the issues were despite the fact that Title IX had not faced much opposition in Congress. The Department came up with a list of regulations

that each school was required to abide by. Elementary schools would have to be compliant in one year, and high schools and colleges would have to be compliant within three years (Ware, 2007). Those who were ready for women and girls to receive equal opportunities moved quickly, but those who were satisfied with the traditional rules worried about how it would affect what they already did (Ware, 2007).

### **Response**

Title IX did more than change the landscape of colleges and universities. It also changed American sports as a whole. No one had predicted such a massive effect of Title IX on sports. One immediate result was increased participation at all levels, including the Olympics. The 1984 Olympics in Los Angeles, for example, gained a lot of media attention because of the contributions by women. A similar result was seen in the 1996 and 2004 Olympics as well, which is why they have been called the “Title IX Olympics,” with an unprecedented number of female athletes participating. This is believed to be an impact of Title IX especially since some of the Olympic sports had not even been previously available to women. Therefore, Title IX has even brought the United States greater global success in athletics (Ware, 2007). Post-Title IX, the participation was drastically different. In 2001, 2.8 million girls were playing high school sports and over 150,000 women were competing at the intercollegiate level (Ware, 2007).

Title IX had a long journey before it was even first implemented, but it was worth the wait for the way it would change the United States’ educational institutions. Athletics was never the sole focus of Title IX, but that is where Title IX’s first impact occurred. It increased

the sports that women could participate in as well as provided them better facilities and equipment. While the first impact was in athletics, in 2006 a letter was written that changed the way that higher education institutions responded to sexual misconduct.

## *Chapter 2*

### Origins: The first “Dear Colleague Letter”

Title IX was enacted to give women equal opportunity in the educational setting. No one had anticipated the affect it would have on sports, and no one ever thought about the part it would have in addressing sexual misconduct on college and university campuses. In 2006, Stephanie Monroe, acting for the U.S. Office of Civil Rights, addressed a formal letter to college and university administrations regarding their obligation to respond to sexual harassment of the students in their programs and activities. Under George W. Bush’s administration, Title IX was being used for the first time to remind schools of their responsibility to recognize and effectively respond to claims of sexual harassment of students following the Revised Sexual Harassment Guidance that had been issued in 2001.

#### **Dear Colleague Letters**

A “Dear Colleague” letter was not a form of correspondence that was new to the government at the time of this letter. A “Dear Colleague” letter is an official correspondence that is typically sent by a member or chair of a committee, or officer of the House of Representatives or Senate. The letter is primarily distributed in bulk to administrative officials in order to provide guidance in the enforcement of a law or policy to those charged with its implementation (Straus, 2008). In this particular letter, Stephanie Monroe addressed her colleagues working in schools that receive federal financial assistance (Monroe, 2006).

## **Contents**

On January 25, 2006, Stephanie Monroe, the Assistant Secretary for Civil Rights at the time, promulgated the letter that has been coined the '2006 Dear Colleague Letter'. The letter commended the schools that were recognizing and effectively responding to claims of sexual harassment. It reminded schools of their commitment to provide equal opportunities in education for all students. It stressed that sexual harassment could interfere with equal opportunities. In the letter, Stephanie Monroe included the 2001 Revised Sexual Harassment Guidance for schools. This guidance was to further enforce the Title IX of the Education Amendments of 1972.

## **Revised Sexual Harassment Guidance**

Title IX prohibited sex discrimination in schools that were financially assisted through the federal government, but originally, it was difficult to tell whether that directly applied to sexual harassment (Office for Civil Rights, 2001). The Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties was written to clarify that issue and revise the guidance given in 1997 after the Supreme Court made decisions in sexual harassment cases. In the 1998 case, Gebser v Lago Vista Independent School District 524 U.S. 274, the Court held that a school district could be liable for monetary damages if one of their staff sexually harasses a student, and an official who has the power to address the harassment has knowledge of the harassment and is deliberately indifferent. This is only in the case of private actions for monetary damages.

Enduring principles from the 1997 guidance are that preventing and remedying sexual harassment in schools is vital to providing a safe environment for students. The 2001 guidance emphasized, as did the 1997 guidance, that it is important that good judgment and common sense of both school administrators and teachers be used to address allegations of sexual harassment to meet the requirements of Title IX. It is also important that schools do not overreact to behavior that does not constitute or rise to the level of sexual harassment. It is noted that school administrators and teachers should consider the age and maturity of students when responding to allegations of sexual harassment because a “kiss on the cheek” from a first grader does not constitute sexual harassment (Office for Civil Rights, 2001).

Title IX is not legislation that is stagnant. It is ever evolving and has been adapted numerous times. The first time was in 2001, and then in 2006 with this Dear Colleague Letter. While this emphasized a greater importance in responding effectively to allegations of sexual harassment, it was not the last time it would be discussed. Another Dear Colleague letter was issued in 2011, which is what will be discussed in the next chapter.

## Chapter 3

### *The second 'Dear Colleague' Letter*

The second “Dear Colleague Letter” was published in 2011 by the Office for Civil Rights. It addressed an educational institution’s responsibility to provide equal opportunity to every student. Effectively responding to sexual harassment or misconduct was now addressed as a vital part of providing equal opportunity. The Office for Civil Rights recognized that this letter primarily addressed concerns of post-secondary institutions, but it was important for school districts that receive federal funding to abide by the regulations as well (Ali, 2011).

#### **Contents**

The 2011 “Dear Colleague Letter” that was distributed by Russlynn Ali, the Assistant Secretary for Civil Rights at the time, covered a number of topics and provided more regulations implementing Title IX (Ali, 2011). The letter began by reminding post-secondary education administrators of their responsibilities to provide all of their students an educational environment free from any harassment or discrimination. In addition, this letter defined what acts fell under the scope of sexual misconduct and identified the institutions that Title IX applied to. The *Revised Sexual Harassment Guidance* issued in 2001 had provided guidance to colleges and universities. This letter was to be a supplement to the 2001 guidelines by providing practical examples and additional guidance (Ali, 2011).

Institutional obligations to respond to sexual harassment and sexual violence are discussed in great detail in this letter. The letter specified that training should be provided for employees, so they know how to properly recognize, address, and report sexual misconduct. It continued

that the training should include practical information about how to identify and report sexual harassment and violence. Most importantly, it required that when a harassed student, their parent, or third party reports a complaint according to the school's grievance procedures, a school that knows or "reasonably should know" about possible harassment must promptly investigate (Ali, 2011).

Procedural requirements are listed and described at great length. Schools have three main obligations to its students under Title IX. The school must distribute a notice of nondiscrimination. Each school must appoint an administrator or faculty member as Title IX coordinator. Lastly, the school must adopt and issue grievance procedures that provide prompt and equitable resolutions for both student and employee sex discrimination complaints (Ali, 2011).

The notice of nondiscrimination is fairly simple. The institution must publish a notice that notifies students and employees that it does not discriminate on the basis of sex in its education programs and activities. It must be widely distributed. The distribution list must include all students, parents of elementary and secondary students, applicants for admission and employment, and any other relevant persons. A policy prohibiting sexual harassment is not required by Title IX, but if an institution is missing such a policy it could violate Title IX by not providing an explanation of what constitutes sexual harassment (Ali, 2011).

The 2011 letter required that each institution have a designated Title IX coordinator. The coordinator's responsibilities are to oversee all Title IX complaints, identify and address any patterns or systemic problems that occur during the review of complaints, and make sure

the institution is in compliance with Title IX. All students were required to be notified of the Title IX coordinator's name, title, and contact information. In addition, the institution must ensure that their Title IX coordinators have satisfactory training on what sexual harassment is, including sexual violence, and how the institution's grievance procedure functions (Ali, 2011).

Grievance procedures must be adopted and published by the recipient. According to the 2011 'Dear Colleague Letter', "The grievance procedures must apply to sex discrimination complaints filed by students against school employees, other students, or third parties," (Ali, 2011). The grievance procedures likely would include voluntary informal mechanisms, such as mediation. The letter specifies that it is inappropriate for a student to work out problems directly with the alleged perpetrator without appropriate involvement by the school. Appropriate involvement could include participation by a counselor, a trained mediator, a teacher, or an administrator (Ali, 2011).

The grievance procedures are required to be prompt and equitable. The letter suggests 60 days for a resolution to be found following the receipt of the complaint. The grievance procedures must be in language that is age appropriate and easily understood. All investigations must be adequate, reliable, and impartial. A victim should be notified of their right to file a complaint and not be dissuaded from doing so. Schools should not wait for criminal investigations to close before opening their own Title IX investigation. Schools should use the "preponderance of the evidence" standard in its hearings and investigations.

The overall requirement is that the school should notify both parties of an outcome and allow them to make an appeal, if applicable (Ali, 2011).

Lastly, the school should take measures to prevent sexual harassment and sexual violence and correct any of the impacts the complainant and others have felt. Education is a crucial step that should be taken. This includes orientation programs for new students, faculty, staff, and employees, training for students, and training for coaches. The institution should have remedies in place to correct any effects. This could include changing academic programs or living situations. The schools must also have policies in place to prevent and address any retaliatory harassment. Counseling must be an option for students who are going through the investigations process as well as training for school law enforcement and all employees who interact with students (Ali, 2011).

The 2011 ‘Dear Colleague’ letter was the last guidance given that was directed at colleges and universities by the Obama administration. In 2016, President Trump was elected and appointed Elizabeth “Betsy” DeVos as Secretary of Education. Since this appointment, the administration has decided to take Title IX in a new direction. In 2017, Secretary DeVos released proposed new guidelines to deal with campus sexual misconduct. The difference in the guidelines from the 2011 ‘Dear Colleague’ letter and the DeVos administrations proposed guidelines will be the subject of the next section.

## *Chapter 4*

### *The New Guidelines*

When the Trump administration entered office in 2017, he appointed Elizabeth “Betsy” DeVos as the Secretary of Education. Beginning in September of 2017, the DeVos administration announced that they would be taking Title IX in a new direction (Kamenetz, 2017). When Secretary DeVos announced her plans to rewrite the rules, she did not give specific examples, but she made it quite clear that she believed that prior guidance had gone too far in its efforts to protect victims, and not far enough to assure due process to all. In her opinion, the result of the 2011 and 2014 guidance letters had likely deprived accused students of their rights (Saul & Goldstein, 2017). Because of this, Secretary DeVos began to roll back the previous administration’s guidelines.

#### **New Proposed Guidelines**

Secretary DeVos made Title IX one of her top priorities when taking on her role. She made the statement, “One rape is too many. One assault is too many. One aggressive act of harassment is one too many” (Saul & Goldstein, 2017, para. 13). Secretary DeVos remarked that she believed not only were accused students being deprived of their rights, but victims were not receiving proper treatment due to a quasi-judicial system that she believed lacked the sophistication required to handle such sensitive topics (Saul & Goldstein, 2017).

On the 22<sup>nd</sup> of September 2017, the DeVos administration released a new ‘Dear Colleague’ letter. The purpose of this letter was to inform institutions that the Department of Education was withdrawing the statements of policy and guidance given by the Office for

Civil Rights in the 2011 ‘Dear Colleague’ letter and the Questions and Answers on Title IX and Sexual Violence from 2014 (Jackson, 2017). The letter stated that while the Department of Education believed both of those documents were well-intentioned, the Department concluded that the documents led to many student’s rights being taken away. The DeVos administration stated that accused students were often denied a fair process, and victims were being denied a satisfactory resolution of the complaints they filed (Jackson, 2017).

Secretary DeVos stated that the interim guidelines would help schools combat sexual misconduct and treat all students fairly. The administration used a newly released Question and Answer to explain its expectations of institutions. The Department continued to rely on its Revised Sexual Harassment Guidelines from 2001 and the 2006 ‘Dear Colleague’ letter. Secretary DeVos assured everyone that the new guidelines would go through the proper public comment process, unlike the 2011 ‘Dear Colleague’ letter and the Questions and Answers on Title IX Sexual Violence from 2014 (U.S. Department of Education, 2017).

The Department of Education released a revised set of Title IX amendments in November 2018. The first thing that was noted was the changes made in wording and process. One change is that the definition of sexual misconduct has been narrowed. The new definition is, “unwelcome conduct on the basis of sex that is severe, pervasive, and objectively offensive,” (Vagianos, 2018, para. 8). In addition, schools are only responsible for assaults if they take place on campus. This is confusing though because the proposal also says that a school has the responsibility to eliminate a hostile environment. According to the provisions, the victim or complainant can be cross-examined live by a third-party. This does not apply to

K-12 schools. The complainant is able to ask for the alleged perpetrator or the responding party to watch an accuser's interview from a different room. Victims can only report to certain people. At a college or university, the victim could only report to the Title IX coordinator. The proposed guidelines allow schools to choose whether they would like to use the "preponderance of the evidence" standard of proof or "the clear and convincing" standard of proof (Vagianos, 2018).

## **Reactions**

With the changes that Secretary DeVos proposed, there have been mixed opinions about whether the provisions are a good idea or not. Many organizations such as Know Your IX and End Rape on Campus made public statements expressing their worry about how this would affect students and their education. Representative Carolyn B. Maloney of New York urged Congress to take a stand against this proposal. She wrote that the revised policy "seems intended to make college campuses safe spaces to commit sexual assault and harassment instead of safe spaces to learn," (Vagianos, 2018, para. 28). On the other hand, Frederick M. Hess, director of education policy for American Enterprise Institute, said, "I think DeVos laid out a sensible, responsible approach to crafting a more measured policy that can better secure the rights of all involved," (Saul & Goldstein, 2017).

There have been varied reactions to the DeVos administration's handling of Title IX. Next, one campus's reaction and response to the proposed amendment will be analyzed through two interviews. The interviews were conducted with the university's Title IX coordinator and Assistant General Counsel.

## *Chapter 5*

### *The Case Study: One Campus's Response*

In order to provide an indication of a University's response to the revised "DeVos Guidelines," a case study of one campus was carried out. An interview methodology was used. After having secured permission from the University's IRB Committee and consent from the interviewees, there were two interviews conducted: one with the Title IX coordinator, Lisa Hernandez Esq. and one with the Assistant General Counsel, Daniel Sypolt, JD. These interviews consisted of twelve questions regarding the previous guidance from the 2011 'Dear Colleague' letter and the DeVos administration's 2018 proposed amendments. Each interview was conducted separately. Both participants agreed to allow audio recording in order to maintain accuracy. In addition, each participant has been able to review their responses in order to confirm that they were quoted and summarized correctly.

#### **How long have you worked with Title IX as it applies to sexual assault allegations at a college campus?**

Neither Dan Sypolt nor Lisa Hernandez worked with Title IX before their job at Robert Morris University (RMU). Dan worked in private practice before starting at Robert Morris University in 2016 as the Assistant General Counsel. Lisa Hernandez became Robert Morris University's Title IX coordinator in 2018. Prior to being the Title IX coordinator, Lisa worked with similar legislation as a civil rights lawyer. She primarily worked with legislation such as Title VII and the Equal Pay Act. She had no prior experience in higher education.

**In your previous work with Title IX were you familiar with the 2011 "Dear Colleague" letter?**

As previously stated, neither of the participants had experience working with Title IX prior to being Robert Morris University employees, so their previous work did not apply to this question. Their first experience with the 2011 'Dear Colleague' letter was in their current positions.

**Did you find that the guidance in the 2011 Dear Colleague letter was helpful in your Title IX work? Or did you find that the Dear Colleague letter was unhelpful or problematic in any way?**

When Lisa Hernandez began at RMU this letter had already been rescinded by the Betsy DeVos administration, so she had no first-hand experience with it. She remarked that from what she knew it did seem well-intentioned, but it made it difficult to comply. She specifically said that the timeline by which investigations had to be completed was quite short. This was a problem especially for small universities with small Title IX departments. Ms. Hernandez also stated that many people had stated that the previous set of guidelines was victim-centered and had a "guilty until proven innocent" framework.

Dan Sypolt had worked with the guidelines set forth by the 2011 'Dear Colleague' letter. He said that it served as a framework for complying with the Department of Education and Office for Civil Rights' expectations regarding Title IX. He believes it set a good framework to provide what each institution is expected to do by the Office for Civil Rights to make sure that each student has the same educational experience and opportunities regardless of gender. Title IX itself has not yet been extensively codified, so the letter was highly relied

on. He stated that as a lawyer that was a bit difficult because while the guidelines had nearly the force of law, they were not codified like typical legislation.

**How do you feel about the changes in the 2018 revision of the guidelines?**

Both of the participants had a number of comments about the 2018 revisions to the guidelines. Neither of the participants were extremely satisfied nor dissatisfied with the revisions. Lisa Hernandez believes that there are a lot of statements in the guidelines that are unclear. She said that she believes these guidelines were rushed because they were a political act rather than an act to truly make the guidelines more beneficial. The final version of the new guidelines has not come out, and it has been well over a year since the circulation of the draft. Hernandez and Sypolt both mentioned that this could be because of the large amount of comments and pushback that the Department of Education received. Lisa Hernandez wrote a letter to the Department of Education on behalf of Robert Morris University expressing concerns about the 2018 revision. These concerns ranged from terminology to regulations. Lisa's heaviest statement in the interview was that the 2018 revision seemed to be designed to keep people from using this process. It creates a lot of hoops for people to jump through.

Dan Sypolt seemed to feel similarly to Lisa. He said that the proposed regulations are problematic in several respects but also helpful in several respects. He, like Lisa Hernandez, believes that the 2018 revision was rushed, which is why they are taking so long now to come out with the final revision. He stated that they do not help the university do their job because they have several contradicting statements. The revisions also have theories that are not adapted to private versus public universities. In addition, he believes that it puts a courtroom

in a place where it does not belong. Sypolt believes the use of mediation could be helpful but an unintended consequence is institutions could rely too heavily on its use. He stated RMU's mission will allow it to provide equality to its students consistent with the law.

**Do you believe that the new guidelines will affect the number of reports that the University receives?**

Similar to Lisa Hernandez's past answers, she believes fewer people will come forward because there are more hoops to jump through. In addition, the letter that Lisa Hernandez wrote to the Department of Education said, "RMU fears that this sort of cross-examination will likely have a chilling effect on reporting parties' willingness to report misconduct, and of the willingness of witnesses to provide testimony," (Hernandez, 2019).

Dan Sypolt's answer was that the new guidelines might make Robert Morris University see fewer reports. He also cites the cross-examination requirement as a main reason. He stated that a lot of people do not press criminal charges because they don't want to be cross-examined or testify. If that is what the university process looks like, people may stop reporting there as well.

**Do you feel that the new guidelines have affected or will affect the way that reports are responded to on this campus?**

Both participants had similar answers. They said that at Robert Morris University, the reports will be responded to the same. Dan Sypolt looks to the university's mission as a reason that RMU will stay committed to responding the same way. The proposed regulations provide more avenues for concluding investigations, which could lead to different outcomes

than under the previous guidelines. The only other comment Lisa Hernandez made was that she believes it will impact outcome more than it will impact response.

**Do you feel that cross-examination of those charging assault is necessary in Title IX sexual assault cases?**

Lisa Hernandez is very upfront about this and says she believes it will be a disaster. Title IX is not a criminal or civil hearing, so bringing in an attorney with no real rule book or guidelines will likely be unfair. She believes questions posed by the hearing panel are fair and even questions posed by the opposing party as long as they are deemed appropriate. She says that controlling a cross-examination with little guidance especially if the Title IX coordinator is not a lawyer could be a catastrophe.

Dan Sypolt agrees with Lisa Hernandez that Title IX is not the place for cross-examination. The university is not a courtroom, and the students are not there to have that experience. He also believes it is likely that it would create a socio-economic disparity. Those who could afford to hire lawyers, whether that is the victim or alleged perpetrator, would have an obvious advantage in the process.

**Do you feel that cross-examination has the potential to re-traumatize those who claim assault?**

Lisa Hernandez believes that there is absolutely the possibility to re-traumatize. She says that the current process could re-traumatize, but that the proposed revisions definitely have a high likelihood to re-traumatize. Allowing for cross-examination could allow questions that are inappropriate or unfair, causing more trauma. She believes that universities and RMU do not have the resources to effectively hold that kind of environment and have it be fair.

Dan agrees with Lisa that it could absolutely be re-traumatizing. He believes that this will be the case at every university and college. While cross-examination could reveal truths and inconsistencies, that is not what Title IX is for. It is supposed to leave the participants with equal educational opportunities.

**What effect do you think that the change of wording in the guidelines to "severe, pervasive, and objectively offensive" will have?**

Lisa Hernandez stated that she believes the changes in wording will mostly cause problems for defining sexual harassment because it may not be seen as "pervasive." She asks, what does pervasive even mean? The letter that Lisa wrote to the Department of Education explains that Title IX covers employees as well, so the language being different from Title VII will be confusing and problematic.

Dan Sypolt said that this change will make institutions change their policy because this is a heightened standard. Hearing panels and investigators will all have to be retrained to make sure they have a satisfactory understanding of what the change from 'or' to 'and' means.

**With the inclusion of the term "pervasive," will "one-time" incidents still be able to be investigated?**

One-time incidents will still be investigated at Robert Morris University according to Lisa Hernandez. She stated that she will continue to do these investigations until she is told to stop. The outcome of these investigations could change, but they will still be investigated.

Dan Sypolt believes that under these revisions, if an incident is not pervasive, the investigation will likely have to be stopped. It could still be sent to other departments for a

violation of student conduct or other policies, though. A one-time incident could still be investigated because an egregious act can be classified as severe and pervasive.

**Overall, do you feel that the changes in the new Guidelines will be beneficial or detrimental to Title IX investigations on campus? Why?**

Lisa Hernandez discussed that she does believe there are good aspects to the 2018 revisions. She believes live hearings are a good change and that is actually what RMU currently does. Despite these good aspects, she said that she thinks they still need more work. The 2018 revisions as they were first proposed have several contradictory statements in them. She hopes that the comment time and delay have been used to address people's comments and concerns.

Dan Sypolt does not believe that the revisions are detrimental. He believes that there will be more avenues now to conclude investigations than there were previously. Investigations that the university would have continued with before may be stopped due to this. He is unsure whether this is detrimental or helpful but thinks it will depend on the situation.

**Are there any other observations or thoughts that you would like to add?**

Lisa had nothing additional to say at the end of the interview. Dan added that the revisions also included a geographic boundary. Essentially, schools may not be responsible for anything that occurred off the campus. This would mean that student studying abroad may not be able to have their incidents investigated through the Title IX process.

## *Chapter 6*

### *Conclusions and Recommendations*

#### **Summary**

This study has examined the evolution of Title IX sexual assault guidelines from the initial adoption of the Title to the present day. Its purpose was to determine how the set of proposed revised guidelines, currently under review by the Department of Education, could impact the reporting and investigation of sexual assault allegations on college campuses. To begin the study reviewed the implementation of Title IX and its initial effects. Title IX was signed into law in 1972 by President Richard Nixon as part of the Education Amendments of 1972. This was signed into law after senate-house committee reconciled two bills proposed by Representative Edith Green and Senator Birch Bayh. Next the study, examined what the 2006 and 2011 ‘Dear Colleague’ letters provided to institutions and the responsibility it expected of the institutions in regard to Title IX sexual assault claims. The study learned that in 2017, Secretary DeVos retracted the 2011 ‘Dear Colleague’ letter and the Questions and Answers on Title IX and Sexual Violence from 2014. In 2018 Secretary DeVos released a set of proposed new implementation guidelines. The reaction of one institution’s Title IX responsible officials to these proposed guidelines formed the basis of this study. The DeVos administrations review of the guidelines and proposed revised guidelines were examined to determine what they would change about the current guidelines.

## **Findings and Conclusions**

Through the research, I had several findings and was able to make several conclusions on the revised guidelines. The two interviews, one with Lisa Hernandez, Esq., Robert Morris University's Title IX coordinator, and one with Daniel Sypolt, JD., Robert Morris University's Assistant General Counsel, both provided a lot of information on Robert Morris University's response to the revised guidelines. Sypolt has worked with Title IX since 2016, and Hernandez has worked with Title IX since 2018. Robert Morris University had vetted grievance procedures in response to the 2011 'Dear Colleague' letter that served as a framework. In the opinion of the University officials interviewed, the revised guidelines seem to have been released too quickly and were not well thought out. The proposed revised guidelines seemed to be a political move, which may be why they were released so quickly. The Department of Education has already taken over a year to review the comments they received from stakeholders, so the official guidelines will probably reflect more of what universities wanted to see.

Unless the Guidelines are revised, the interview subjects believe that it is likely that fewer alleged victims will come forward to report. This is because there is the possibility of having to be even more traumatized. Cross-examination has often been cited as one reason that victims don't report to the police, so adding this into the Title IX grievance procedures could be detrimental to campus reporting. Furthermore, the interviewees noted changing of the wording in the guidelines to describe sexual harassment as "severe, pervasive, and objectively offensive" will definitely raise the standard as to what rises to the level of sexual

harassment. This means that there will be more avenues for a case to be closed without a full review. This is even more true in one-time incidents. One-time incidents can be investigated, but the outcomes could be different according to the interviewees. Incidents that may have been deemed sexual misconduct previously may not be considered sexual misconduct under the new definition leading to the alleged perpetrator not being disciplined.

I believe that the interviews have proved Robert Morris University is ready to respond effectively to these revised guidelines. The University has RMU has already established efficient and fair grievance procedures. RMU's current grievance procedures use live hearings which is one proposal in the Revised Guidelines. Lastly, the study's interviewees agree that the proposed revised guidelines need further refinement. I believe that is why we have seen the review process take so long already. As the interviewees noted, the cross-examination process suggested in the Guidelines is likely to highlight socioeconomic disparities between those who have access to legal counsel and those who do not.

## **Recommendations**

Based on the findings and conclusions from the interviews conducted, I have developed several recommendations. First, I recommend that the Department of Education conduct a thorough review of the responses to the proposed Guidelines before finalizing them. I believe that we have already seen that process begin. The Department has already taken almost a year and a half without releasing the final guidelines. This is likely because they are taking the comments they received and giving them serious consideration. Institutions should continue to do what they can to prevent trauma. Title IX can already be traumatic but adding

things like cross-examinations could be even more traumatic. That is part of the reason that I recommend they should not be used in their present form besides the socioeconomic disparities. Title IX's grievance procedures, under the proposed revised guidelines, looks much more like a court room than what is intended to be.

### **Limitations**

While this study was thorough, it still has limitations. One of the limitations is the size of the study. This study only interviewed two administrators at one university, Robert Morris University. In addition, the questions did not ask about the Questions and Answers on Title IX and Sexual Violence from 2014. This could have provided more information for the interviews. In addition, the interviews had to be conducted via video call and phone call due to COVID-19. This limited the ability to be able to clearly record the audio to reference.

### **Recommendations for Further Research**

There are a number of ways to continue this research. When continuing this research, the researcher should try to interview more people and more institutions to get a better look at the response on a large scale. Further research could be conducted once the final guidelines are released and schools are required to abide by them.

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## APPENDIX A

### Interview Questions

Q1: How long have you worked with Title IX as it applies to sexual assault allegations at a college campus?

Q2: In your previous work with Title IX were you familiar with the 2011 "Dear Colleague" letter?

Q3: Did you find that the guidance in the Dear Colleague letter was helpful in your Title IX work? Or Did you find that the Dear Colleague letter was unhelpful or problematic in any way?

Q4: How do you feel about the changes in the 2018 revision of the guidelines?

Q5: Do you believe that the new guidelines will affect number of reports that the University receives?

Q6: Do you feel that the new guidelines have affected or will affect the way that reports are responded to on this campus?

Q7: Do you feel that cross-examination of those charging assault is necessary in Title IX sexual assault cases?

Q8: Do you feel that cross-examination has the potential to re-traumatize those who claim assault?

Q9: What effect do you think that the change of wording in the guidelines to "severe, pervasive, and objectively offensive" will have?

Q10: Will "one-time" incidents still be able to be investigated?

Q11: Overall, do you feel that the changes in the new Guidelines will be beneficial or detrimental to Title IX investigations on campus? Why?

Q12: Are there any other observations or thoughts that you would like to add?

APPENDIX B

Robert Morris University

Institutional Review Board

Approval

Date

Renewal Date:

IRB Number: 202001112266

CONSENT TO ACT AS A PARTICIPANT IN A RESEARCH STUDY

TITLE: The Changing World of Title IX Investigations: One Campus's Response

PRINCIPAL INVESTIGATOR:

Dakota J. Staley

Robert Morris University

6001 University Blvd

Moon Township, PA 15108

SOURCE OF SUPPORT: Robert Morris University's Honors Program

CONSENT FORM:

Participant's Initials \_\_\_\_\_

\*\*\*\*\*

**Consent Form**

**1. Description**

This study is being undertaken to determine whether the 2018 Title IX amendment proposal will have a significant change in campus response to Title IX sexual misconduct allegations and investigations. This study will interview each participant for roughly one hour.

**2. Risks and Benefits**

The possible discomforts of this study are discussing the investigatory process of sexual misconduct on a college campus. The benefits to participating in this study is it will allow for a determination of how campus's may want to respond to the Title IX amendment proposal.

**4. Right To Withdraw**

*I understand that I am free to refuse to participate in this study or withdraw at any time.*

**5. Confidentiality/Right to Privacy**

*I understand that any information about me obtained from this research, including answers to an interview will be kept confidential. I understand that my name will not be included in any of the publication without my consent.*

6. **Cost and Payment**

*There will be no cost to any participants on this subject.*

7. **Compensation for Injury or Illness**

I understand that in the event of a physical injury or illness resulting from the research procedure, no monetary compensation will be made, and I hereby release Robert Morris University and the investigator from any and all liability. Medical treatment, which may be necessary in the event of physical injury or illness, will be provided at the participant’s expense. I can call the investigator to obtain information about treatment if it is needed.

8. **Agreement to Participate**

I, \_\_\_\_\_, agree to participate in the study, “The Changing World of Title IX Investigations: One Campus’s Response”.

\_\_\_\_\_  
Participant’s Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Researcher’s Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness’s Signature

\_\_\_\_\_  
Date

**VOLUNTARY CONSENT**

All of the above has been explained to me and all of my current questions have been answered. I understand that I am encouraged to ask questions about any aspect of this research during the course of this study and that such future questions will be answered by the researchers listed on the front page of this form.

Any questions which I have about my rights as a research participant will be answered by the Human Subjects Protection Advocate of the IRB Office, Robert Morris University (412-397-6227 or irb@rmu.edu).

By signing this form, I agree to participate in this research study. A copy of this consent form will be given to me.

\_\_\_\_\_  
Participant’s  
Signature

\_\_\_\_\_

Date

**CERTIFICATION of INFORMED CONSENT**

I certify that I have explained the nature and purpose of this research study to the above-named individual(s), and I have discussed the potential benefits and possible risks of study participation. Any questions the individual(s) have about this study have been answered, and we will always be available to address future questions as they arise.

---

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Printed Name of Person Obtaining Consent

Role in Research Study

\_\_\_\_\_  
Signature of Person Obtaining Consent

\_\_\_\_\_  
Date

\*\*\*\*\*

**Waivers and Exceptions of Informed Consent Requirements**

**Waiver of Informed Consent for Minimal Risk Research Studies**

The IRB can approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent, or may waive the requirement to obtain informed consent from some or all of the research subjects provided that each of the following criteria are met:

- 1) The research involves no more than minimal risk to the subjects;
- 2) The waiver or alteration will not adversely affect the rights and welfare of the subjects;
- 3) The research could not practicably be carried out without the waiver or alteration; and
- 4) Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

To be considered for such a waiver, the principal investigator must, in the recruitment section of the corresponding IRB research protocol, request a waiver of the requirement to obtain informed consent for some or all of the research subjects and must address each of the above criteria including a justification of its applicability to the proposed research and/or the subject population for whom the waiver of consent is being requested.

**Waiver of the Requirement to Obtain a Signed Informed Consent Document**

The IRB may waive the requirement for the investigator to obtain a signed consent form for some or all of the research procedures if either:

- 1) The only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality; or

(**Note:** If a waiver is granted based on this criterion, each subject must be asked whether s/he wants documentation linking her/him with the research, and the subject’s wishes will govern.)

2) The research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context.

To be considered for such a waiver, the principal investigator must, in the recruitment section of the corresponding IRB research protocol, request a waiver of the requirement to obtain a signed informed consent document for some or all of the research procedures and must address whichever of the above criteria is applicable to the research procedures for which the waiver is being requested to include an appropriate justification for its applicability.

Note that if the IRB grants a waiver of the requirement to obtain a signed consent form for some or all of the research procedures, this does not eliminate the requirement to obtain the informed consent of the subject for participation in the respective research procedures. Thus, accompanying this waiver request should be a script of the information that will be provided to potential subjects in obtaining their verbal consent for participation in the respective research procedures. This verbal consent process should include all of the basic and additional, applicable elements of informed consent addressed above. The waiver request should also address (i.e., within the recruitment section of the corresponding IRB research protocol, the mechanism that will be used by the investigators to document that the verbal consent of subjects has, in fact, been obtained.

### **EXAMPLE COVER LETTER FOR INFORMED CONSENT**

Dear (your subjects)

I am Dakota Staley. I am a senior clinical psychology major at Robert Morris University, and I am conducting research for my senior honors thesis project.

The purpose of this study is to determine whether the 2018 Title IX amendment proposal will have a significant change in campus response to Title IX sexual misconduct allegations and investigations. People involved in this work are being asked to participate in their department's response to these changes.

Your voluntary response to this request constitutes your informed consent to your participation in this activity. You are not required to participate. If you decide not to participate, your decision will not affect your current or future relations with Robert Morris University, the Honors Program, or me.

The interview required for this study will take approximately one hour to complete. I, Dakota Staley, will schedule a time that works best for you to interview you as long as you agree to participate.

This activity has been approved by the Robert Morris University Institutional Review Board. This Committee administers the University policy covering the protection of human subjects. The Committee may be contacted through the Chairperson.

Thank you for your valuable contribution to this research.

Sincerely,

Dakota Staley

For more information contact Chairperson – Robert Morris University's Institutional Review Board.

