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**PUBLIC  
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Section D

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## Analyzing the Dear Colleague Letter of 2011

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### Abstract

In April of 2011, the Office of Civil Rights (OCR) released a “Dear Colleague” letter to over 7,000 colleges that receive federal funding across the United States. This policy guidance instructed new legal obligations on the practices colleges must employ to adjudicate cases of sexual violence and sexual misconduct. It has given way to ethical debates on evidence standards, appropriate disciplinary actions in the capacity of the educational system and concerns regarding due process. Further, colleges struggle to comply due to inadequacies in the policy, lack of guidance from the Department of Education and a general lack of funding that would otherwise be used to develop practices to better investigate and adjudicate cases to appoint personnel. These lacking areas have the potential to impact accountability, compliance, due process, privacy, transparency and the investigation. Moreover, this study not only researches these capacities, it seeks to analyze the impact of Dear Colleague Letter of 2011 and the impact of rescinding it. With these concerns in mind, this thesis aims to study The Dear Colleague Letter of 2011 through three campuses, to understand the different practices that are adapted in order to comply with OCR’s policy guidance of 2011. This study analyzes the campuses with the highest, lowest and median reported sexual misconduct cases between the years 2014-2017 as a sounding board for analyzing federal, state and university policies and practices. Ultimately, this study cross examines qualitative and quantitative research and aims to prove if The Dear Colleague Letter of 2011 is efficient and adequate in its guidance. © 2018 California State Polytechnic University; Pomona. All rights reserved

Keywords: The Dear Colleague Letter of 2011, sexual violence, campuses, Office of Civil Rights

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## 1. Introduction

Before 1972, gender equality in educational institutions was mere discord and not a guiding principle. This was the decade where women were still enrolled in “home economics” to learn how to cook and sew. Whereas men were typically enrolled in a “woodshop” classes, to learn a trade, such as woodwork. In both contexts, one can see sexist principles at play, where these courses aimed to reify each gender’s “role” according to societal norms. Sports were no different. In fact, intercollegiate sportsmanship became a predominant route for young men to access higher education, where institutions would recruit promising young men to compete in their respective universities. Sports in general were branded as American pastimes that created a long-standing cultural presence around ideals of patriotism, pride, strength, passion and tradition. Therefore, pursuing a profession in athletics was one way many students could catapult themselves from low-income to the upper echelons of society. However, these paths have been limited to men who historically have been afforded more choice, access, power and voice in all aspects of social life. Prior to 1972, gender equality in educational institutions or in sports, was a tense discussion of civil rights.

In 1972 Congress passed the “Title IX of the Educational Amendments of 1972” which prohibited sex discrimination in any educational program or activity receiving federal financial aid. To comply, educational institutions had to restructure all intercollegiate and interscholastic activities to enable gender equality. For the next 25 years, multiple institutions would file suits challenging Title IX arguing that women were less interested in sports than men and therefore gender equality in educational programs was redundant. Further, making the point that Title IX was a costly piece of legislation because women lacked the biological, physical capacity, ambition and desire to pursue such activities. The claims against Title IX were inherently sexist and discriminatory.

In 2001, the challenges to Title IX were effectively put to rest when the Supreme Court decided in *Brentwood Academy vs. Tennessee Secondary School Athletic Association* that any “state actor” that functions as a state organization is subject to the Constitution. Where any institutions whose employees or programs are funded through public monies, are held to state and federal regulations. This is because organizations predominantly run by state employees consequentially function as an extension of the state. To clarify, this case’s final ruling expanded gender equality to federally funded educational institutions, not just in the context of university athletics. Moreover, ruled by the 14<sup>th</sup> Amendment’s Equal Protection Clause, which affords protections to all citizens, where federal funds cannot be used to discriminate against an individual on the basis of gender.

Although Title IX, was initially argued for gender equality in intercollegiate and interscholastic activities, gender equality encompasses many areas beyond sports and academia. In 2011, 39 years after Title IX was passed, the Department of Education (DOE) released a policy guidance, known today as “The Dear Colleague Letter of 2011” (DCL of 2011). This specific policy guidance expands Title IX to include cases of sexual harassment and sexual misconduct on campuses. Specifically, the DCL of 2011 serves as a framework for implementing practices that provide students with protective services and that educate students to reduce sexual misconduct incidences. Further, it is important to highlight that this is the only piece of legislation that addresses gender equality and equity in post-secondary educational institutions. Most notably, implementing this policy guidance sends a clear message to students that the DOE understands that experiencing sexual misconduct or sexual violence has the potential to hinder a student’s educational experience.

The Department of Education determines that a Dear Colleague letter is a “significant guidance document” released under the Office of Management

and Budget's Final Bulletin for Agency Good Guidance Practices. Over the course of the DOE's history, several "Dear Colleague" letters have been released to provide support and examples to recipients on how the Office of Civil Rights (OCR) evaluates compliance of legal obligations to federal law. This is important because although a "Dear Colleague Letter" is considered a policy "guidance", it is technically mandatory. Also, because it is usually a supporting document to an existing law, it rarely includes funding sources to enable compliance.

In 2017, the DCL of 2011 was rescinded by the Department of Education with four main claims. The DOE argued that the Preponderance of Evidence Standard was a low bar for sanctioning disciplinary actions. Further, arguing that The DCL of 2011 was ineffective guidance, which prosecuted innocent students. The DOE also claims the policy guidance does not afford students "due process" in sexual misconduct cases. The Department of Education further argued that campuses should not have the authority to carry out sanctions because justice should not be in the jurisdiction of an educational institution.

In brief, Title IX has been in effect for 45 years and the Dear Colleague Letter of 2011 that was rescinded was only effective for 6 years between 2011-2017. The DOE's decision to rescind the aforementioned letter puts into question if the policy guidance did what it was intended to do and therefore if it was effective guidance. Consequentially, this puts into question future guidance on how to handle such cases and whether cases of sexual harassment and misconduct on campus still fall under the jurisdiction of postsecondary institutions.

### *1.1 Research Question*

With the historical context of Title IX in mind, this senior thesis project aims to deconstruct the Dear Colleague Letter of 2011 that was in effect until 2017. I aim to analyze if it clearly and thoroughly provides guidance for cases of sexual misconduct on college campuses. More specifically, I seek to probe: Is the

Dear Colleague Letter of 2011 effective in its guidance?

This thesis project hosts a multidisciplinary focus of probing effectiveness through various implemented practices, procedures and policy. Further, I intend to decipher whether this letter effectively guides post-secondary institutions to implement a system that protects students from sexual misconduct and sexual violence on campus.

### *1.2 Argument*

I question effectiveness of this policy guidance to understand in depth the claims against The Dear Colleague Letter of 2011, set forth by the Department of Education, to analyze if they hold merit and if this merit then warrants rescindment due to overall ineffective guidance. Further, I argue that the Dear Colleague Letter of 2011 provides over 7,000 post-secondary institutions across the country with a framework of protective policies and practices regarding incidences of sexual misconduct and sexual violence. With this in mind, I seek to emphasize that this policy guidance is crucial for addressing sexual misconduct incidences on college campuses. More specifically, that effectiveness of the Dear Colleague Letter of 2011, is evident when upon compliance, practices reflect equitable services, receptiveness to claims and a student body educated on consent.

This thesis will focus on investigating the causal relationship between the "Dear Colleague" letter and the reduction of sexual violence and sexual misconduct on campuses. The logic here is that the DCL of 2011 acts as a guiding principle and thorough directive for how to implement practices that effectively reduce sexual violence and sexual misconduct.

## **2. Literature Review**

To better understand the core of this research project there is a complex structure of policy to deconstruct. First and foremost, Title IX of the Education

Amendments Act of 1972 prohibits discrimination on the basis of sex for all institutions receiving federal funds, whereby “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 [...]” (20 U.S. Code § 1681). As mentioned previously, this statute affords protection for gender equitability in sportsmanship and academia. Further, it was effectively decided in *Brentwood Academy v. Tennessee Secondary School Athletics Association of 2001* that a private organization could be connected to the state in such a way that the organization itself exercises state power, known as “entwinement”. Consequentially, any “state actor” is subject to the First, Fifth, Fourteenth Amendment and the Bill of Rights, as extensions of the governmental body and could therefore not use federal monies to discriminate against an individual (*Brentwood Academy v. Tennessee Secondary School Athletics Association, 2001*). This case helped to identify educational institutions as quasi-governmental beneficiaries and held them accountable for not only their use of federal funds, but their practices.

Although gender equality was at the forefront of Title IX, the act in practice lacked supportive policy structures that were unaccounted for in 1972, such as peer-to-peer sexual harassment or sexual discrimination. For this reason, Title IX can be seen as an extension of the Civil Rights Act of 1964.

With this in mind, the Supreme Court has recognized that student-on-student harassment, misconduct and sexual violence could hinder the capacity of a student to complete their post-secondary education and consequently could discourage students from engaging in educational programs. Therefore, these incidences are recognized as barriers to an accessible educational experience. The U.S. Department of Education’s Office of Civil Rights released a policy guidance known as The Dear Colleague Letter of 2011, that provides supportive guidance to extend Title IX. Further, this policy

guidance provides a framework of protections for students in cases of sexual misconduct, harassment and sexual violence (Ali, 2011).

### 2.1 Defining Efficacy

As mentioned previously, a ‘Dear Colleague Letter’ is a document that provides additional guidance to institutions, to support compliance with federal law. Many times, in order to gain further clarification, an institution can, additionally, work with the OCR to ensure they are adequately compliant with the policy guidance and with federal law. However, this has the potential to open up an investigative audit of the institution, for violation federal law, inadequate or non-compliance. Moreover, there is no fixed standard for ‘effective’. Theoretically speaking, ‘effective’ is an ever-changing and evolving standard. However, for the purposes of my research question, I will probe ‘effective guidance’ as set forth by the standards of the DOE, the OCR and the DCL of 2011.

On January 18, 2007, the Office of Management and Budget (OMB) issued the “Final Bulletin for Agency Good Guidance Practices,” (GGP Bulletin) which became effective July 24, 2007. This bulletin offers definitions of different types of guidance documents. The DCL of 2011, as discussed in this thesis is categorized by the DOE as a “significant guidance document”.

According to the DOE’s public comments on significant guidance documents, the Federal Register shows Executive Order 13497, signed by President Obama, as a guidance with the potential annual effect on the economy to be of \$100 million or more, to create serious inconsistency and raise novel legal or policy issues arising out of legal mandates (Department of Education, 2009).

However, ‘efficacy’ is defined as “the power to produce an effect”; while ‘effectiveness’ is defined as “producing a decided, decisive, desired effect” (Merriam-Webster Dictionary, n.d.). Further, “pure efficiency” typically consists of meeting the objective at the lowest cost or obtaining the maximum amount of the objective with specified resources (Wildavsky,

1966). To have efficiency and to produce an effect, one must consider the cost to achieving that desired effect. In the context of the DCL of 2011, the OCR seeks a sort of “pure efficiency” from all universities—in other words full compliance. Where without additional funding, universities must then strategize to comply. This, “mixed efficiency”, makes due with the available resources (Wildavsky, 1966). Wildavsky uses pure and mixed efficiency to probe effective practices through a political and economic lens—highlighting that economic rationality will exceed political rationality.

This is to say that when universities across the nation are unable to allocate funds to appoint the necessary personnel to carry out Title IX claims, it is not necessarily evidence of non-compliance or lacking priorities. Four years after the DCL of 2011 was released, many universities *still* had not appointed Title IX Coordinators, where upon the DOE issued additional guidance to urge appointments to ensure compliance (Office of Civil Rights, Lhamon, 2015). Even though universities have the responsibility to prioritize federal law, seeking further guidance can seem indicative of inadequate compliance. Upon the DOE opening up investigative audits across the country, then grew a sense of urgency and understanding of the seriousness of non-compliance.

As of the DCL of 2011, effective guidance intends to reduce sexual misconduct and sexual violence on campuses, while also providing a protective framework for students. However, the DCL of 2011, does not include additional funding to implement this policy adequately. With this in mind, I will proceed to investigate exactly how effective the DOE’s guidance in question really is.

## *2.2 Due Process in Context of a University*

Among the guiding practices enclosed in the DCL, the “preponderance of evidence standard” was deemed the guiding principle for adjudicating educational sanctions and processes in Title IX investigations. The “preponderance of evidence standard” which is used in most civil cases, requires 51% of evidence be obtained in order for there to be a level of confidence in the facts

at hand, by which then the case is moved forward. Essentially the “preponderance of evidence” standard of proof questions “whether the existence of a fact is more probable than its nonexistence” (Kagehiro and Stanton, 1985). It is important to note, that there are two additional standards of proof used in different types of cases. Briefly, the “beyond a reasonable doubt” evidence standard used in most criminal trials requires 91% proof for a case to move forward with confidence (Kagehiro and Stanton, 1985). The “clear and convincing evidence” standard is an intermediate standard which requires between 67% and 75% of evidence in order to move the case forward with confidence (McCauliff, 1982; *United States v. Fatico*, 1978).

Chmielewski (2013) supports the use of the preponderance of evidence standard citing the Supreme Court has used this standard in civil litigation involving Title VII of the Civil Rights Act of 1964, which was one of the precursors to Title IX (2013). Further, Chmielewski (2013) notes that the Office of Civil Rights and the judicial system have instructed the use of the preponderance of evidence standard to multiple institutions and is used as a common measure of confidence. However, the preponderance of evidence standard is being framed as an insufficient measure and employed as a “presumption of male guilt”, whereby critics view this standard as an “attack on civil liberty directed specifically at men” (Chmielewski, 2013). This is especially pertinent because males make up 99% of those facing allegations of sexual assault, harassment or misconduct. Further highlighting a societal issue that needs more probing, putting into question to what extent has courting, dating and sexual experiences changed socially—if men and women are learning how to give and receive consent to sexual experiences and to what extent do these two factors result in males being the 99% of respondents in Title IX cases.

The DCL guidance policy encourages Higher Education Institutions (HEI’s) to have a quasi-parental role over students, whereby HEI’s have the responsibility of addressing sexual misconduct cases

with sensible, ethical and equitable practices that the preponderance standard may not always afford (Ellis, 2013). Ellis (2013) addresses the claims against the preponderance of evidence standard, arguing that there is a potential to hinder due process because institutions carry limitations to sanctions and are not of a criminal justice capacity. Moreover, the preponderance of evidence standard requiring 51% percent of evidence is a problem for campuses because it is not enough to adjudicate an individual in a sexual misconduct criminal case, but enough of a standard to get academic sanctions. With such a standard for evidence, there is great possibility that some innocent could be sanctioned. And if there is more than substantial evidence found against a respondent, then the case falls under the jurisdiction of the criminal justice system which is equipped to provide appropriate and proportional sanctions. On the other hand, Kagehiro and Stanton (1985) and Weizel (2012) argue that the preponderance of evidence standard adequately protects the accused student's rights. More to the point, this scholarly work studies "due process" through *Mathews v. Eldridge* arguing:

When the accused student's individual interest is balanced against a realistic assessment of the risk of erroneous findings and the significant competing interest of colleges [...] in the particular context of student-on-student sexual assault, it becomes clear that schools may comply with Title IX without jeopardizing the rights of the accused students. (2012)

Within this scope, preserving the rights of the accused students and protecting the victim leads to a stratum of ethical debates around due process. Where due process is a term corresponding to judicial processes that affords all parties involved to be subjected to fair, equitable, thorough, non-biased practices of investigation and decision-making. Further, the due process clause in our constitution serves as a safeguard for citizens that may be facing the possibility of being deprived of life, liberty and the

pursuit of happiness –when being sanctioned by state and federal law. However, critics of Title IX oppose due process in the context of a university because educational sanctions, at times, become a part of the respondents' academic record, such as in cases that result in expulsion. Sanctions such as these put into question due process, because a sanction that results in expulsion, arguably has the consequence of depriving or derailing a student's 'pursuit of happiness' (Triplett, 2012).

Further, critics like Triplett argue that the Dear Colleague Letter suffers from a "fatally inadequate discussion of the appropriate balance between victim protection and due process" (2012). This is because institutions face statutory duties to be receptive to claims of assault, while juggling constitutional and contractual requirements of due process to the accused. Triplett argues that the guidance is inadequate and forces institutions to follow the OCR's guidelines, but risk possible due-process claims from alleged perpetrators or attempt to balance victim-protection and due-process and risk non-compliance and violation due to inadequate victim protection (2012).

HEI's do not function in a criminal justice capacity, the preponderance of evidence standard is adequate for carrying out disciplinary actions within the jurisdiction of the educational institution. In *Grogan v. Garner*, the Supreme Court, ruled that the clear and convincing evidence standard was to be appropriate only when "particularly important individual interests or rights are at stake", as in "cases involving allegations of fraud or some other quasi-criminal wrongdoing by the defendant" (Triplett, 2012). Further, in Title IX cases of sexual assault that may have criminal implications, the campus holds adjudicatory proceedings for transitioning the case onto the criminal justice system.

Moreover, this standard of proof allows for cases to be carried out similar to civil cases, not as criminal cases (Triplett, 2012). This standard along with thorough implementation of the DCL of 2011, still allows for sensible resolutions, while maintaining a baseline to process claims. This, however, puts into

question the implementation and practices to comply with the OCR's DCL of 2011.

### *2.3 Education as a Preventative Measure*

National statistics show that 1 out of 5 freshman women are victims of sexual violence, where college women are 3 times more likely to experience sexual violence (Krebs, et al. 2009). Aware of these grim statistics, Aronowitz (2014) tackles sexual violence per the DCL of 2011 through a paradigm of public health. Aronowitz (2014) deconstructs the impact of rape culture on consent showing that there is a point of contention, where a campus climate study does not necessarily correlate with the amount of reported sexual violence crimes on campus. Moreover, probing if there is a present rape culture on a campus through its reported crimes and implemented policies does not account for the many nuances that can give way to situations of sexual misconduct or sexual violence. More to the point, thoroughly implemented policies are not always sufficient to reduce occurrences of sexual misconduct or sexual violence. It is educating students on rape culture in college campuses that serves as a deterrent and preventive measure for sexual violence, as intended in the DCL of 2011.

Further, this reiterates the DCL of 2011's guidance to educate students on consent and rape culture, in order to prevent and reduce cases of sexual misconduct. Moreover, the DCL of 2011 requires campuses educate their students on how to be effective bystanders to prevent a rape incident from occurring if they should find themselves in a situation that indicates a potential lack of consent (Bayard, Plante and Moynihan., 2004).

Moreover, Perkins and Warner (2017) conduct a study on proper sexual violence responses and preventions by studying policies and practices on college campuses (2017). This study found that asking students conceptual and behavioral based questions around concepts of consent, rape and assault allowed for a more in-depth analysis. This is believed to be imperative to the quality of climate surveys and to

analyzing proper and effective policies and practices for the campus and their respective student life.

### *2.4 Accountability*

The OCR releases many DCL letters, each with a different directive, intent and in a supportive capacity. Further, state actors, like HEI's not only have to comply with state and federal regulations of Title IX, they must also maintain transparent records under the Clery Act. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics, also known as the Clery Act is a consumer protection law intended to provide transparency regarding campus crime policy and statistics (20 U.S.C. S 1092). More to the point, the Clery Act requires that each campus publicly report their annual crime statistics. Specifically, criminal offenses that occurred each year including: murder, non-negligent manslaughter, manslaughter by negligence, rape, robbery, aggravated assault, burglary, motor vehicle theft, arson and sexual assault crimes such as rape, fondling, incest and statutory rape. Further, Violence Against Women Reauthorization Act known as "VAWA" also requires the Clery Act report on cases of domestic violence, dating violence and stalking. Further, the Clery Act also requires reporting on larceny-theft, simple assault, intimidation, destruction of property, damage of property and vandalism of property. Along with weapons law violations, drug abuse violations and liquor law violations. This annual report is known as an Annual Security Report (ASR) and reports the number of cases of each of these categories for each year. The Clery Act's reporting mandate supports Title IX policy and is used to assess crime rates regarding protections on campus for cases of sexual violence and sexual misconduct.

With this in mind, the OCR's Title IX policy guidance also requires that campuses appoint a designated Title IX Coordinator to ensure that the campus has implemented Title IX policies. In reviewing the new OCR guidance, O'Brien (2015) argues in support of Title IX Coordinators to be given

this role solely and respectively. This is due in part to the fact that many campuses will assign the position to a faculty member with many other responsibilities. Some institutions do this because they lack the funding to hire an individual to do the work of Title IX solely. Failing to comply with the DCL of 2011, by not having a dedicated Title IX Coordinator, weakens the entire policy structure and goal to protect students on campuses. Non-compliance puts students' wellbeing at risk.

The California State University (CSU) system which is the fourth largest university system in the country, fosters the education of several hundred thousand students (California State University, 2018). With this in mind, the CSU has appointed a Title IX Coordinator and Compliance Officer in each campus, and the first-ever Systemwide Compliance Officer, who oversees all 23 campuses to ensure statewide compliance with Title IX (2015). This is evidence of positive progress receptive to the OCR's DCL of 2011, where the CSU not only is in compliance on a fundamental level but has taken the directive one step further to meet the needs of the entire CSU system.

### *2.5 Implementation in Practice*

The media has dubbed the authority afforded to campuses to investigate sexual misconduct cases on campuses as "kangaroo-trials" in an attempt to defame the policy guidance DCL of 2011 as a process that lacks legitimacy, ethical just proceedings or credibility. Moreover, critics hope to rebrand these investigative processes as lacking in a policy structure that affords due process. Laird (2016) argues that the justice system is better equipped to handle such cases and appropriate sanctions, with a more finite and accurate process. However, it is important to note that not every Title IX case is one with a criminal jurisdiction, many cases are resolved internally and can escalate from mediation to restraining orders, to criminal cases—depending on the investigation's results. Each Title IX claim and case is different from another, resulting in a sliding scale of nuanced situations that require careful review by multiple individuals and trained and informed

personnel. By this hand, Title IX offices in colleges, must have an investigator, a compliance officer, a sanctioning and review panel and a swath of support programs such as counseling and advocacy services (Ali, 2011).

Moreover, scholars often debate the many interpretations of sexual harassment and how administrators should respond. The prevalent claim that the OCR's directive fails to provide guidance on all scenarios of sexual misconduct cases, puts into question how administrators should implement policies that address nuanced and subtle situations. Cumings (2017) presents a case study whereby educators were put to the test, implementing policies appropriate to their campus life juxtaposed with regard to fraternities amidst a rampant rape culture (Cumings, 2017). This case study resulted as a learning tool to gain a deeper understanding of how to properly implement policies that are appropriate to the microcosm of each campus.

On the other hand, in support of expanding Title IX, Yale University in New Haven Connecticut serves as a case study for implementation of the OCR's DCL of 2011. Yale brought in a collaborative approach, with the Yale Women's Faculty Forum which stimulated discussion around advocacy for sexual misconduct victims (Bagley, et al., 2012). This report argues that proper implementation needs an ongoing discussion besides educating the student body on consent, sexual misconduct and their respective rights. With this in mind, Yale has published their collaborative efforts to reflect a strong belief in an open-discussion approach to increase awareness through events and educational advocacy seminars.

In terms of accountability, Michigan State University (MSU) sets a stellar example for the practices of transparency that a campus should employ. MSU has worked closely with the OCR and the DOE to improve their practices and policies to process Title IX claims. This university has made their data publicly available for scrutiny, even publishing the number of personnel that have been dismissed, the number of cases that results in proceedings of a criminal capacity



and data that shows an egregious spike in cases (Callejas, 2018). MSU moved forward in making this information publicly available as it has an outstanding number of cases. Callejas' (2018) case study revealed that proper implementation of the DCL of 2011, alongside supportive programs, leads to a spike in cases due to a more structured and receptive campus. Further, MSU's decision to make such data available, more than the Clery Act requires, not only is evidence of their transparent practices but also indicates a willingness to be further scrutinized for the purposes of improvement. This insight puts into question the relationship between resources and programs that a campus allocates and the data of Title IX cases, whereupon a more Title IX supportive and structured campus, shows an increasingly large need that needs to be met (Callejas, 2018).

### *2.6 Improving Current Practices and Creating Better Policies*

Although there are substantial arguments that seem to poke at a fragile OCR guidance letter, Ellman-Golan (2017) advocates in favor of saving Title IX by pushing for better designs of the federal regulations. More specifically, improving the current standards by designing more equitable and efficient investigative and sanctioning procedures. Arguing that although there are some issues with the guidance letter, there are more efficient and feasible methods to improve the DCL of 2011 than to rescind the entire policy guidance. With this, Ellman-Golan (2017) also deconstructs the positive impacts surrounding this policy guidance letter, emphasizing a shift in paradigm across the country, whereby institutions now take sexual assault more seriously. This is also evident where upon the CSU has, as mentioned previously, appointed a Systemwide Compliance Officer.

It is difficult to quantify effectiveness of The Dear Colleague Letter of 2011. At best, quantifying effectiveness of the Dear Colleague Letter of 2011 is evident in the aforementioned case study of MSU's transparent practices which afford the public clear data of case outcomes and resolutions, not just the number

and type of cases per year as the Clery Act instructs (Callejas, 2018).

However, focusing on suggestions of improvement, there is legitimacy to some claims that are prevalent across the country, where a trial-like process is in place to address cases and determine educational sanctions. This is due to a combination of factors: (1) a lack of funding to appoint a full-time Title IX Coordinator, (2) money infringing equity, (3) balancing victim protection with due process for alleged perpetrators and (4) oversight of the review panel. To explain the point '(2)', there have been cases where students hire lawyers of their own to use in Title IX investigations. Technically, this is legal and completely within the capacity of either party involved in a Title IX case, however this highlights a lack of equity in resources that have the potential to impact a case inequitably and unfairly. With these factors, in mind, my thesis focuses on the Dear Colleague Letter of 2011 to evaluate effectiveness and potentially understand if the claims mentioned against this policy guidance have any merit. Such claims stem from the DOE's Secretary Betsy DeVos, to perpetrators that feel they did not receive due process and where wrongly "convicted", to rape victims who felt they did not receive the proper support or tools to seek out 'justice'.

### **3. Methodology**

Using the aforementioned research regarding the intricacies of this policy guidance, I will be evaluating the Dear Colleague Letter of 2011 for its effectiveness in guiding institutions to implement the policy through university practices, policies and resources that afford equity, protection, support and education –as directed by this policy guidance. Further, analyzing the policy guidance for its effectiveness by the *outcomes* of implementation, both in evaluating the implemented practices, administrative proceedings and education efforts to reduce sexual assault and sexual misconduct. With this in mind, an issue of contention within this thesis that I will need to caution for, is the road blocks to accessing data and insight as to the qualitative case study that I will be conducting.

This thesis will take a qualitative approach by analyzing case studies to prove the argument that the Dear Colleague Letter of 2011 is effective guidance and provides a basic framework for investigating and managing claims. The ultimate goal will be to demonstrate a positive impact between clear guidance upon implementation, sufficient resources and practices that support implementation and consequently, outcomes of such implementation. Further, I seek to understand if the claims against this policy have merit by evaluating three campuses in California.

### 3.1 Case Selection

To carry out this research project I have studied Title IX, in order to understand equity under the law as intended for the Dear Colleague Letter of 2011. I will also analyze Dear Colleague Letter of 2011, both the language and the directives, to understand the claims against and for this policy. I will also study the Executive Orders 1095, 1096, 1097 which are additional directives that the CSU Chancellor's office provided to further guide CSU campuses with adequate implementation. Further, I will analyze the implementation of the Dear Colleague Letter of 2011 through the Cal State University (CSU) system, which educates roughly 500,000 students as of today across twenty-three campuses in the state of California.

I have conducted my case selection by reviewing the Annual Security Reports (ASR's) of each campus in the CSU, per the Clery Act. I pulled the ASR's for each campus, for the year 2014-2015, 2015-2016 and 2016-2017 as these were the last three years in which the Dear Colleague Letter of 2011 was in effect. Although the DCL of 2011 was rescinded in 2017, it was rescinded at the beginning of the 2017-2018 school year and because we are currently in the school year 2017-2018, the end-of-year ASR is not yet available for the use of this study. I further analyzed all sixty-nine ASR's: three for each campus, for each of the twenty-three CSU campuses and extracted the reported cases that are of Title IX case jurisdiction; which are: the VAWA offenses of domestic violence, dating

violence and stalking, and those of a criminal-capacity which are: sexual assault via rape, fondling, incest and statutory rape. Upon compiling this data, I was able to identify the three campuses for my study, which are: (1) CSU Monterey Bay with the *highest* reported Title IX cases per population count, (2) CSU Stanislaus with the *median* reported Title IX cases per population count and (3) CSU Bakersfield with the *lowest* reported Title IX cases per population count.

**Table 1: Title IX Cases in the California State University System**

	CSU Campuses	Total Number of Cases : 2014	Total Number of Cases: 2015	Total Number of Cases : 2016	Total Sums	Ratio 3 Yr Span
1	Bakersfield	1	0	0	1	0.003664480193
	Population	8,720	9,228	9,341	27,289	
2	Channel Islands	15	19	26	60	0.3932839207
	Population	5,879	6,167	6,611	18,657	
3	Chico	10	23	33	66	0.1879592185
	Population	17,287	17,220	17,557	52,064	
4	Dominguez Hills	0	14	8	30	0.05430724323
	Population	14,687	14,635	14,731	44,053	
5	East Bay	10	39	23	72	0.1450646484
	Population	14,823	15,528	15,855	46,206	
6	Fresno	8	7	15	30	0.061462815
	Population	23,179	24,136	24,405	71,720	
7	Fullerton	17	22	26	65	0.06462035541
	Population	38,128	38,948	40,235	117,311	
8	Humboldt	4	16	13	33	0.1528872163
	Population	8,485	8,790	8,503	25,778	
9	Long Beach	8	19	26	53	0.06882676832
	Population	36,809	37,448	37,776	112,031	
10	Los Angeles	17	19	22	58	0.07905990585
	Population	24,488	27,680	27,827	79,995	
11	Maritime Academy	1	2	4	7	0.3613369467
	Population	1,047	1,075	1,107	3,229	
12	Monterey Bay	38	56	75	169	1.031069563
	Population	6,631	7,102	7,274	21,007	
13	Northridge	41	76	93	210	0.2329892775
	Population	40,131	41,548	39,916	121,595	
14	Pomona	15	39	23	77	0.09081576246
	Population	23,966	23,717	25,326	73,009	
15	Sacramento	15	31	10	56	0.03277613897
	Population	29,349	30,284	30,510	90,143	
16	San Bernardino	21	19	44	84	0.2118746088
	Population	18,952	20,024	20,767	59,743	
17	San Diego	48	58	32	138	0.09225092251
	Population	33,483	34,354	34,688	102,525	
18	San Francisco	23	40	48	111	0.1652608022
	Population	29,465	30,256	29,045	88,766	
19	San Jose	54	35	84	173	0.2612427692
	Population	32,713	32,773	32,154	97,640	
20	San Luis Obispo	29	20	34	83	0.1595794612
	Population	20,186	20,944	21,306	62,436	
21	San Marcos	38	34	29	101	0.2206329884
	Population	12,154	12,793	13,144	38,091	
22	Sonoma	13	21	20	54	0.2146232221
	Population	9,290	9,408	9,323	28,021	
23	Stanislaus	14	15	8	37	0.08195042
	Population	9,045	9,282	9,762	28,089	

### 3.2 Interviews

Upon identifying the campuses ideal for this study, I will visit their Title IX information website to review their policies and interview their Title IX experts and student leaders. Interviewing Title IX experts and student leaders is a method of research that I am employing to gain more in-depth, first-hand insight as to university's efforts on a local level regarding the implementation of DCL of 2011. Further, reviewing the Title IX information website will help to provide context as to the kind of information, resources and guidance that is available for a student seeking to make a Title IX claim. Further, interviewing Title IX experts for each campus will provide first-hand insight regarding an administrator's perspective on the DCL of 2011. Moreover, I have chosen to also interview student leaders in each of the three universities' respective student government organizations because student leaders are arguably the most engaged recipients in a university and therefore can provide first-hand insight as to their exposure and education on the DCL of 2011.

#### Interview Questions for Title IX Coordinators/ Title IX Administrators

1. How do you educate students on campus per Title IX? Do you see a correlation with a more informed student body?
2. What departments on campus do you collaborate with on Title IX cases?
3. Do you have mental health services for both responders and complainants?

4. Do parties involved in the case have an advisor through the process?
5. Does the university provide legal support to either parties?
6. How many people are involved in case? Who are these individuals? What role do they play?
7. Is funding an issue to improve efforts?
8. Do you feel there are areas in the law that need to be fixed? Or is poor guidance? Or should be changed?
9. Do you think that the DCL of 2011 is sufficient guidance?
10. How is the DCL of 2011 an extension of gender equity?

#### Interview Questions for Student Government Leaders

1. What do you know about Title IX as a student?
2. Has your student government passed any resolutions or discussed Title IX since the DOE's comments in 2017?

3. Do you feel your campus provides enough awareness and/or training on Title IX, consent, healthy relationships and rape culture?
4. What do students typically do in an event of sexual misconduct and sexual violence?
5. Do you feel like your university does enough to prevent sexual misconduct such as harassment or rape?
6. If you experienced a situation of sexual misconduct, who would you turn to for guidance in your university? Do you know who is there for you?
7. Do you know of the services available to you? Would you actually use them?
8. Do you have to go through training on consent as a student? As a student leader?
9. Your campus has (insert range of low/median/high) amount of Title IX cases? How do you feel about this?
10. Do you think your campus could do more? If so, how?

### 3.3 Hypothesis

With the deconstruction of the core issue and the intricacies that complicated understanding effectiveness of the DCL of 2011 in mind, alongside the research methodology thoroughly explained, I will unpack my hypothesis. I hypothesize that the Dear Colleague Letter of 2011 will in fact be effective guidance that provides a framework for adjudicating claims. Moreover, the three campuses identified for this study will serve as evidence for compliance, educated students and receptive campuses. I hope to find this policy guidance is a sensible and crucial directive, necessary to create safe campuses that address claims of sexual harassment and sexual misconduct.

## 4. Results

Upon qualitative analysis, I learned that the Dear Colleague Letter of 2011 was itself additional guidance for the Office of Civil Rights' initial guidance document "Revised Sexual Harassment Guidance (2001). The Dear Colleague Letter of 2011 outlines the Title IX administrative proceedings, and obligations related to sexual harassment and sexual violence. The Dear Colleague Letter of 2011 also provides a brief descriptor as to the Title IX coordinator's responsibilities within the administrative capacity to protect both victims and alleged perpetrators. Further, the policy guidance discusses training and stresses that Title IX coordinators need resources, trainings and professional development to process claims appropriately. The letter also has a lengthy section of "adequate, reliable, and impartial investigation of complaints" which indicates that when a case holds criminal capacity, the university must still go forth with their own investigation. Meaning, go forth, independent of the police's investigation and sanction students as well because the standards for either investigation differ, and the police have no jurisdiction in a student's academic record, and a university holds no jurisdiction in a student's criminal record. Further,

the Dear Colleague Letter address the preponderance of evidence standard minimally. The policy guidance breaks down the stages of administrative proceedings for processing claims: (a) “notice of the grievance procedures”, (b) “adequate, reliable, and impartial investigation of complaints”, (c) “designated and reasonably prompt time frames”, (d) “notice of outcome” (Dear Colleague Letter, 2011). The letter then provides a section for prevention and education that outlines “steps to prevent sexual harassment and sexual violence and correct its discriminatory effects on the complainant and others” (Dear Colleague Letter, 2011). Further, the Dear Colleague Letter then offers a “remedies and enforcement” sections where guidance is outlined to remove the victim from a hostile environment, counseling and medical services, academic support services and additional procedures to ensure the victim is adequately supported. Further, “counseling and training” section is also provided to outline that institutions must offer counseling, health, mental health services, notifying on-campus departments that can provide further support to the students, training Title IX Coordinators, school law enforcement and any personnel that may aid in carrying out the case. Further, there is a “development of materials and implementation of policies and procedures” outlines guidance for universities to provide records, definitions, standards and information that provides context to the proceedings for public consumption. This section also outlines how a student should seek out support if they believe they want to file a Title IX report. This section also outlines guidance on reviewing evidence, maintain communication throughout the case with all relevant parties, continuously issuing policy statements that reinforce the mission of Title IX to the campus, revising grievance procedures and complaints to improve upon for overall program improvement and development. The letter then follows with a section on “school investigations and reports to OCR” to ensure the campus conducts periodic assessments of student activities to ensure that students do not violate the school’s policies of sexual harassment and sexual

misconduct, further investigates where student have been subjected to sexual misconduct, investigates if a employee knowingly withheld advocating for or being receptive to knowledge of a sexual misconduct allegation. Moreover, conducting a climate study of the campus periodically to adapt policies to the shift in student body and culture.

#### *4.1 Analysis of the Dear Colleague Letter of 2011*

The Dear Colleague Letter of 2011 is incredibly lengthy, however still lacks in addressing a number of areas and provides minimal input for each section. It seems that in an attempt to be concise, the Office of Civil Rights neglected to address crucial points of addressing transparency in reporting and data tracking, legal support services and the lack in funding that may not allow universities to appoint full time Title IX coordinators. The policy guidance serves as a reiteration of the principles for providing protections on sexual misconduct, however it does so with examples. Additionally, I found that the Dear Colleague Letter of 2011 was unclear to the entire nation that the Office of Civil Rights released additional policy guidance to clarify and further support the Dear Colleague Letter of 2011. Essentially there was a policy guidance for a policy guidance (January 2015), for a policy guidance (April 2015).

The Preponderance of Evidence standard, I learned was a bit problematic. This standard requires 51% of ‘evidence’ to adjudicate. However, in the context of a university, 51% at times can be as simple as a claim, the results in an investigation being opened and the alleged perpetrator forced to prove their innocence. I learned that that is the inherent issue within the context of this evidence standard in administrative proceedings of Title IX cases: that the evidence standard frames the alleged perpetrator as “guilty until proven innocent” instead of the traditional “innocent until proven guilty” principle that we rely on for adjudication and sanctioning criminals.

Moreover, whereupon a case is opened, resolutions are usually actionable – dependent on a tangible resolution, such as one-year academic probation.

Where resolutions must exceed a “warning” and signed agreement of amicable resolve. Moreover, this then results in a bias in the policy, whereby those accused must prove their innocence and once accused must be sanctioned. Sanctions are wide-scale resolves, from mediation, to probation, to expulsion and vary largely on the case and are within the discretion of the sanctioning panel.

As for education and prevention directives of the Dear Colleague Letter of 2011, education efforts are not enough. The guidance letter guides universities to provide education on Title IX rights, rape culture, giving and receiving consent and bystander education. Specifically, during (1) orientation programs for new students, (2) trainings for students who serve in residence halls, (2) training for student athletes and coaches, (4) school assemblies and “back to school nights” (Dear Colleague Letter, 2011).

Further, campus culture plays a huge role in student’s willingness to turn to their school for guidance, and even more of a role for the university to accurately identify outreach methods to increase the scope of impact for educating their respective student bodies. More to the point, I learned that the campus environment itself plays a role in implementing protective measures on campus. For example, CSU Stanislaus is a rural farm culture, where at night, the campus becomes empty in a way that students feel fear walking about during night classes. In an attempt to remedy this, the university has implemented emergency poll booths all over campus, within a range of proximity of one another, that lights the way through campus. These poll booths shine a light bright enough to stand as beacons in a dark campus and are themselves phones that reach the police station directly to call upon an escort service or immediate assistance. On the other hand, Monterey Bay has the largest on-campus residents and attribute their Title IX case numbers to activity that occurs at night within the privacy of their student’s apartment dorms. To address this, all resident hall employees are trained. There are also informative graphics and a recognizable campaign

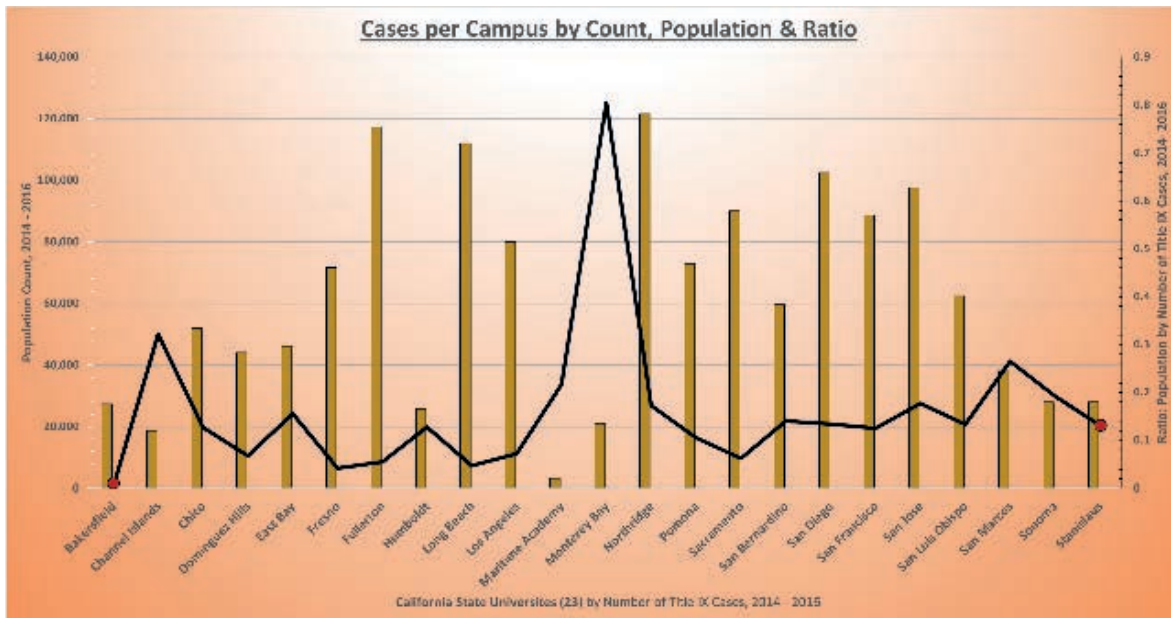
to spread the message of awareness, consent and healthy relationships.

Further, I learned that disciplinary actions are not necessarily proportional. Whereby a student that is found to have committed an act of sexual misconduct, is sanctioned academically however not in a way that will address the core issue at hand. For example, a sanction for sexual harassment may have an implication on the student’s permanent record, as that of academic probation. However, a more proportional and pivotal sanction would have been mandatory anger management classes, or domestic violence education classes, or a workshop that provides insight relevant to their case so as to ensure the student is aware, educated and less likely to repeat themselves.

Fundamentally, the results indicate that technically speaking all three campuses, along with the rest of the CSU are in compliance with the Dear Colleague Letter of 2011. However, compliance is not equivalent to effectiveness. The policy itself was wholly misunderstood across the nation. Many universities sought further guidance for implementation and still continue to work with the Department of Education and the Office of Civil Rights to ensure proper compliance. Many universities feared that upon seeking further guidance, the university would be opening itself up for a lawsuit due to potential violations of non-compliance, however, the OCR seeks to support campuses in ensuring proper implementation because fundamentally the ultimate goal is to address Title IX claims properly, to protect students in such cases, to inform and educate students better, improve outcomes and reduce these occurrences.

#### 4.2 Data

The results of evaluating the Dear Colleague Letter of 2011 through (1) CSU Bakersfield, (2) Stanislaus and (3) Monterey Bay are as follows. Bakersfield was identified as the CSU campus with the lowest reported cases in a three-year span, where their 2017 Annual Security Report claims *one* Title IX case between 2014-2016. Bakersfield’s population cumulatively



over a three-year span is 27, 289, resulting in a case-to-population ratio of 0.003664480193 (California State University Bakersfield, 2017). Stanislaus was identified as the CSU campus with the median reported cases in a three-year span, where their 2017 Annual Security Report claims *thirty-seven* Title IX cases between 2014-2016. Stanislaus’ population cumulatively over a three-year span 28, 089, resulting in a case-to-population ratio of 0.081955042 (California State University Stanislaus, 2017).

Monterey Bay was identified as the CSU campus with the highest reported cases in a three-year span, where their 2017 Annual Security Report claims *one-hundred sixty-nine* Title IX cases between 2014-2016. Monterey Bay’s population cumulatively over a three-year span is 21, 007, resulting in a case-to-population ratio of 1.031069563 (California State University Monterey Bay, 2017).

**Graph 1: Cases per Campus by Count, Population and Ratio**

*4.3 Interview Responses*

Upon my interview with the three Associated Student Government of each respective university,

there was a unanimous response that the education they received regarding Title IX was minimal. All three student leaders explained that in order to register for classes they have to do a mandatory review of the initial Title IX training they did when they first transferred into campus. All student leaders explained that the educational tools are videos on consent and bystander education and are minimally impactful. This is because these videos are mandatory only once or



twice per year, and there is no testing component attached to the video to ensure the student was actually learning and listening. One of the student leaders, explained that many times they can simply press “play” on the video and walk away to do other things in their home. The video will play and the system then registers that that student is in compliance with this educational requirement, whereby they then regain access to register for classes.

Moreover, Monterey Bay student leaders explained that they understand their campus has the highest number of reported Title IX cases in a three-year span and have prioritized efforts to address this. Surprisingly, I found that this campus had more support programs than the other two campuses in this study. Monterey Bay CSU also has a Title IX Ambassador program, which are comprised of peers who are experts on consent, healthy relationships, bystander awareness and mediation. This is because Monterey Bay acknowledges that peers and student leaders are usually the first point of contact for victims seeking support. Moreover, Monterey Bay also has a university and student government committee on Title IX, to ensure constant growth and discussion around this issue. Further, Monterey Bay also puts together many awareness events to empower women to feel safe walking around campus at night. Monterey Bay also has a system of “timely warnings” where when an assault occurs, a sort of “amber alert” is sent out to the student body and the university so that the campus is aware that a perpetrator is still on the loose. Moreover, both their resident halls leaders and student government leaders are all further trained on Title IX, consent, their rights, healthy relationships and bystander awareness because student leaders interact with their peers in a capacity that the university may not be able to reach.

Further, Stanislaus explained that their efforts are around better lighting, maintain an informed campus, empowering women and increasing emergency poll booth beacons around campus. The student body President himself admitted that he was not well informed on Title IX and would not know who on his

campus he would turn to if he himself was a victim. This draws concern regarding education efforts because the student body President, who is arguably one of the most invested students on campus, is unaware of his rights, his resources and the support available to the student body. The President agreed that more needs to be done regarding education, stating repeatedly that the education tool presently used is insufficient. All of the student body Presidents echoed this sentiment—the education efforts are insufficient.

Further, Bakersfield’s student body President explained that she understood her campus had almost no reported cases of Title IX and asked if that meant there was no rape on campus. She explained the campus has a Title IX advocate that presents on campus routinely and has become a point of contact for outreach and for students to seek assistance. Further stated that their awareness campaign regarding Title IX has been successful and has gained recognition from the student body, allowing for a more awareness. Further, Bakersfield also develops routine programs and events around woman empowerment that hints on assault, awareness and discussion.

Lastly, the administrators I spoke to, reiterated the guidance of the Dear Colleague of 2011. A general consensus regarding our interview discussions was that the letter initially brought about a lot of confusion, and that it was the Chancellor’s executive orders 1095, 1096 and 1097 that paved the way for the quality of administrative practices and proceedings that the CSU abides by. Further, the administrators spoke greatly about their individual efforts to educate students, however indicated that every new incoming freshman class resets the progress of an educated campus, and therefore a successful campaign that can maintain a presence long term will help to market awareness on consent and student rights. Further, a recurring theme in the interview highlights that it is difficult to gage and quantify reduction rates and the effectiveness of outreach. Bakersfield’s Title IX coordinator specially indicated that the more outreach they do, the more reporting goes up. Further, funding albeit an issue in other states, is not necessarily an issue in terms of

compliance for the CSU. However, there is a need for increase in funding to appoint staff to support the program and meet additional needs, such as a fulltime outreach educator on Title IX, which is not presently available and is a responsibility shared among multiple people.

#### *4.4 What does this Mean?*

The findings from this research study indicate that the Dear Colleague Letter of 2011 is inefficient guidance as it does not address all the discrepancies that can and do occur on the local level. It is important to note that a lot of the issues that have been highlighted from the policy guidance' inefficiencies, could not have been foreseen and were only addressed once identified –which possibly indicates why the Office of Civil Rights released two additional policy guidance' to clarify the Dear Colleague Letter of 2011. However, the three campuses that I studied in this research project, are in fact following the guidance effectively. This is due to the Chancellor's office Executive Orders 1095, 1096 and 1097 which further clarified the Dear Colleague Letter of 2011. Moreover, the research and data compiled indicate that an increase in support programs and resources show a correlation with an increase of reported cases. This is also widely supported by researchers across the country on this issue and supported by the three campuses that I studied herein. Where Monterey Bay with the highest reported cases per population count also has many more resources, support programs, tools of awareness such as their Title IX Ambassador's program which is peer-to-peer support and education. More to the point, Bakersfield with the lowest reported cases, also reported a lack of employees to address the needs of the campus more accurately. This data means that the CSU is effectively implementing the Dear Colleague Letter of 2011, however the policy guidance is not enough guidance in and of itself.

## **5. Conclusion**

With all of this in mind, this research further indicates that the Department of Education's claims against the Dear Colleague Letter of 2011 holds merit. However, the preponderance of evidence standard, although adequate from a statistical perspective, has not been properly implemented to ensure students are not wrongly convicted and instead creates a "guilty until proven innocent" proceeding. Moreover, due process is a careful dance between constitutional laws, state laws, victim-protection and due process for the alleged perpetrator. This issue of contention is not one that can be answered within these pages and is best left for more advanced researchers that can identify the intersection of due process in a local-level non-criminal case jurisdiction such as a public institution. As for the findings in my research, the Dear Colleague Letter of 2011 tries to address due process through equity, however the preponderance of evidence standard seemingly contradicts this effort as the alleged perpetrator is trying to prove they did not in fact do something they were accused of. Further, there is something to be said about gender that plays a huge role in this policy and this particular issue. As previously mentioned, males make up a large percentage of the perpetrators and for this reason, men activist groups advocated for rescinding the Dear Colleague Letter of 2011 stating a sort of reverse sexism, and inadequacies in the law. By the same token, female activist groups refute and protest the rescinding of this letter because women make up a large portion of those abused, highlighting a grander issue in society. Groups like the Feminist Majority Foundation claim that it affords the alleged perpetrators the benefit of the presumption of truth – "innocent until proven guilty", as is arguably the rule of thumb in society. This policy seems to lean towards a "guilty until proven innocent" rule relying on the Preponderance of Evidence Standard of 51% to investigate a claim and open a case. Many female activist groups see this as a step backwards in the movement of gender equality and Title IX inherently is a step towards the fight for gender equality. Again, this

is a difficult tension in the complexity of the statute, that seems to balance equality and equity, for investigations in Title IX cases are not carried out in the same manner nor with the same backing as a criminal investigation that holds legal implications. For this reason, the policy is inadequate in many areas. On a principle note, Title IX and the Dear Colleague Letter of 2011 stand as policy towards equality and provide students with a basic framework of protection that makes the college both accountable and engaged in the crimes and potential crimes that occur within their jurisdiction.

Throughout the course of this study, it is clear that the Dear Colleague Letter of 2011 is compliance based, not preventative. This is inherently a part of the issue, and yet at a very fundamental level, is widely overlooked. For policies are reactionary responses and are designed as rules for society. Whereby not being in compliance and being in compliance do not necessarily impact incident rates, just the ability to address them. With this in mind, the DOE needs to reinstate an improved version of the Dear Colleague Letter of 2011 that provides more in-depth concrete practices and guidance. The CSU has chosen to preserve the protections afforded by the Dear Colleague Letter of 2011 through their Executive orders 1095, 1096 and 1097. Other universities have lent themselves to increased scrutiny in order to improve their outcomes. Michigan State University is a good example of how to go beyond compliance to improve outcomes, by allowing their data to be scrutinized for feedback. Broadly speaking, studies have shown that more stable bureaucratic structures that serve Title IX cases, have a higher reporting rate due to a level of receptiveness to claims and a corresponding support system on campus –not due to higher incidence rates, but higher reporting rates. This indicates a campus is more receptive to student needs and prioritizes a support structure for investigating and processing these claims which allows victims to find support services, protection and some form of justice.

The intentions of Title IX are impactful when the policy is implemented thoroughly and correctly,

because although the law does not prevent such incidences, it does provide protection from reoccurrence, justice, safety and it validates the victim's claim by having an investigation carried out. However, the adjudications are not proportional to the offenses committed by the perpetrator. This policy leans towards a type of justice that is not educational nor restorative but oriented in punishment, it does not necessarily correct a wrong so much as it offers the victim a sense of validity to what happened to them. It is important to note that this happens in society as well, we have the largest number of incarcerated individuals in the world because society pursues punishment as justice. Truthfully, in the context of an educational system, a proportional "punishment" or measure would be more restorative. Whereby a student that is adjudicated in a Title IX case of, per say harassment, should be required to perhaps take a class on consent and write an essay explaining how they have grown since the incident, plus academic probation. This is especially important towards the educational efforts required by Title IX to aid in prevention, to teach students what consent means and to provide students with a space to understand courting, dating, consent, abuse, and how to effectively communicate on issues of sex. Society has many social norms and nuances that parents seldom teach their kids in relation to consent and dating, which many students and adults alike still struggle to understand. A class such as one on consent and Title IX can provide a space of dialogue –more than the basic video clips that students at the CSU are required to watch once a year to register for classes. It would be a more consequential social good to pursue adjudications that validate the victim and provide a sense of justice but that also educate the perpetrator on their wrongdoing. With this in mind, undoubtedly rape is prosecuted in a criminal capacity through the court system, and Title IX and the Dear Colleague Letter of 2011 offers students a support system on campus to further protect the student from their perpetrator.

However, in more nuanced cases, it raises the question on how academic probation can protect from reoccurrence, prevention or a change in behavior. In

more egregious cases, it raises the question when upon an adjudication results in rescinding a degree, or expelling a student, how is this proportional? This calls into question if this measure is simply due to the limitations of an educational institution; and highlights inadequacies in the law that do not sufficiently address adjudication and proportionality. Further, it would be intriguing to study the life-long implications of a perpetrator whose adjudication resulted in expulsion, however were not provided with the educational tools to understand social expectations of how to gain and give consent, on dating, courting and communication. More importantly, how expulsion resulted in a justifiable measure of “justice”. It seems ironic that an educational system not teach perpetrators more adequately on how to consent and gain consent. Further, when upon entering a university and partaking in that campus, one consents to a sort of social contract to engage by the school’s policies and by their values. On that premise alone, a Title IX adjudication resulting in expulsion seems fit based on violating that institution’s implied social contract according to codes of conduct and values, per say. Again, this policy holds inadequacies that provide a sense that not everyone in a Title IX case is equally protected, innocent until proven guilty and validated. The policy lacks guidance regarding transparent practices of due process, transparent practices of establishing witnesses and evidence, and transparency to establish equal support for both parties throughout the investigation. These are tense complexities that the policy lacks in assertively addressing as if conflicts with victim protection, presumption of guilt versus truth and balancing a stratum of laws. Again, universities struggle with compliance due to a lack of funding, increased reporting, lack of proper implementation, misinterpretations of the laws, lacking transparency and lacking personnel.

Finally, the Dear Colleague Letter of 2011 is a basic framework that should be improved upon and is currently rescinded while the Department of Education takes in public commentary to address these issues. To that point, I add that education efforts that are intended

to be preventative, are not enough, as indicated by students and the cases themselves. Further, more studies need to be conducted on the effectiveness of education efforts as preventive measures for reducing sexual misconduct and sexual violence on campuses. More importantly, these education efforts need to be adaptable to social cultural norms, real-case scenarios and adaptive to stimulate learning that encompasses dialogue that is more than consent but addresses the culture of dating and courting and the different communication styles of engaging in a sexual relationship. Lastly, this research paper is a small part of the conversation as to the larger issue, this study itself is not sufficient to account for the many intricacies of this policy guidance however can be used to gain more insight towards this on-going conversation.

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## Athena Garcia-Gunn



Following an internship on Capitol Hill in 2013, Athena has been motivated to craft and change policy in order to strengthen her community, empower marginalized people and expand accessibility to political institutions, services and resources. Athena being a former foster youth, became engaged in reforming the foster care system and advocating for her peers -thus grew her passion for advocacy. At Cal Poly Pomona, Athena took up the position of Civic Engagement Officer in ASI where she went on to create two resolutions that impacted both the Cal Poly Pomona community and the CSU wide community. She co-authored a gender bill with CLASS Senator of 2017-2018 Cameron Pastrano and co-authored a CSU-wide resolution through the Cal State Student Association (CSSA) to protect Title IX polices and to keep those protections for all current and future students in the CSU system. Within Athena's first quarter at Cal Poly Pomona, she gave a TedTalk at Mt. Sac shedding light on the foster care system. Shortly prior she was Class Speaker for her graduating class at Pasadena City College in 2016. In 2015, Athena was asked invited to speak before California's Chief Justice Tani Gorre Cantil-Sakauye to enshrine November as National Adoption Month. Since 2013, Athena's advocacy has taken her nationwide where she proactively take on issues of trauma, mental health, healing, and the openly discusses foster care issues to audiences of the fostercare community both professionals and caregivers alike. Today Athena works as a Child Welfare Policy consultant for ICF under the Department of Health and Human Services. Athena hopes to work in the top levels of government aiming to bring restorative integrity to the field to increase access, awareness and transparency to policy.

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