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A Content Analysis of Title IX Sexual Misconduct Violations
Using the Office for Civil Rights Investigative Findings for Higher Education in New Jersey

By
Monise Princilus

Committee:
Dr. Amy Kline (Mentor)
Dr. Daniel Gutmore
Dr. Barbara Strobert

Submitted in partial fulfillment of the requirements for the degree
Doctor of Education
College of Human Development, Culture, and Media
Seton Hall University
2023

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COLLEGE OF HUMAN DEVELOPMENT,
CULTURE, AND MEDIA

SETON HALL UNIVERSITY

DEPARTMENT OF EDUCATION LEADERSHIP MANAGEMENT & POLICY

APPROVAL FOR SUCCESSFUL DEFENSE

Monise Princilus has successfully defended and made the required modifications to the text of the doctoral dissertation for the **Ed.D.** during this **Fall Semester**.

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The mentor and any other committee members who wish to review revisions will sign and date this document only when revisions have been completed. Please return this form to the Office of Graduate Studies, where it will be placed in the candidate's file and submit a copy with your final dissertation to be bound as page number two.

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Dedication

This dissertation is dedicated to my brilliant, strong, beautiful, talented dancing daughter, Milania Maurice. Dr. Mommy did this for you! You never ceased to amaze me, whether it's through your academics or a dance competition. Thank you for your unconditional love and understanding when mommy had to attend classes or study. You were created to impact your generation positively, and I can't wait to call you "Dr. Mimi" and have you fix all my dental work that was done incorrectly! You will take Howard University and dental school by storm. I love you, and I am very proud to be your Dr. Mommy!

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ABSTRACT

Sexual misconduct incidents remain a major problem on college and university campuses. Despite its prevalence, higher learning institutions are still grappling with establishing the best approach for addressing or minimizing sexual misconduct practices on their campuses. While previous scholars have explored Title IX compliance, it is not clear how the Office for Civil Rights (OCR) interprets Title IX noncompliance in higher education institutions. The purpose of this qualitative content analysis (QCA) study is to explore how OCR interprets Title IX noncompliance in New Jersey's higher education institutions. This content analysis study used social constructionism theory (SCT) to frame the problem, research questions, and design. To conduct the policy analysis, secondary data from the OCR's investigative office were used. Concerning data collection procedures, a sample of 23 Letters of findings (LOFs) and resolution letters (RL) were gathered through the Freedom of Information Act (FOIA). The findings indicated that the following strategies were recommended to improve compliance: training employees, improving grievance procedures, designation of Title IX Coordinator, complaint reviews, notice of non-discrimination, climate checks, and information sessions. The following strategies were recommended to improve compliance in sex-based discrimination: provision of facilities, provision of publicity, and provision of support services, survey female students about athletic opportunities, and travel and per diem allowance. The study may be useful to education stakeholders responsible for training employees. Improving grievance procedures, designation of a Title IX Coordinator, complaint reviews, drafting notices of non-discrimination, and information sessions may be used to strengthen compliance resolutions. Future research should be conducted to determine how training can impact non-discrimination Title IX compliance.

Keywords: Title IX, sexual misconduct, campus sexual misconduct, and OCR.

CHAPTER I

INTRODUCTION

Background

Sexual misconduct incidents remain a major problem on college and university campuses (Bolívar, 2019). Despite its prevalence, higher learning institutions are still grappling with establishing the best approach for addressing or minimizing sexual misconduct practices on their campuses (Alaggia & Wang, 2020). As per Banyard and Potter (2018), most higher learning institutions have not responded to all incidences of sexual misconduct to the extent that the outcomes satisfy the affected victims. In some instances, investigators have cautioned that campus disciplinary policies and practices could be unsupportive of sexually assaulted victims by placing minimum accountability on offenders (Bloom et al., 2021; Bolívar, 2019).

Given the limitations of campus disciplinary practices, many victims develop the sense that the learning institution mechanisms do not address their stories, meet their needs, or even address the sexual misconduct experience on campus (Alaggia & Wang, 2020). With the pronounced negative effects of sexual misconduct on campuses, the U.S. Congress established laws regulating how institutions of learning addressed all sexual misconduct-related issues (Bolívar, 2019). The law is famously known as Title IX of the Education Amendment of 1972. Title IX encourages all learning institutions to adopt appropriate procedures considering victims' interests when addressing sexual misconduct allegations on campuses (Bolívar, 2019). While there is wide support for the basic intent of Title IX, other provisions of the law have encountered several criticisms.

Some scholars have reported that Title IX provisions are inadequate in handling sexual misconduct allegations, given the learning institutions' responsibility to address sexual

misconducts that could be beyond their jurisdiction (Comvalius-Goddard, 2021). Others have reported that Title IX is unjust, given that they prioritize victims with minimal regard for offenders (Cowan & Munro, 2021). In this case, the use of Title IX hearings in sexual misconduct allegations focuses mostly on the victims with limited focus on offenders.

Disciplinary procedures related to sexual assault are only meant to allow learning institutions to meet their obligation of providing a safe and supportive learning environment (Fronius et al., 2019). In most cases, such mandate and duty could be confined to traditional disciplinary practices embedded in findings to solve crimes (DeKeseredy et al., 2019). However, such practice is not encouraged in Title IX institutions, given that fact-finding is ignored in preference for the victim's safety and satisfaction (Cowan & Munro, 2021). Given these limitations in learning institutions' procedures to address sexual misconduct on campuses fully, there is a need to implement alternative approaches to sexual misconduct on campuses in Title IX compliance institutions (Del Gobbo, 2021).

Although Title IX compliance may not fully replace disciplinary proceedings, it can provide an alternative approach to the quasi-criminal disciplinary hearings that administrators of higher learning institutions are currently struggling to tackle (Fronius et al., 2019). Gentile (2018) established that Title IX compliance is strategically unique and responsive to victims' needs and provides them with greater power to influence the outcome. Title IX compliance could also provide learning institutions with the opportunity to account for their institutional environmental safety and accountability for a sexual misconduct. Gavrielides (2018) noted that Title IX compliance could allow learning institutions to leverage the community to address sexual misconduct better. There is, therefore, the need to understand how the Office for Civil

Rights (OCR) interprets Title IX non-compliance in institutions of higher education using the Office for Civil Rights investigative findings.

Statement of the Problem

While previous scholars have explored Title IX compliance, it is not clear how the OCR interprets Title IX noncompliance in higher education institutions (James & Hetzel-Riggin, 2022; Karp, 2019). The Department of Justice (DOJ) allows colleges and universities to determine the standards they will utilize during a hearing. In turn, this creates ambiguity that does not allow for formal guidance to the hearing officials (Karp, 2019). Some scholars have argued that Title IX could enable learning institutions to leverage their competencies and avoid the legal problem of using quasi-criminal justice to address campus sexual misconduct (Gilzene, 2020; James & Hetzel-Riggin, 2022; Karp, 2019).

Although there is considerable research on campus sexual assault incidences, there is limited research on how OCR interprets Title IX sexual noncompliance in higher education institutions (Akens et al., 2019; Giles-Mitson, 2021; Rodriguez, 2020). Thus, there is need to investigate sexual assault incidences in higher learning institutions in New Jersey to discover how OCR personnel interpret Title IX noncompliance in higher education institutions. The Department of Justice remains committed to pursuing the goal of equality in education through its continued enforcement of Title IX. However, federal complaints and Title IX investigations show that higher education institutions are experiencing significant compliance challenges in meeting Title IX requirements.

Purpose of the Study

The purpose of this qualitative content analysis (QCA) study is to explore how (OCR) interprets Title IX noncompliance in New Jersey's higher education institutions. Title IX is a

federal law that guarantees equal opportunity and access to programs, activities, and employment at educational institutions that receive federal funds (Chiste, 2005). The primary objective of Title IX is to address sexual discrimination in education (Chiste, 2005). Consequently, when learning institutions hesitate to respond to sexual misconduct on campuses, Title IX law dictates that this inaction constitutes sexual discrimination (Gibbs, 2009).

Title IX requires learning institutions to address and respond to all sexual misconduct claims by ensuring that they “take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again” (Title IX). Mishandled sexual misconduct cases could be detrimental to institutions as they will likely be subjected to federal lawsuits and civil liabilities.

Research Questions

The following research questions address OCR’s interpretation of Title IX non-compliance policy relating to how institutions of higher education handle Title IX complaints:

1. How does OCR respond to complaints of how institutions of higher education handle Title IX in New Jersey?
2. What identifiable themes are found in OCR’s Letters of Findings and Resolution for institutions of higher education in New Jersey?
3. What strategies do the OCR suggest to improve Title IX compliance in institutions of higher education in New Jersey?

Theoretical Frameworks

This content analysis study used social constructionism theory (SCT) to frame the problem, research questions, and design. Fundamental to SCT is the premise that individuals

create knowledge as a function of interactions between existing knowledge and new ideas or information encountered in the context of a social environment (Flavell et al., 1998).

Additionally, constructivists believe that fostering interactions between an individual's current knowledge and new knowledge is the only way to promote learning.

Constructivism underscores the idea that learning should be student-centered, and knowledge is created socially by individuals. According to social constructionism theory, learners create knowledge through experiences as a result of social interactions in the environment (Vygotsky, 2020). Constructionism theory will be applied in this study to offer insights concerning individual interpretations of the use of Title IX for addressing sexual conduct violations.

Research Design

This research was analyzed using content analysis. Content analysis, a method for systematically describing the meaning of data from documents (Selvi, 2019). This is done by classifying parts of your material as instances of the categories of a coding frame (Marvasti, 2019). The method is suitable for all material that requires some degree of interpretation. The research assigns successive parts of your material to the categories of your coding frame (Marvasti, 2019). This frame is at the heart of content analysis, and it covers all those meanings that feature in the description and interpretation of your material (Selvi, 2019). This is a complex process in which we bring together our perception of the material with our own individual background: what we know about a topic, the situation in which we encounter it, how we feel at the time, and much more (Marvasti, 2019). Meaning is not a given, but we construct meaning. The assumption is that meaning is not something that is inherent in a text and that the recipients take an active part in constructing meaning.

To conduct the policy analysis, secondary data from the OCR's investigative office were used. The information is readily available on the U.S. Department of Education's website. Concerning data collection procedures, Letters of Findings (LOFs) and Resolution Letters (RL) will be gathered through the Freedom of Information Act (FOIA). The FOIA is a federal act that permits public access to federal data. Given the increase in Title IX violations, most LOF and RL will be accessed on the U.S. Department of Education's website. The researcher will not need to seek SHU's IRB approval to collect secondary data from the U.S. Department of Education's website for non-human subject research. This study will be "not human subjects" research. However, permission to access LOFs and Resolution Letters data will be sought from the Department of Educational and Research Administration's department chair. The data collection process will commence after gaining approval. Through a social constructionist lens and by applying content analysis, OCR's LOFs and Resolution Letters will establish how OCR interprets Title IX noncompliance in New Jersey's higher education institutions.

Significance of the Study

Compliance with Title IX remains a top concern for administrators in higher education institutions (Cantalupo, 2021; Nite & Nauright, 2020). The cost of being found liable or non-compliant with Title IX is great. Not only are HEIs concerned about the monetary damages they can face for Title IX violations (Nite & Nauright, 2020, Richards & Kafonek, 2016), but they also worry about compliance reviews that could possibly halt federal funds for noncompliance (Koss et al., 2014; New, 2015; Nite & Nauright, 2020). Amid these significant concerns, there are unanswered questions and concerns regarding OCR's Title IX guidance (Nite & Nauright, 2020). Despite the guidance provided by OCR, HEIs are failing to comply with Title IX, thus failing to properly protect and serve students. Campus sexual assault stories have appeared in

publications and media outlets such as the *Huffington Post*, *The New York Times*, and CNN. The negative publicity that comes with mishandling or covering up sexual assault cases is a grave risk for colleges and universities (Nite & Nauright, 2020).

Assumptions

Assumptions are the beliefs researchers hold to be true when conducting a study. The data for this study will be obtained from the U.S. Department of Education's Office for Civil Rights. Consequently, the researcher assumes that Office for Civil Rights will collaborate to provide the information requested for the study by the researcher. Second, it is assumed that the documents provided by the OCR will be original and reliable to provide the required information for this study.

Limitations

The material availability will limit the study since it will be challenging to generate additional data given the research design selected for the study. However, the study material that will be provided by OCR is publicly available. The number of documents used in the study may be another source of limitation, as the researcher has no control over how many documents will be available.

Delimitations

The study will have several delimitations. The study will be delimited to Title IX analysis. Second, the study will be delimited to OCR's office interpretation of Title IX and how noncompliance occurs. The study will also be delimited by the theoretical framework adopted. In particular, the study will be delimited by social constructionism. The selected research methodology will also be delimited in the study. The researcher will only use the QCA design to conduct the policy analysis for this study.

Organization of the Study

The first chapter introduces the statement of the problem, the purpose of the study, research questions and significance of the study, design of the study, limitations/delimitations, and the definition of terms. Chapter II creates a historical context for the study by reviewing the rules, guidance, practices, and implementation of Title IX. Also, it examines presidential administration policy changes and guidance. Chapter III includes the methodology and the process used to gather data for the study. Chapter IV summarizes the research and responds to the research question, and Chapter V considers discussion, conclusions, and recommendations.

Definitions

Complainant

An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Designation of a Title IX Coordinator

Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under Title IX; the employee must be referred to as the “Title IX Coordinator.”

Office for Civil Rights (OCR)

Ensure equal access to education and promote educational excellence through vigorous civil rights enforcement in our nation’s schools.

Program or Activity

Education program or activity includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs and consists of any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

Respondent

An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual Harassment

Conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the recipient conditioning the provision of aid, benefit, service of the recipient on an individual's participation in unwelcome sexual conduct (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity (3) "Sexual assault," "dating violence" "domestic violence" "stalking" as defined by the Clery Act.

Title IX

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 (Hepler, 2013).

List of Abbreviations and Acronyms

OCR: Office for Civil Rights

DCL: Dear Colleague Letter

FOIA: Freedom of Information Act

HEIs: Higher Education Institutions

IRB: Institutional Review Board

LOFs: Letters of findings

Q&A: Questions and Answers

SCT: Social constructionism theory

STEM: Science, Technology, Engineering, And Math

CHAPTER II

LITERATURE REVIEW

The chapter begins with literature search procedures, a history of Title IX and conceptual framework. This is followed by Title IX and sexual assault and mishandling in higher learning, prevalence of sexual assault and mishandling allegations in higher education and U.S. Department of Education's Office for Civil Rights Title IX guidance. Next the literature review concludes with New 2020 Title IX Regulations.

Literature Search Procedures

The following databases were reviewed: SHU Library, the Education Resources Information Center (ERIC), Journal Storage (JSTOR), ProQuest using the following search terms social constructionism theory, Title IX noncompliance, OCR, Title IX history, and Title IX flaws. Boolean logic and phrase searching included Title IX" AND "OCR" AND "interpretations" AND "New Jersey". Articles were included if (a) they focused on Title IX regulations, compliance, noncompliance, or OCR interpretations in the context of educational institutions, (b) they employed qualitative and quantitative analysis as a research methodology, or discussed its application in educational or legal contexts, and (c) pertained to higher education institutions within the state of New Jersey, considering the regional focus of the study. In addition, articles were included if they were published within the last ten years (2018 to 2023) to ensure the inclusion of current perspectives and developments in Title IX interpretations and enforcement. Articles were excluded if (a) did not directly relate to Title IX, OCR interpretations, noncompliance, or higher education institutions in New Jersey and focused on general education policies or unrelated legal frameworks. A total of 23 articles met the inclusion criteria and were therefore analyzed.

Conceptual Framework

Scholars of social constructionism have defined the concept as the process or how people account for the places or the world they inhabit (Vygotsky, 2020). Burr (2005) established that the knowledge and ideas shared by social constructionists develop through social relationships and contacts. A review of literature on social constructionism revealed that beliefs, behaviors, knowledge, and concepts developed within a particular social context are a result of societal contacts and interactions with others; that is, rather than constructing meaning based on individual observations, constructionists center their argument on the collaborative and coordinated description of social meaning and knowledge (Lombardi et al., 2021; Tiefer, 2018).

The development of social construction theory is attributed to different sources dating from more than two centuries ago. Michel de Montaigne presented the first instance of social constructionism in the 16th century, where he suggested that rather than interpreting things, there was a need to interpret interpretations, too (Burr, 2003). Similarly, Friedrich Nietzsche, in 1887, explained that only interpretations existed, and facts were only illusions constructed by individuals based on the reality they lived (Burr, 2015). However, the significant development of the social constructionism theory and associated constructs are attributed to the philosophical works of Berger and Luckmann (1966).

Vygotsky developed the social constructionism theory in 1990 (Vygotsky, 2020). The fundamental agreement among constructionists is the premise that individuals create knowledge as a function of the interaction between existing knowledge and new ideas or information they encounter in a social environment (Flavell et al., 1998). Additionally, constructivists believe that fostering interactions between an individual's current knowledge and new knowledge is the only way to promote learning. Constructivism, commonly known as cognitive theory, premises the

role of learners in the self-construction of knowledge. Flavell et al. (1998) defined social constructionism theory as a learning framework that confirms the nature of knowledge and how people learn the knowledge. The process of gaining new knowledge entails learners' ability to build new meanings based on the current knowledge and the experiences they encounter in the external environment (Vygotsky, 2020).

Social constructionism theory has been used in various settings and fields to understand how knowledge is passed and practiced. Constructivist learning theory has three major characteristics (Vygotsky, 2020). First, constructivists believe that the meaning and experience of new knowledge is self-built through the cognitive mechanism and cannot be transferred between the teacher and the learner (Vygotsky, 2020). However, such knowledge is deeply created inside an individual's mind in response to their interactions with the external world. Learners' previous experiences could also influence their knowledge (Vygotsky, 2020).

Second, constructivists believe that creating meanings to learners' experiences is a psychological improvement. Consequently, there is a need for active mental efforts among learners (Charmaz, 2021). Learners must dedicate their mental cognition and functioning to the learning of new knowledge, processing it, and deriving meanings from their experiences. Third, the cognitive structure of the learner is considered repellant to change (Derry, 2013). The most important perception held by constructivists is that cognitive structures are often persistent to change. In this case, it takes repeated effort to create new knowledge or experience. The way to change a learner's mental knowledge is to train and develop them continuously (Vygotsky, 2020).

Four key assumptions anchor social constructionism and the social development of knowledge (Berger & Luckmann, 1966; Burr, 1998). The first assumption is reality. Burr (2005)

described the assumption of reality as based on how people and organizations sustain a particular social phenomenon through their social practices. The assumption of reality urges social constructionists and people to challenge beliefs, conventional knowledge, and unbiased knowledge in addition to critically analyzing their surroundings (Burr, 2005, 2015). The second assumption describes knowledge and understanding as being constructed through daily and constant interactions with and between people rather than through observations (Burr, 2015). Burr (2015) argued that, as a social construct, language derives its meaning from its societal and cultural application.

The third assumption is the interaction and integrated working of social action and knowledge in any particular social context. Tiefer (2018) asserted that people understood the world based on their interaction with different social events. Each social interaction results in a different understanding and view of a social context and the world in general (Burr, 2015). The fourth assumption combines a historical and cultural understanding of the social concept. Burr (2015) established that cultural and historical association influences the personal understanding of the word. The differences and varied understanding of social concepts provided by social construction theory are critical in its application. Research has demonstrated that social constructionism has been used to address different social problems, especially those associated with gender and race (Tiefer, 2018).

Social construction theory has been used by researchers studying equality in institutions of higher learning. Schmidt and Cacace (2018) reviewed the literature on developing structural frameworks to support equality in research and found that the interaction between input and output variables, including representation and participation in the decision-making process, resulted in a multidimensional framework that supported equality. Similar findings were reported

in Miner et al. (2018), who investigated gender inequity in Science, Technology, Engineering, and Math (STEM) courses using social construction theory, established that gender inequity in STEM resulted from the beliefs, expectations, behaviors, and choices women made. However, to address the issue in institutions of learning, the collaboration of social constructionism would prove critical in encouraging academic institutions to collectively own the problem rather than making it a women's problem.

History of the Title IX

Since Title IX was first implemented in 1972, there have been several additional federal mandates and shifts within presidential and political administration that have added to the complexity and intricacy of Title IX policy (Valentin, 1997). The major federal mandates that inform higher education Title IX institutional reporting and adjudication processes include The Clery Act of 1990 (Weis, 1990); The Violence Against Women Act of 1994 (Jessup-Anger et al., 2018); The Campus SaVE Act of 2013 (Valentin, 1997) and Dear Colleague Letters in 2011, 2014, and 2017 issued by the U.S. Department of Education Office for Civil Rights (Wilgus & Lowery, 2018). Title IX policy is often referred to as a “living law,” given that it has been subjected to more than two dozen proposed amendments, reviews, supreme court cases, and presidential political actions that add to the complexity of the definitions of sexual violence, institutional responses and (in)action and clarifications of which students are protected by the law (Valentin, 1997; Wadley & Bicolazzo, 2021).

Title IX, Sexual Assault and Mishandling in Higher Learning

The first piece of legislation to forbid sexual discrimination in public education was passed by Congress twenty-one years ago (Chamberlain et al., 2018). The Education Amendments of 1972's Title IX prohibited sex discrimination in institutions that received

government funding (Chamberlain et al., 2018). Title IX increased the number and percentage of women enrolling in postsecondary institutions, as well as fairer educational and job possibilities for females. Despite the importance of this legislation, Title IX has received little attention from historians (Chamberlain et al., 2018).

Congress established several measures offering financial aid to higher education institutions and their students during the 1950s and 1960s (Chamberlain et al., 2018). The members of Congress filed several legislations in 1970 to extend and expand these programs because several of these laws were scheduled to expire in 1971 (Wiersma-Mosley & DiLoreto, 2018). Congress debated sex discrimination in education legislation in conjunction with the extension of these financial aid regulations due to several significant occurrences (Wiersma-Mosley & DiLoreto, 2018). The origins of Title IX, a law that fundamentally altered the education trajectory, took place in the late 1960s and early 1970s (Chamberlain et al., 2018). Feminists who were frustrated by the pervasive inequality that took place in educational institutions pushed for Title IX. Dr. Bernice Bunny Sandler, who is frequently referred to as the "Godmother of Title IX," was crucial to developing and enacting that law (Chamberlain et al., 2018).

Higher education institutions were seen as autonomous enterprises that did not require the assistance of the government; therefore, they were purposefully left out of earlier legislation like Title IX, which applied to educational institutions and their educational operations (Cyphert, 2018). Neither statute applied to college staff, managers, or students. The presidential Executive Order banned racial, ethnic, religious, and national origin discrimination by the U.S. Commission on Civil Rights (Cyphert, 2018). President Johnson revised the Executive Order on October 13, 1968, to include sex discrimination (Cyphert, 2018). Since most higher institutions

had federal contracts, this was the turning point in the fight against sexism in education. Upon passage of President Johnson's revised Executive Order, Dr. Sandler and a group of women and men filed initial lawsuits against 250 institutions in January 1970 (Cyphert, 2018).

A bill demanding gender parity in education was presented and passed by Congress, and President Nixon signed Title IX into law in 1972 with the help of Representatives Edith Green (D-Oregon) and Patsy Mink (D-Hawaii) (Jessup-Anger et al., 2018). It stated that no one in the United States would be subject to discrimination under any educational program or activity receiving federal financial assistance, be denied the benefits of such a program or activity or be excluded from participation in such a program or activity based on sex (Jessup-Anger et al., 2018). The first instance in which a court provided legal interpretation was *Cannon v. the University of Chicago* in 1972. A female plaintiff, in this case, alleged that the university's medical school program did not accept her because of her gender (Jessup-Anger et al., 2018).

The United States Supreme Court decided that the history of Title IX and the language used supported a private right of action in the plaintiff's case, using Title VII as a precedent due to the parallels between both laws (Stromquist, 2020). Ten years later, in *Grove City v. Bell*, the Supreme Court limited the application of Title IX to those programs within institutions that received federal funding (Stromquist, 2020). This meant that to penalize an institution for failing to comply with Title IX, the U.S. Department of Education could only target certain programs within the institution (Stromquist, 2020). However, the Civil Rights Restoration Act of 1987 was passed by Congress and overturned the Supreme Court's ruling, extending Title IX protections to all aspects of an institution rather than simply those receiving federal funding (Lewis & Kern, 2018).

The United States, to mitigate the rising cases of sexual misconduct in institutions of learning, ratified Title IX in 2008, directing institutions of learning to reevaluate and strengthen their administrative policies and response against sexual misconduct (Castellanos & Huyler, 2018). Under Title IX, higher institutions of learning were required to create a department of education office for civil rights or OCR managed by a Title IX coordinator who would guide and advise the institution on its response to sexual assault cases, and handle sexual harassment complaints in addition to ensuring the school's compliance with Title IX. Holland et al. (2018) investigated the policies and Title IX implementation in 150 universities and found that universities with Title IX coordinators compelled the disclosure of sexual assault and actions against offenders. Clay et al. (2019) reviewed the literature and found that Title IX positively influenced administrative policies on sexual assault and triggered positive responses against sexual assault and perpetrators. Moreover, Title IX helped higher education institutions to navigate the complex investigations associated with sexual assault claims.

Examining the benefits of Title IX in combating sexual harassment in colleges, Castellanos and Huyler (2018) revealed that many institutions became proactive in their response to sexual assault and harassment. Trudeau et al. (2019) reiterated that Title IX held learning institutions accountable for failing to act against sexual misconduct. While investigating Title IX and how it is associated with gender, race, and sport, Grenardo (2019) found that Title IX protected the integrity of the learning institution while providing guidelines for expedited investigation and legal action against sexual offenders. Cantalupo (2021), in a review of the impacts of Title IX on sexual misconduct in higher education, reported increased action and urgency in solving sexual harassment cases and punishment of perpetrators through jail terms and loss of employment. Moreover, with more than 300 institutions of learning under

investigation for violating Title IX and mishandling sexual assault cases, Reynolds (2022) established that as a result of Title IX, schools have mobilized laws and taken proactive measures to address sexual misconduct.

Although research has shown Title IX to mitigate sexual misconduct in higher learning, some scholars have reported otherwise. Goldman (2019), while investigating the impacts of Title IX against sexual assault, found the investigations to be lengthy and sometimes incomplete, allowing perpetrators to walk free. Elletson (2019), while studying sexual misconduct at Morehouse College, reported that hypermasculinity in Morehouse college and poor Title IX coordination at the institution fueled sexual misconduct. Moreover, interference by the institution resulted in a piling of cases, while collusion between Title IX coordinators and sexual offenders led to the mishandling of sexual assault claims. Paleka (2020) reiterated that despite one in every five women in learning institutions being assaulted sexually, non-compliance with Title IX by learning institutions was pervasive due to poor policies and communication, leading to feelings of betrayal by the victims.

Comparably, Lorenz et al. (2022b) conducted qualitative research with 21 graduate and undergraduate students who survived sexual assault to Title IX and sexual misconduct in higher learning institutions. Despite Title IX demanding that learning institutions enhance their administrative policies against sexual misconduct, Lorenz et al. (2022b) reported that higher learning institutions still tend to protect perpetrators from an investigation, resulting in institutional betrayal. Additionally, a lack of urgency from Title IX coordinators and a lack of resources to support investigations, supports a culture of sexual misconduct, which only hinders the effective implementation of Title IX. Therefore, lack of cooperation and non-adherence to Title IX guidelines has increased cases of sexual misconduct in higher education institutions.

Prevalence of Sexual Assault and Mishandling Allegations in Higher Education

Globally, the United Nations Women (2019) reported that one in every three women experiences sexual violence or harassment from their partners or outsiders. Around the world, the UN Women (2019) report illustrated that at least 2.6 billion women lived in countries that did not recognize rape in marriage as a punishable offense. In the United Kingdom, 45%-55% of women, or at least 100 million women, have been exposed to sexual harassment in institutions of learning or places of work (UN Women, 2019). Moreover, Bondestam and Lundqvist (2020) revealed that in the United States, an American is sexually assaulted every 68 seconds. One in every six women has been raped or almost raped during their lifetime in the United States, accounting for 14.8% of rape cases and 2.8% of almost rape (Bondestam & Lundqvist, 2020). Similarly, one in every 33 men, or 3% of men in the United States, have been raped or nearly raped in the United States.

In other findings, Castellanos and Huyler (2018) reported that sexual assault in institutions of learning was higher, with 20% of women and 11% of men being assaulted each year sexually. Reviewing the findings of 33 published articles, Castellanos and Huyler (2018) found sexual assault and mishandling to impact students' academic continuity and performance negatively and, in some instances, resulted in students dropping out of school. Bondestam and Lundqvist (2020) reviewed the literature on sexual harassment in institutions of higher learning and found different factors that contributed to increased sexual harassment cases. In their review, Bondestam and Lundqvist (2020) found toxic academic masculinity, poor leadership, a culture of not reporting sexual harassment, normalization of gender-based violence, and poor working conditions increased cases of sexual harassment. This negative culture contributed to the mishandling of sexual harassment cases (Bondestam & Lundqvist, 2020).

Sexual assault and mishandling in universities have negatively influenced the number of students joining such institutions, academic performance, and student retention. Hogue (2020) argued that female students' declining enrollment in higher learning institutions is attributable to increased cases of sexual harassment and the coverups done by these institutions to protect their reputation and that of their instructors. Conn (2020) illustrated that compared to male students, female students were discriminated against and harassed sexually, and as a result, the number of female students enrolling for business majors in American universities has reduced significantly. Besides declining enrollment, some scholars reported that due to sexual harassment and mishandling of such cases by institutions of learning, the performance of many students has plunged (Bovill et al., 2022; Castellanos & Huyler, 2018; O'Callaghan et al., 2021).

Despite the negative impacts of sexual harassment, relatively few cases are reported and addressed by higher learning institutions. Castellanos and Huyler (2018) asserted that 90% of sexual offenses and assaults were not reported. Castellanos and Huyler (2018) argued that the increase in unreported sexual cases resulted from universities and law enforcement officers mishandling. Even with effective sexual assault policies such as Title IX, many students and faculty members failed to report the cases. Bondestam and Lundqvist (2020) reiterated that many learning institutions violated Title IX and shielded perpetrators of sexual violence. Like Castellanos and Huyler (2018), Bondestam and Lundqvist (2020) established that many universities have yet to fully ratify and reevaluate their policies to respond to sexual assault cases effectively and, thus, the limited number of reported cases.

Extending the findings of Bondestam and Lundqvist (2020), Young and Wiley (2021) reviewed the literature on why sexual misconduct in universities was high while reporting such cases was low. The results indicated that the lack of effective willpower to discourage sexual

misconduct against students and perpetrators shielded by loopholes in institutions' policies had increased the mishandling of sexual harassment cases and reduced reporting of such cases. In previous research, Foster and Fullagar (2018) found that low self-esteem, negative attitude towards the justice system to punish the perpetrators, and lack of effective response from the institutions of learning contributed to poor reporting of sexual harassment cases. Similarly, in a quantitative study with 88 students, faculty, and staff, Kirkner et al. (2020) reported that 40% of participants did not report their incidents because of fear of being stigmatized and belief that perpetrators would not be held accountable. Thus, the prevalence of sexual harassment in universities has increased due to failures to take serious actions against the perpetrators.

U.S. Department of Education's Office for Civil Rights Title IX Guidance

The 2001 Revised Sexual Harassment Guidance, which underwent a notice-and-comment period, continued to be used by the Department (Richards, 2019). This included the present definition of responsible employees, who are still expected to report incidents of sexual misconduct, and institutions are required to take appropriate action if they were aware or reasonably should have been aware of such an incident (Richards, 2019). These services, also called accommodations under the Clery Act, ensure that the parties get the support they require before or throughout an inquiry (Richards, 2019). To receive certain accommodations under the Clery Act, a person does not have to make a formal complaint (Richards, 2019).

While no set reporting period is prescribed by law, a Title IX investigation requires the institution's procedure to be swift, equitable and carried out by trained people (Lewis & Kern, 2018). Clery also recommended a quick, unbiased, and fair disciplinary procedure (Lewis & Kern, 2018). Even though Clery did not specify deadlines, it stated that a prompt proceeding is completed within reasonably prompt timeframe designated by the institution's policy (Lewis &

Kern, 2018). This included a process allowing time extensions for a good cause, with written notice to the accuser and the accused of the delay and the reason for the delay, with access to any information that will be used during informal and formal. This timeline should be stated in policies and the institution's yearly security report (Richards, 2019).

2011 Dear Colleague Letter

The Dear Colleague Letter (DCL), a 19-page document, was released by OCR on April 4, 2011, to remind educational institutions of their Title IX obligations concerning sexual harassment (Newberry, 2018). In numerous aspects, the document was similar to past advice. However, there were some modifications as well (Newberry, 2018). OCR reminded institutions that publishing a notice of non-discrimination, implementing suitable grievance procedures, and having a Title IX Coordinator were necessities that functioned as preventative measures against harassment, similar to the amended guideline document released in 2001 (Newberry, 2018). For the first time, OCR utilized the phrase "sexual violence," defining it as a type of sexual harassment that Title IX forbids, including sexual assault, sexual battery, sexual coercion, and rape (Newberry, 2018).

OCR used significantly distinct language in the 2011 Dear Colleague letter. It was more authoritative and explicit than earlier guidance on Title IX standards (Newberry, 2018). The letter not only shifted the emphasis to sexual violence and made it clear that it was a type of sex discrimination but also discussed institutional response. In the letter's opening paragraph, OCR expressed great concern over sexual assault and the victimization rates for students in K–12 and postsecondary institutions (Newberry, 2018). The letter was added to the 2001 advice by offering further instructions and details regarding recipients' obligations under Title IX when handling reports of sexual harassment and sexual violence (Newberry, 2018).

One of the Title IX criteria was implementing grievance processes that led to controversy. The Dear Colleague Letter instructed recipients to comply with Title IX by using the preponderance of the evidence standard, or more likely than not standard, as their standard of proof (Miller, 2018). Since some colleges and universities were applying the clear and convincing level, or beyond a reasonable doubt, a far higher threshold required in criminal prosecutions posed difficulties (Miller, 2018). However, OCR asserts that the preponderance of the evidence standard, which was created for civil rights statutes, is the most suited for examining claims of sexual harassment or sexual violence, which are kinds of sex discrimination (Miller, 2018). The letter further noted that mediation, even voluntarily, was inappropriate for such severe claims and that any case involving a claim of sexual assault must be investigated through a proper process (Miller, 2018).

In line with earlier guidelines, OCR addressed the requirement for extensive Title IX training for those who hear reports of sexual violence, including coordinators, investigators, and law enforcement (Buffkin et al., 2018). However, in contrast to earlier advice, the 2011 Dear Colleague Letter expanded training guidelines to cover any worker or student who is probably to witness or hear about harassment or violence (Buffkin et al., 2018). OCR made it clear in the document that all students, including student-athletes, are subject to the Title IX grievance procedures (Buffkin et al., 2018). Student-athletes were engaged in most sexual assault cases reported in the media and filed with the courts (Buffkin et al., 2018). OCR also clarified that these situations needed to be considered and decided upon as part of the institution's Title IX proceedings and should not be handled only through athletic department processes.

A group of survivors and their supporters who voiced their dissatisfaction with their institutions' and universities' lack of response after they reported being sexually assaulted

supported this call to action against sexual violence (Jessup-Anger et al., 2018). However, the Obama administration's initiatives changed how Title IX compliance related to sexual violence was handled (Jessup-Anger et al., 2018). Vice President Joe Biden has been interested in eradicating violence against women on a political and societal level for more than 20 years, as stated in the U.S. Department of Education 2011 report. As a senator, President Joe Biden proposed the Violence Against Women Act (VAWA) to Congress, legislation that altered how the nation responded to sexual assault and domestic violence (Jessup-Anger et al., 2018). VAWA raised the penalty for habitual sex offenders, created new federal offenses of interstate domestic violence and stalking, and encouraged the adoption of state laws aimed at defending victims (Jessup-Anger et al., 2018). The high incidence of dating violence and sexual assault against high school and college students concerned the Obama administration.

Recent changes also influenced a big part of the 2011 DCL in the legal system. At the beginning of the twenty-first century, there was an increase in sexual violence lawsuits (Miller, 2018; Newberry, 2018). The decisions expanded Gebser's (1998) definition of actual notice in *Simpson v. University of Colorado* of 2006 as well as the *Williams v. Board of Regents of the University System of Georgia* of 2007; consequently, even if the actual notice was not given, schools could still be held accountable for a Title IX violation if administrators should have known about sexual harassment or assault (Buzuvis, 2020). These major examples show contextual distinctions absent from the Franklin, Gebser, or Davis court cases, like sexual assault occurring within athletics, and demonstrate Title IX's ongoing evolution and application to college sexual assault (Buzuvis, 2020).

They started several campaigns to raise public awareness and stop sexual assault on college and university campuses (Richards, 2019; Withers, 2019). Only five months had passed

since OCR's Dear Colleague Letter of 2011 when the campaigns were introduced (Withers, 2019). President Obama and Vice President Biden established the White House Task Force to Protect Students from Sexual Assault in 2014, along with its U.S. campaign, which aimed to alter campus culture and involve males in bystander interventions (Withers, 2019). According to the 2011 Dear Colleague letter to support the Obama administration's crackdown on sexual violence in education, all the initiatives above and developments resulted in OCR's severe implementation of Title IX (Withers, 2019).

2014 Questions and Answers on Title IX and Sexual Violence

Questions and Answers (Q&A) on Title IX and Sexual Violence, published by OCR on April 29, 2014, coincided with the release of the "Not Alone Report" by the White House Task Force to protect students from sexual assault, which contained recommendations to help schools protect students from sexual violence (Richards, 2019). Following the 2011 Dear Colleague Letter's publication, OCR responded to calls for help defining institutions' responsibilities concerning sexual violence under Title IX by creating this Q&A document (Richards, 2019). OCR decided that it would be advantageous to provide more information on Title IX duties in the form of a published paper (Richards, 2019).

To properly comprehend OCR's recommendations and their legal responsibilities regarding Title IX and sexual violence, OCR encouraged institutions to use the 45-page Q&A paper in conjunction with the 2001 Guidance and the 2011 Dear Colleague Letter (Cantalupo, 2019). OCR included questions and answers on different topics in the text. Confidentiality and a school's obligation to respond to sexual violence, students, protected by Title IX, Title IX procedural requirements, responsible employees and reporting, investigations, and hearings, interim measures, remedies, and notice of the outcome, appeals, Title IX training, education, and

prevention, retaliation, first amendment rights, The Clery Act, and Violence Against Women Reauthorization Act were some of the subjects covered in this lecture (Cantalupo, 2019).

In order to fully clarify the Title IX obligations specified in the Dear Colleague Letter from 2011, OCR published a Q&A booklet in 2014 (Siefkes-Andrew & Alexopoulos, 2019). The letter clarified the function of a Title IX Coordinator, but the content was condensed into just one section (Siefkes-Andrew & Alexopoulos, 2019). A year later, OCR issued another Dear Colleague Letter, adding to earlier clarifications and reminding institutions that they must appoint one person to serve as the Title IX Coordinator following the law.

2015 Dear Colleague Letter

The 2015 Dear Colleague Letter was released by OCR and included previous Title IX Coordinator instructions and further explanation and direction on their duties (Keys, 2019). Through their investigations, OCR started to understand that many of the Title IX violations they had seen might have been avoided (Keys, 2019). According to OCR, recipients needed a strong Title IX Coordinator if they wished to comply (Keys, 2019). The agency advised grantees that to effectively carry out their Title IX duties, a Title IX Coordinator needs the full support of their institution (Keys, 2019). It was made plain that the statute's anti-retaliation provisions will be broken by college and university administrators that impede a Title IX Coordinator's efforts to administer and abide by the law (Keys, 2019).

According to the 2015 Dear Colleague Letter, to prevent any conflicts of interest, the Title IX Coordinator shall act independently and report directly to the college or university president (Cruz, 2021). OCR did not compel recipients to employ a full-time Title IX Coordinator, but they advised doing so to reduce the possibility of conflicts of interest and to make sure the person filling this position could spend the necessary amount of time (Cruz, 2021).

According to OCR, several coordinators should be designated to assist the Title IX Coordinator, especially at larger colleges and universities. However, there should only be one person whose major duty is to coordinate recipients' replies to all sex discrimination complaints, including tracking results, seeing trends, and evaluating the impact on the campus atmosphere (Cruz, 2021).

The decision-making process for Title IX complaints was not something that Title IX Coordinators had to oversee, nor were they forbidden from doing so (Caron & Mitchell, 2022). They merely required that the investigation and decision-making staff were appropriately trained in sexual violence, Title IX, and the recipient's grievance processes and that the process was timely, equitable, and complete (Caron & Mitchell, 2022). Lastly, OCR suggested that Title IX Coordinators be involved in creating the recipient's sexual harassment and discrimination policies to ensure that grievance procedures adhere to Title IX (Caron & Mitchell, 2022). The 2015 Dear Colleague Letter was created to serve as a friendly reminder to recipients of their duty to name and fully support their Title IX coordinators as required by law (Edwards et al., 2019). This was the first OCR guidance paper that solely described and clarified the job of the Title IX Coordinator, as well as the recipient's obligation to make sure that their coordinator had the skills, credentials, and freedom to carry out their duties effectively and efficiently (Edwards et al., 2019).

Numerous organizations have voiced their displeasure with OCR, particularly the 2011 Dear Colleague Letter, stating it is too general and lacking in detail (Keys, 2019). U.S. Senator James Lankford claimed the department went too far by forcing colleges to combat sexual abuse and enlarging Title IX compliance requirements (Keys, 2019). Administrators from colleges and universities draw attention to the terminology OCR employs when addressing Title IX

compliance in incidents of sexual assault on campus (Keys, 2019). As they seek to distinguish between Title IX provisions that are requirements and other provisions that are merely suggestions, they report having trouble properly grasping what OCR demands (Keys, 2019).

People were concerned about free speech and fair treatment for those accused and criticized OCR (Sokolow, 2020). After the 2011 Dear Colleague Letter was published, The Foundation for Individual Rights in Education (FIRE) started a legal battle against OCR (Sokolow, 2020). The preponderance of the evidence standard for charges of sexual assault, including rape, has drawn criticism from FIRE (Sokolow, 2020). Concern regarding OCR's lack of guidance on free expression was expressed by the Foundation for Individual Rights in Education and the American Association of University Professors (Sokolow, 2020). They argued that, in contrast to earlier OCR guidance, the DCL did not explicitly respect students' rights to free speech (Sokolow, 2020).

Many people think that administrators' frustration stems from the 2011 Dear Colleague letter, which was written to explain how OCR interprets Title IX (Tamura, 2022). However, it can be difficult to determine OCR's definition of compliance when the DCL is vague about the procedures for Title IX investigations and adjudications (Tamura, 2022). Others contend that the letter is not interpretative but fundamentally changes the legal landscape (Tamura, 2022). OCR defended the 2011 Dear Colleague Letter despite the objections. The 2011 DCL is just an advice document and has no legal effect, according to Assistant Secretary Catherine Lhamon (Tamura, 2022).

The letter was made public to inform recipients and the public of how the U.S. Department of Education views the rules now in place (Gualtieri, 2020). The government also supported the preponderance of the evidence standard because investigations into sexual

violence on college and university campuses required that bar of proof since sex discrimination is a civil rights problem (Gualtieri, 2020). On May 1, 2014, OCR published a list of 55 higher education institutions under investigation for potential Title IX violations regarding handling sexual violence and sexual harassment allegations (Brubaker, 2019). Shortly after, the 2014 Q&A document was made public (Brubaker, 2019). High-profile universities, including Harvard University, Vanderbilt University, and Emory University, were on the list, to mention a few (Brubaker, 2019). The department published the list of institutions under inquiry for the first time (Brubaker, 2019).

The list was made public to further the President's White House Task Force's objective to increase the department's transparency and to promote conversation about sexual assault on college and university campuses, according to OCR's Assistant Secretary for Civil Rights (Sommers, 2019). Since OCR's first publication, more HEIs have been investigated for Title IX violations, with some schools having several instances (Sommers, 2019). According to Sommers (2019), there were 281 open investigations and 55 investigations that OCR had closed. Thirty of the 55 closed cases led to findings of Title IX violations (Sommers, 2019).

The federal government's heightened enforcement of Title IX, documentary films, and protests have helped establish HEIs' improper handling of sexual assault complaints as a social issue (Nunn, 2018). Although OCR investigated 9 HEIs in 2009, Title IX investigations were not new (Nunn, 2018). However, OCR has seen an increase in the number of HEIs violating the law due to the social construction of Title IX noncompliance as a national and social problem. OCR received nearly 2000 Title IX-related complaints in the 2015 fiscal year (Nunn, 2018). Recent decisions in the cases of *Simpson v. University of Colorado 2006* and *Williams v. Board of Regents of the University System of Georgia of 2007*, along with advice from OCR's 2014 Q&A

and the 2015 DCL, revealed how Title IX has evolved as a tool to combat sexual violence, including sexual assault (Nunn, 2018).

In addition to mandating gender parity in graduate admission and employment, Title IX has developed legislation requiring HEIs to prevent and address sexual assault on their campuses (Baggling, 2021). Applying the linking, domain expansion, and frame extension principles of social constructionism, sexual harassment, and sexual assault were turned into social issues and categories of sexism that were illegal under Title IX (Baggling, 2021). Increased Title IX investigations were caused by the rise in complaints and a federal government that supported the claims makers' ideas regarding how HEIs handled sexual assault cases (Baggling, 2021).

However, OCR's choice to make the names of HEIs under Title IX investigation public was crucial because it increased public awareness, discussion, and media attention about Title IX sexual violence offenses (Lorenz et al., 2022a). According to the social constructionism theory, issues are not always clear-cut and need to be presented and interpreted by a person in a position of authority or influence (Webermann & Holland, 2022). Webermann and Holland (2022) revealed that the mishandling of sexual assault complaints by HEIs is more likely to develop into and persist as a social problem if OCR portrays and interprets it as a social problem since OCR has the authority to enforce Title IX and the power to withhold federal money from HEIs in noncompliance.

2020 Title IX Regulations

In August 2020, new Title IX Regulations were adopted. Below are a few of the new changes:

- Narrowing the definition of sexual assault under Title IX

- Limiting the obligation to investigate complaints only to conduct that occurred in the school's program or activity (and not to unrelated off campus conduct)
- Mandatory response obligations of schools (i.e., providing supportive measures)
- A change to the standard for school liability
- More detailed grievance procedures that will alter the way schools process and respond to complaints.
- Hearings are optional, written questions are required (for K-12 Schools), and highbred hearings with cross examination are mandatory.
- Schools may choose what standard of evidence to use (e.g. preponderance of evidence v. clear and convincing)
- Schools must offer both parties an appeal from a determination regarding responsibility (Holland et al., 2018).

Summary

The literature analysis conducted revealed that cases of sexual harassment and mishandling in institutions of higher learning have increased significantly. However, there are inconsistencies in the percentage increase of sexual assault cases and how many such cases are reported and acted upon by the school management and law enforcement. Females aged 18 to 24 were at an elevated risk of sexual harassment (Young & Wiley, 2021). Young and Wiley (2021) established those female students aged 18-24 were three times more likely to be assaulted sexually, while their counterparts not in college were four times more likely to be assaulted sexually. Young and Wiley (2021) reported that 13% of graduate and undergraduate students had been assaulted sexually through incapacitation or physical force. 2.5% of male and 9.7% of female graduates experience sexual assault through rape, while 26.4% of female and 6.8% of

male undergraduates experience sexual assault through rape or incapacitation (Young & Wiley, 2021). The purpose of this content analysis study is to explore how OCR interprets Title IX noncompliance in higher education institutions in New Jersey higher education institution. This chapter presents an overview of literature pertaining to how OCR interprets Title IX noncompliance in higher education institutions.

Chapter III
METHODOLOGY

Introduction

This content analysis study analyzed LOFs, and resolution letters received by the OCRs for Title IX grievances filed against New Jersey institutions of higher education due to sexual misconduct on campuses. After a filed Title IX investigation is completed, OCR issues LOFs and resolution letters, which were analyzed in this study to identify themes of Title IX compliance grievances among institutions of higher education. The phenomenon of interest is sexual misconduct incidents on campuses, and higher learning institutions which are frequently unaddressed, or insufficiently investigated (Alaggia & Wang, 2020). Data collection and analysis on a topic with this level of legal, ethical, emotional, and societal implications were challenging. Data collection required FOIA requests, which are notoriously slow, incident reports that may or may not accurately reflect the actual incident, and institutional resistance to reopening the potential for institutional, personal, or employee liability should the documentation suggest culpability, or even insufficient due diligence.

Higher learning institutions underreport incidences of sexual misconduct when the outcomes sufficiently compensated the victims (Banyard & Potter, 2018). Failure to accurately investigate and report sexual misconduct promotes campus disciplinary policies and practices that underappreciated the emotional toll experienced by victims, which results in minimum accountability for offenders (Bloom et al., 2021). Given the limitations of campus disciplinary practices, most victims develop the sense that the learning institution mechanisms do not address their stories, meet their needs, and even address the sexual misconduct experience on campus (Alaggia & Wang, 2020).

Based on consistent failure by universities and colleges to address the effects of sexual misconduct, the U.S. congress established laws regulating discipline for all sexual misconduct-related issues (Bolívar, 2019). The law is famously known as Title IX of the Education Amendment of 1972. Title IX requires that institutions of higher learning to adopt appropriate procedures when addressing sexual misconduct allegations on campuses. Some suggest that Title IX provisions are insufficient given the learning institutions' responsibility to investigate and punish sexual misconduct (Comvalius-Goddard, 2021). Others suggest that Title IX and related federal regulations are unjust in that the presumption of innocence is not granted to offenders (Cowan & Munro, 2021).

In this case, the use of Title IX hearings in sexual misconduct allegations focuses on the victim's comfort and satisfaction with fairness to the offenders. As demonstrated by the intense conflict, including federal law and institutional reputation, obtaining data for this study is challenging. The researcher obtained OCR's investigative finding letters sent to institutions of higher education after OCR submitted after any Title IX investigation. This chapter describes the research methodology, followed by a brief statement of the research questions, designs, data collections, analysis, and summary.

Purpose Overview and Research Questions

The purpose of this content analysis study was to explore how OCR interprets Title IX noncompliance in higher education institutions. Title IX is a federal law that guarantees equal opportunity and access to programs, activities, and employment at educational institutions that receive federal funds (Cruz, 2021). The primary objective of Title IX was to address sexual discrimination in education (Cruz, 2021). This study aimed to advance knowledge regarding how explore how OCR interprets Title IX noncompliance in higher education institutions. The

researcher used a social constructionist approach to analyze content in OCR's letters of findings (LOFs) and resolution letters. As Burr (2005) points out, it is sociological theory that states that people construct understandings and social issues through their experiences and social interactions. Schafer nee Malone opined that social constructionist offers a way to define, understand, and study Title IX noncompliance. This study utilized a social constructionist lens to thematic analysis whereby OCR's Letters of Findings are reviewed for themes to determine what accounts for Title IX non-compliance by OCR. The research questions that guide the study were:

1. How does OCR respond to institutions of higher education regarding how Title IX complaints are handled in New Jersey?
2. What identifiable themes are found in OCR's letters of findings and resolution letters for institutions of higher education in New Jersey?
3. What strategies do the OCR suggest to improve Title IX compliance in institutions of higher education in New Jersey?

Sampling Population

New Jersey is the fourth-most diverse state, trailing only California, Texas, and Hawaii, and includes some of the most diverse counties in America (Herres et al., 2021). Results from the 2020 census indicate Middlesex County is the 20th-most diverse county in the nation, followed closely by Essex County, the 21st-most diverse county (Stepleton et al., 2019). Much has been written about the benefits of diversity. Racial and ethnic diversity are often viewed as civic strengths (Stepleton et al., 2019). Little, however, has been written about the downside of diversity. In fact, to even raise the issue can invoke scorn in some circles (Herres et al., 2021).

While New Jersey is one of the most diverse states in the U.S., its schools are also among the most segregated in the nation (Stepleton et al., 2019). About 66% of the state's African

American students and 62% of Latino students attend schools that are more than 75% nonwhite, according to a lawsuit filed by a coalition of civil rights groups that challenges the state school system as unconstitutional and calls for sweeping reforms to end segregation (Stepleton et al., 2019).

The study used secondary data from all OCRs from 2018 to 2023. Articles were included if (a) they focused on Title IX regulations, compliance, noncompliance, or OCR interpretations in the context of educational institutions, (b) they employed qualitative and quantitative analysis as a research methodology, or discussed its application in educational or legal contexts, and (c) pertained to higher education institutions within the state of New Jersey, considering the regional focus of the study. The data that was analyzed for this study was retrieved from the U.S. Department of Education's website after successfully seeking permission through the FOIA requests. Since the data accessed and used for this study contains sensitive information, the researcher adhered to the FOIA federal act that provides guidelines on the access and use of federal data for research. Data was retrieved from the U.S. Department of Education's website. Prior to sampling the information needed for this study, the researcher sought permission to access the LOFs and resolution letters data from the chair of the U.S. Department Education and Research Administration.

Sample Size

The sample size 23 articles from the U.S. Department of Education's (2022) website. Data collection continued until data saturation occurred (Savin-Baden & Major, 2013). Data saturation refers to the point in the process where the marginal return on the next piece of data is unlikely to yield new information (Merriam, 1998). The signal for data saturation is redundancy. Data saturation signals that a researcher can be reasonably assured that incremental data

collection is unlikely to result in new findings to confirm, or refute, emerging themes and conclusions (Merriam, 1998).

Research Design

This study employed a content analysis to explore how OCR interprets Title IX noncompliance LOFs and resolution letters in higher education institutions. Content analysis is most appropriate for enabling unanticipated themes and findings to emerge during data collection and analysis, and for understanding the milieu in which a phenomenon occurs (Merriam & Tisdell, 2016). The collection and analysis of document reviews and observations in content analysis allows the researcher to develop findings that are richly contextualized by the in-situ setting in which individuals experience the phenomenon of interest (Merriam & Tisdell, 2016).

Content analysis is designed to systematically review and analyze archival data (Selvi, 2019). Content analysis is an inductive process, which in this study involves archival data, reliant on the iterative process to identify repeating patterns and themes, which are then synthesized into a composite data representation (Savin-Baden & Major, 2013). The researcher must set aside pre-conceived notions, understandings, or experiences prior to initiating each step in the content analytic process.

The process begins with the coding frame, which is an iterative process of reading and re-reading source material until patterns of ideas, phrases, or themes arise (Merriam & Tisdell, 2016). Coding is an iterative process to break down, examine, compare, conceptualize, and categorize unstructured data in the form of archival records (Strauss & Corbin, 1990). This process involves a line-by-line analysis while noting and organizing recurring patterns and themes (Savin-Baden & Major, 2013). The method is suitable for all material that requires some degree of interpretation. The research assigns successive parts of your material to the categories

of your coding frame (Marvasti, 2019). This frame is at the heart of content analysis, and it covers all those meanings that feature in the description and interpretation of your material (Selvi, 2019).

The procedure entails findings, selecting, appraising (making sense of), and synthesizing data contained in documents. policy analysis yields data-excerpts, quotations, or entire passages that are then organized into major themes, categories, and case examples specifically through content analysis (Braun & Clarke, 2006). Content analysis can help the researcher uncover meaning, develop understanding, and discover insights relevant to the research problem (Merriam, 1989).

Content analysis is a systematic procedure for reviewing or evaluating documents – both printed and electronic (computer-based and Internet-transmitted) material. Like other analytical methods in qualitative research, policy analysis requires that data be examined and interpreted to elicit meaning, gain understanding, and develop empirical knowledge (Corbin & Strauss, 2011). Although document analysis is often used as a means of triangulation and complementary to other collection methods, it can also be used as a stand-alone method (Bowen, 2009). Merriam (1989) suggests that this is common when document analysis is the most realistic and appropriate approach, such as in historical research, legal research, or hermeneutic inquiry.

This study used secondary data from the OCR's investigative findings. The information was readily available on the U.S. Department of Education's website. Concerning data collection procedures, LOFs and resolution letters were gathered through the Freedom of Information Act (FOIA) a federal act that permits and guides the collection and use of federal data by the public. The researcher did not seek IRB approval since the data collected from the U.S. Department of Education's website is public and does not contain information that might compromise

individuals or groups of persons. The researcher completed the Collaborative Institutional Training Initiative (CITI Program – six modules). However, the researcher did not acquire permission from the U.S Department of Educational and Research Administration’s department chair to access the LOFs and resolution letters given that the information is freely available for the public. After collecting relevant data, content analysis was used to enhance the understanding of how explore how OCR interprets Title IX noncompliance in higher education institutions (Marvasti, 2019). Using the social constructionist paradigm, the researcher explored how explore how OCR interprets Title IX noncompliance in higher education institutions.

Higher Learning Institutions in New Jersey

Higher education in New Jersey is well established given the high number of higher learning institutions operating in the State. Currently, 151 colleges and universities have been licensed and they include 113 private schools and 38 public colleges and universities. There are 61 four-year universities and colleges, 41 community colleges offering 2- and 4-year programs, and 49 vocational and trade institutions in New Jersey. In the academic years 2022-2023, the average acceptance rates for students in the identified universities and colleges was 29.22% while the graduation rate was 58.13%. In the academic year 2022-2023, close to 400, 000 students both in graduate and undergraduate programs attended the universities and colleges in New Jersey. The rates of retaining students in New Jersey is high 75% compared to transfer rates at 31%.

In terms of student population and diversity, there are 132, 940 part time students and 264, 644 full time students (UnivStats, 2023). Of this number, 55.21% of the students are female students and 44.79% are male. The population of New Jersey is highly diverse and so is the student population enrolled in higher education institutions. Thus, in terms of ethnic diversity for

the academic year 2022-2023, there are 52,120 African Americans, 86,836 Hispanic students, 699 Caucasians and 39,517 Asian students in New Jersey universities and colleges. Additionally, there are 162,813 white students, 620 Native Hawaiian, 24,124 students with unknown ethnicity and 10,626 students with two or more ethnicities.

Role of the Researcher

Content analysis demonstrates researcher's subjective perspectives and how such perspectives inform the coding process and identification of relevant themes (Savin-Baden & Howell Major, 2013). Content analysis is an iterative process of repetitive systematic review, analyzes, and codes that eventually emanate patterns, also called themes, that are then named and used to organize all data (Braun & Clarke, 2021). Content analysis is used to organize any type of unstructured data and to identify and highlight both implicit and explicit themes through coding for semantic meaning (Yin, 2015).

In this content analysis research, the researcher's primary role was the identification of data, collection, analysis and interpretation of the collected data (Yin, 2017). By employing the concepts and procedures set forth for thematic analysis, the researcher reviewed the contents of the documents being analyzed, coded the data retrieved from the documents and developed provisional themes from the data. The researcher then reviewed the codes to develop themes that would explain how OCRs describe Title IX non-compliance by institutions of higher learning.

Besides collecting, reporting and analyzing data, the researcher was also tasked with identifying and addressing instances of bias that might influence the credibility of the research findings. In qualitative studies, instances of bias are common given the subjectivity of the research process (Yin, 2015). The critics of thematic content analysis argue that thematic analysis is too reliant on the subjective perspective of the research from interview question

design to identifying patterns from the data retrieved from participant responses increasing the risks of researcher bias (Braun & Clarke, 2021). Despite allowing for rigorous and systematic analysis of data, thematic analysis is prone to unintentional researcher bias (Braun & Clarke, 2021; Terry et al., 2017). Therefore, in this study, the researcher identified the philosophical, theoretical, and values-based position in relation to the research design approach to address instances of unintentional bias (Braun & Clarke, 2021).

Researcher Positionality

In qualitative research, researcher positionality is defined as the position, or the worldview adopted by the researcher as well as their political and social context of the research problem (Holmes, 2020). In their study, Holmes (2020) established that researcher positionality informs their ontological and epistemological assumptions that often guide the conduct of qualitative studies. To better describe researcher positionality, Holmes (2020) identified three key areas that should be used. The first is describing the researcher's position based on the research and study participants, second, defining researcher's position based on the subject under investigation and third, the context and process of the research. It should be noted that some aspects of researcher positionality can be ascribed to the researcher's cultural orientation with a focus on gender, nationality, skin color or race (Holmes, 2020). Personal history and experience with the issue under investigation and political orientation can also be used to describe the researcher's positionality.

Regarding the current study, as a former Title IX coordinator, it is my positionality that although higher institutions of learning have made significant progress in mitigating cases of sexual assault and misconduct, a lot needs to be done to ensure that students in schools feel safe and protected. Examining literature on sexual misconduct and assault towards students of both

genders, it is disheartening that some students have to experience shoddy investigations that result in no justice. More disheartening is that although the federal government passed Title IX, its implementation in higher learning institutions has been poor with little guidance provided to the Title IX coordinators. In the absence of clear and consistent processes, Title IX is not always able to ensure justice for the victims and mitigate against misconduct, which can lead to corruption within the learning institutions. Therefore, as the researcher, I feel obligated to explore how learning institutions have used Title IX to create safe learning environments, where they have failed and what can be done to ensure Title IX compliance, for the benefit of the victims, as well as to support other higher education administrators who are tasked with implementing Title IX.

Despite my previous experience of being a Title IX coordinator, I did not allow my opinions and experiences to affect the trustworthiness of the study findings. I strived to be objective in my judgment to ensure subjectivity does not affect the study outcomes or skew researcher process in a predetermined direction as recommended by Nahrin (2015).

Data Collection and Analysis

LOFs and resolution letters were collected via FOIA requests, a federal act that allows the public to access federal agency records (U.S. Department of Education, 2016). However, it is important to note that due to the increased scrutiny of institutions of learning non-compliance with Title IX requirements, the majority of the LOFs and resolution letters have been uploaded on the U.S. Department of Education's website and are thus easily accessible. This study did not require approval from Seton Hall University's Institutional Review Board since no human participants will be interviewed. The LOFs and resolution letters were organized chronologically and analyzed through content analysis approach as shown in Table 1.

Table 1

Procedure for Thematic Analysis

Phase	Phase Description of the Process
1. Familiarizing yourself with your data	Transcribing data (if necessary), reading and rereading the data, noting down initial ideas.
2. Generating initial codes	Coding interesting features of the data in a systematic fashion across the entire data set, collating data relevant to each code.
3. Searching for themes	Collating codes into potential themes, gathering all data relevant to each potential theme.
4. Reviewing themes	Checking in themes work in relation to the coded extracts (Level 1) and the entire data set (level 2), generating a thematic map of analysis.
5. Defining and naming themes	Ongoing analysis to refine the specifics of each theme, and the overall story the analysis tells, generating clear definitions and names for each theme
6. Producing the report	The final opportunity for analysis. Selection of vivid, compelling extract examples, final analysis of selected extracts, relating back to the analysis to the research question and literature, producing a scholarly report of the analysis.

Note. Adapted from “Can I use TA? Should I use TA? Should I not use TA? Comparing reflexive thematic analysis and other pattern-based qualitative analytic approaches,” by V.

Braun, and V. Clarke. 2021, *Counselling and Psychotherapy Research*, 21(1), p. 37

<https://doi.org/10.1002/capr.12360>.

Secondary data from the LOFs and resolution letters from the OCR's investigative findings were collected and analyzed using thematic analysis to address the research questions.

The data that was analyzed was retrieved from the U.S. Department of Education's website

following the FOIA guidelines and permission from the U.S. Department of Educational and

Research Administration's department chair. The data collection process commenced after permission from the Department of Educational and Research Administration's department chair.

Initially, the researcher read through each OCR LOF and resolution letter from the U.S. Department of Educational and Research Administration's department chair transcript to familiarize herself with the scope of the data. The researcher reviewed journal entries to become familiarized with potential biases. The researcher imported all archival data into NVivo20® (NVivo) for thematic coding. The researcher created nodes and linked common phrases, or words in a unique node. As such, each node allowed for the categorization of text based on recurring ideas and themes. The nodes, which were later labeled as themes, remained nameless until a pattern arose from the compiled data after which a thematic name was assigned to represent a common idea shared by all the lines of text within that node.

The researcher created visualizations to aid data reporting. Specific visualizations included clusters, word trees, and word clouds. However, the main output to be used for evaluating how the study question was answered included a table containing the nodes, specific lines of texts that share a common theme, and the number of participants whose responses corresponded to each node. Results were organized by theme and subtheme and reported with heavy reliance on verbatim instances. In qualitative analyses, findings should reflect meaning, down to word choice to express an idea, so as to provide context for conclusions.

Design Limitations and Validity

The material availability limited the study due to challenges in acquiring FOIA material. However, the study materials that were provided by OCR were publicly available. The use of

secondary data limited the study. The potential for a small sample size of LOFs and resolution letters used in the study was another source of limitation.

Qualitative Research Validity

The processes and methods used to conduct a qualitative study required accurate reporting of archival data in a manner consistent with the tone and attitude of the authors (Merriam, 1998). The researcher must be sufficiently descriptive for readers to formulate a conceptual understanding themselves (Gay et al., 2012), which establishes validity and transferability. The validity of a qualitative research study relies on transparency of how the research was conducted and presented and that the researcher's narrative is supported by the verbatim data. Unfortunately, member checking was not available for this study, however efforts were made to contact the constituents relating to the LOFs and resolution letters, to ensure accuracy.

Credibility

Credibility refers to the researcher's responsibility to establish confidence that the rigorous systematic, conceptual, and analytical disciplines were applied consistently, and that study findings were plausible, unbiased, defensible, and trustworthy (Shufutinsky, 2020). Shufutinsky (2020) suggested that to establish credibility the researcher must conduct a sufficiently thorough review of the literature to become a subject matter expert on the phenomenon. In addition, data collection methods, including data selection, interview question formation, and type of analysis all contribute to credibility. The research questions themselves should not reflect a personal bias or indicate the expectation of a particular conclusion. The research questions were developed in a manner that does not lead the inquiry, rather each is worded to allow for an in-depth, rich collection of information for data analysis (Yin 2015).

Dependability

Dependability refers to the alignment of the research design with the research question (Shufutinsky, 2020). To ensure dependability the researcher should step back from time to time and ask whether another researcher following the proposed methodology would come to similar conclusions regarding the phenomenon. Dependability was grounded in the rigorous stipulation of a repeatable process, with repeatable data, and with an audit trail of the process.

Transferability

Transferability refers to the generalizability of findings to other groups, situations, geographies, and cultures (Maxwell, 2021). While generalizability of findings in qualitative research does not require the same standard as that in quantitative analyses, study findings should apply to samples that are sufficiently similar in salient ways. Sample size, inclusion criteria, data collection technique, and data analysis choice have the potential to affect generalizability.

Confirmability

Confirmability requires the researcher to create a sufficient audit trail of both data collection and data analysis so that another researcher could repeat the study (Yin, 2015). Such an audit trail requires the retention of all notes, journals, on decisions, notes on thoughts, meetings with stakeholders, notes from meetings with dissertation Chair, methodologist, and content expert, to complete the research (Maxwell, 2021). The researcher must maintain notes, actions, spreadsheets, and drafts for future review an audit trail. As with all areas of trustworthiness, the researcher consulted with the Chair, methodologist, and content expert for feedback.

Summary

While previous scholars have explored Title IX compliance, research on how the OCR interprets Title IX noncompliance in higher education institutions was lacking (James & Hetzel-Riggin, 2022; Karp, 2019). This study sought to investigate how OCR interprets Title IX noncompliance in higher education institutions through a content analysis approach. The Department of Justice (DOJ) allows colleges and universities individually to determine the standards they utilized during a hearing. In turn, this ambiguity does not allow for formal guidance to the hearing officials (Karp, 2019). This study aimed to advance knowledge regarding how institutions of higher learning respond to Title IX noncompliance regarding sexual misconduct.

This study employed a content analysis to explore how OCR interprets Title IX noncompliance LOFs and resolution letters in higher education institutions. The study used secondary data from all OCRs published between 2010 and 2022. Much of the LOFs and resolution letters are available on the U.S. Department of Education's website and were retrieved following the FOIA guidelines. The procedure entailed finding, selecting, appraising (making sense of), and synthesizing data contained in documents. Document analysis yields data excerpts, quotations, or entire passages that are then organized into major themes, categories, and case examples specifically through content analysis (Braun & Clarke, 2006). Content analysis helped the researcher uncover meaning, develop understanding, and discover insights relevant to the research problem (Merriam, 1989). Chapter 4 details study findings in the words used in the OCR LOFs and resolution letters and followed in Chapter 5 by conclusions and recommendations.

CHAPTER IV

RESULTS

The purpose of this qualitative content analysis (QCA) study was to explore how the Office of Civil Rights (OCR) interprets Title IX noncompliance in New Jersey's higher education institutions. OCR Letters of Findings were collected via Freedom of Information Act (FOIA) requests, a federal act that allows the public to access federal agency records (U.S. Department of Education, 2016). The following three research questions were used to guide this study:

RQ1. How does OCR respond to complaints of how institutions of higher education handle Title IX in New Jersey?

RQ2. What identifiable themes are found in OCR's letters of findings and resolution letters for institutions of higher education in New Jersey?

RQ3. What strategies do the OCR suggest to improve Title IX compliance in institutions of higher education in New Jersey?

This chapter is a presentation of the study results. The results were derived from executing the data collection and data analysis procedures described in Chapter III, and they serve as the basis for the discussion, interpretations, recommendations, and conclusions presented in Chapter V. The following section of this chapter is the presentation of results.

Results

The following data were collected through FOIA requests and downloaded in full in portable document format (.pdf):

- One letter of findings and one resolution agreement related to Rutgers University case no. 02182096, concerning the alleged sexual harassment of a student and the

university's alleged failure to respond appropriately (hereinafter referred to as Rutgers LF1 and RA1);

- One letter of findings and one resolution agreement related to Rutgers University case no. 02162315, concerning alleged sexual discrimination against a student and the university's alleged failure to respond appropriately (hereinafter referred to as Rutgers LF2 and RA2).
- One letter of findings and one resolution agreement related to Rutgers University case no. 02086001, concerning the university's alleged failure to provide equal opportunities to female athletes (hereinafter referred to as Rutgers LF3 and RA3).
- One letter of findings and one resolution agreement related to Princeton University case no. 02112025, concerning alleged sexual assault and harassment of three students and the university's alleged failure to respond appropriately (hereinafter referred to as Princeton LF and RA).
- One letter of findings and one resolution agreement related to Mercer County Community College case no. 02152290, concerning the college's alleged failure to adopt and publish grievance procedures providing the prompt and equitable resolution of complaints alleging sexual discrimination (hereinafter referred to as MCCC LF and RA).
- One letter of findings and one resolution agreement related to Monmouth University case no. 02156001, related to the university's alleged failure to provide female student athletes with equal opportunities to participate in intercollegiate athletics (hereinafter referred to as Monmouth LF and RA). Table 2 is a summary of this information for the reader's convenience and quick reference.

Table 2

Data Analysis Sources

Sources	Complaint(s) submitted to OCR
Rutgers LF1 and RA1	Sexual harassment of a student; university failure to respond
Rutgers LF2 and RA2	Sexual discrimination against a student; university failure to respond
Rutgers LF3 and RA3	Failure to provide equal opportunities to female student athletes
Princeton LF and RA	Sexual assault and harassment of three students; university failure to respond
MCCC LF and RA	Failure to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging sexual discrimination
Monmouth LF and RA	Failure to provide equal opportunities to female student athletes

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The remainder of this presentation of findings is organized by research question. Under the heading for each research question, the findings are organized by the themes that emerged during inductive, thematic analysis to address the research questions. Table 2 is an overview of how the themes were used to address the questions.

Table 3*Alignment of Themes with Research Questions*

Research question	Themes presented to address question
RQ1. How does OCR respond to complaints of how institutions of higher education handle Title IX in New Jersey?	Theme 1. OCR responds to complaints by conducting an investigation, issuing findings, and reaching a resolution agreement
RQ2. What identifiable themes are found in OCR’s Letters of Findings and Resolution Letters for institutions of higher education in New Jersey?	Theme 2. Themes in OCR letters [followed by subthemes]
RQ3. What strategies do the OCR suggest to improve Title IX compliance in institutions of higher education in New Jersey?	Theme 3. Strategies to improve compliance after sexual harassment and hostile environment complaints Theme 4. Strategies to improve compliance after sex-based discrimination in athletics complaints

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Table 3 indicates the frequencies of the themes and the number of source documents in which the themes were identified.

Table 4*Data Analysis Theme Frequencies*

Theme	<i>n</i> of sources in which theme was identified	<i>n</i> of data excerpts assigned to theme
Theme 1. OCR responds to complaints by conducting an investigation, issuing findings, and reaching a resolution agreement	9	41
Theme 2. Themes in OCR letters	5	40
Theme 3. Strategies to improve compliance after sexual harassment and hostile environment complaints	6	33
Theme 4. Strategies to improve compliance after sex-based discrimination in athletics complaints	3	14

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Research Question One

RQ1 was: How does OCR respond to complaints of how institutions of higher education handle Title IX in New Jersey? One theme was used to address this question, as follows:

Theme 1: OCR responds to complaints by conducting an investigation, issuing findings, and reaching a resolution agreement. This theme emerged during data analysis when three related initial codes were grouped. Table 4 indicates the initial codes that were grouped to form this theme.

Table 5

Theme 1 Initial Codes

Initial code grouped to form theme	<i>n</i> of sources in which code was identified	<i>n</i> of data excerpts assigned to code
Investigation	6	7
Findings	6	35
Resolution agreement	9	15

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The findings indicated that when OCR receives a complaint, its first major action is to conduct an investigation. The OCR’s investigations were summarized in all of the letters of findings included in this study (Rutgers LF1 and LF2, Princeton LF, Monmouth LF, and MCCC LF). As an example of the OCR’s summary of its investigation in a sexual harassment and assault complaint, the following language is quoted from Princeton LF:

In response to the above-referenced complaint, OCR examined whether the University responded promptly and equitably to complaints, reports, and any other notice to the University of incidents of sexual harassment, sexual assault and other forms of sexual violence, including the students’ reports of sexual assaults; and whether as a result, students, including the students at issue in the above-referenced complaints, were subjected to a sexually hostile environment. (p.1)

The summary of the investigation did not include complainants or defendants' names or the names of university officials who were involved in the university's internal investigations or proceedings. In all the letters of findings reviewed for this study, details of sexual assaults and harassment were either omitted or redacted, and complainants' and perpetrators' identities were kept confidential. The summaries of the investigations referenced the legal standard to which the university was held ("responded promptly and equitably to complaints," etc.). In Rutgers LF2, in which the complainant alleged discrimination rather than sexual assault, a summary was provided of the complainant's account. The complainant's grade on a term paper was substantially reduced because he used an obscene word for female genitalia without a citation to the course material that he claimed to be drawing the word from; he alleged that the female professor only penalized him for using the word because he was male. OCR interviewed the complainant's professor and summarized her response to the complaint in Rutgers LF2 as follows:

The instructor stated that her decision was not based on the complainant's sex, but rather because he used an inappropriate term without any citation or context that made his use of the term reasonable. The instructor further stated that had the term been used with citations and in an appropriate context, she would not have deducted points. The instructor advised OCR that the complainant had previously used the same term in his prior reaction paper to XXXX XXXXX XXXXXXXX, with proper citations, and the instructor had not deducted points. (p.4)

An example of OCR's summary of its investigation of a complaint of a university's failing to provide equal opportunities to female athletes was found in Monmouth LF:

OCR investigated whether the University discriminated against female students by denying them an equal opportunity to participate in intercollegiate athletics. Specifically, OCR investigated whether the University’s athletic program adequately met the interests and abilities of its female students. In addition, the review assessed whether the University provided equal opportunity to male and female athletes regarding athletic financial assistance. (p.6)

As with the sexual harassment complaint referenced in Princeton LF, the summary of the OCR’s investigation into athletic discrimination included references to the applicable legal standards (“met the interests and abilities of its female students”; “provided equal opportunity to male and female athletes regarding athletic financial assistance”). Review of applicable legal standards will be addressed in greater detail under Theme 2 in this chapter.

After conducting an investigation, the OCR’s next major action was to issue findings. In Monmouth LF, the OCR issued the following finding of fact:

Therefore, OCR determined that the University failed to establish that it has effectively accommodated the athletic interests and abilities of women, the underrepresented sex; as required by the regulation implementing Title IX. (p.11)

In Monmouth LF, the OCR proceeded to enumerate a number of ways in which the university had fallen short of the legal standards, including by failing to give females opportunities to participate in athletics equal to males, in proportion to their enrollment; a failure to engage in program expansion in response to female students’ interests and abilities; and that the university was surveying female students to ascertain their athletic interests, but not taking action in accordance with the survey results.

In Princeton LF, the OCR also found the university to be at fault with respect to all three complainants because of a noncompliant grievance procedure:

OCR determined that the University's prior grievance procedures failed to comply with the requirements of Title IX. OCR also determined that the University failed to provide a prompt and equitable response to complaints of sexual harassment, including sexual assault/violence, as required by Title IX, as well as Student 1's, 2's, and 3's complaints of sexual harassment/violence. (p.22)

The OCR proceeded to detail the findings of fact with respect to each of the three complainants, confining itself, however, to noting the legal standards that it found the university to have violated. Examples included failing to provide a prompt response to "Student 1's" complaint, failing to give Student 1 equal written notice of the outcome of the complaint, employing an inappropriate "clear and persuasive" evidentiary standard rather than the required preponderance of the evidence standard, and failing to provide an equitable response to "Student 3's" complaint.

In Rutgers LF2, the OCR found that it had "concerns as to whether the University addressed the complainant's allegations of sex discrimination in the context of the University's Title IX grievance procedures." The OCR did not find that the university's existing grievance procedures were inadequate, only that they may not have been followed adequately.

Accordingly, in Rutgers RA2, the university agreed to undertake an investigation in accordance with its existing, compliant grievance procedures, using a preponderance of the evidence standard, involving interviews with all parties and written notice of outcomes, as required for compliance.

As Rutgers RA2 suggests, the third major action that the OCR undertook in each of the cases reviewed for this study was to arrive at a resolution agreement with the university. The

resolution agreement was worked out in collaboration between the OCR and the university, and it consisted of the university’s timeline for achieving full Title IX compliance based on OCR recommendations. The OCR’s recommended strategies for achieving Title IX compliance in the cases reviewed in this study are discussed under Themes 3 and 4 in this chapter.

Research Question Two

RQ2 was: What identifiable themes are found in OCR’s Letters of Findings and Resolution Letters for institutions of higher education in New Jersey? The theme used to address this question was:

Theme 2: Themes in OCR letters. This theme emerged during data analysis when five related initial codes were grouped. The findings indicated that the following themes emerged in OCR letters: (a) summary of the complaints, (b) establishment of OCR jurisdiction, (c) review of applicable legal standards, and (d) prohibition of retaliation against the complainant. Table 5 indicates the initial codes that were grouped to form this theme.

Table 6

Theme 2 Initial Codes

Initial code grouped to form theme	<i>n</i> of sources in which code was identified	<i>n</i> of data excerpts assigned to code
Summary of complaints	4	7
Establishment of jurisdiction	5	5
Legal standards for discrimination in athletic programs	2	12
Legal standards for sexual harassment	2	18
Prohibition of retaliation	4	4

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OCR Letter Theme 1: Summary of Complaints. The first theme in OCR letters of findings was the summary of the complaints. As with summaries of the OCR's investigations, complaints were typically summarized without details of the case, and with all parties' identities kept confidential. Instead, the legal standards alleged to have been violated were referenced, as in the following complaint summary from Princeton LF:

Complainants 1, 2, and 3 alleged that the University discriminated, on the basis of sex, by failing to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student complaints of sex discrimination/harassment, including sexual assault. Additionally, the complainants alleged that the University failed to respond appropriately to complaints of sexual assault that three students (Students 1, 2, and 3) made during academic years 2009-2010 and 2010-2011. (p.1)

Rutgers LF2 had the following complaint summary. As with the complaint summary in Princeton LF, this summary from Rutgers LF2 noted both the original incident and the university's alleged failure to respond appropriately:

The complainant alleged that the University discriminated against him, on the basis of his sex, when his XXXXX XXXXX course (the course) instructor (the instructor) lowered his grade on the final paper for the course, on or about May 10, 2016; and, the dean of the School of Social Work (the dean) failed to respond appropriately to his complaint of sex discrimination regarding his grade on the final paper for the course, on or about June 24, 2016. (p.1)

In Monmouth LF, the summary of the investigation quoted previously served as the summary of the complaint, as it referenced the legal standards alleged to have been violated.

OCR Letter Theme 2: Establishment of Jurisdiction. The second theme in OCR letters of findings was the establishment of the OCR's jurisdiction. The following language from MCCC LF indicated how the OCR established its jurisdiction in resolving a complaint of discrimination against female athletes, citing the college's receipt of funds from the Department of Education, its corresponding duty to abide by Title IX, and the OCR's authority to enforce Title IX:

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The College is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX. (p.6)

Identical language was used to establish the OCR's jurisdiction in all letters of findings reviewed for this study, regardless of the nature of the complaints. It should be noted that the jurisdictional authority described in the letters of findings was explicitly limited to investigating the complaints.

OCR Letter Theme 3: Review of Applicable Legal Standards. The third theme in OCR letters of findings was the review of applicable legal standards. In the letters of findings reviewed in this study, two sets of legal standards applied: the legal standards for sexual harassment, and the legal standards for equal opportunity in athletics. The relevant legal standards for sexual harassment investigated by the OCR were not those used to determine whether sexual harassment had occurred, but those used to determine whether the recipient of a sexual harassment complaint had responded appropriately. The applicable legal standard was as

follows: “no person 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 operated by a recipient [of a sexual harassment complaint]” (as quoted in Princeton LF). To determine whether the recipient of the complaint has been guilty of discrimination, the first applicable legal standard is that the recipient must take immediate and appropriate action to determine what occurred. If an investigation reveals that discriminatory harassment has occurred, the recipient must “promptly and effectively” take action that is reasonably calculated to accomplish the three goals of (a) ending the harassment, (b) eliminating the hostile environment and its effects, and (c) preventing any recurrence of the discriminatory sexual harassment. Complaint recipients must also, “adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX” (as quoted in Princeton LF). Additional standards for compliance are discussed under Theme 3 in this chapter.

The relevant legal standards for determining whether sex-based discrimination in athletics had occurred were embodied in a three-part test. An institution meeting any one of the three parts of the three-part test is determined to be in compliance with Title IX. The first part of the test indicates that opportunities for intercollegiate athletic participation are “provided in numbers substantially proportionate to their enrollment” (as quoted in Monmouth LF, and as quoted verbatim in Rutgers LF3). If Part 1 does not apply because one sex is underrepresented, an institution may still be in compliance “if it can show a history and continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of that sex.” If Parts 1 and 2 do not apply, an institution may still be in compliance if it can show that “the interests and abilities” of the underrepresented sex “have been fully and effectively accommodated by the present program.” Thus, if neither sex is underrepresented in proportion to

their enrollment; or if the institution has a history and ongoing practice of program expansion in favor of the underrepresented sex; or if the underrepresentation reflects a lower level of interest in athletics in the underrepresented sex, an institution will be found in compliance.

OCR Letter Theme 4: Prohibition of Retaliation. The fourth theme in OCR letters of findings was the prohibition of retaliation by the recipient against the complainant. The following example of a prohibition of retaliation was taken from MCCC LF:

Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment. (p. 9)

Identical language was employed in all letters of findings reviewed in this study, with “University” substituted for “College” as appropriate.

Research Question Three

RQ3 was: What strategies do the OCR suggest to improve Title IX compliance in institutions of higher education in New Jersey? Two themes were used to address this question, including: (Theme 3) strategies to improve compliance after sexual harassment and hostile environment complaints, and (Theme 4) strategies to improve compliance after sex-based discrimination in athletics complaints. Discussions of these themes follow.

Theme 3: Strategies to improve compliance after sexual harassment and hostile environment complaints. This theme emerged during data analysis when seven related initial codes were grouped. The findings indicated that the following strategies were recommended to improve compliance in sexual harassment discrimination cases: training employees, improving grievance procedures, designation of Title IX Coordinator, complaint reviews, notice of non-

discrimination, climate checks, and information sessions. Table 6 indicates the initial codes that were grouped to form this theme.

Table 7

Theme 3 Initial Codes

Initial code grouped to form theme	<i>n</i> of sources in which code was identified	<i>n</i> of data excerpts assigned to code
Training employees	6	7
Improving grievance procedures	4	6
Designation of Title IX Coordinator	4	4
Complaint reviews	3	3
Notice of non-discrimination	3	3
Climate checks	2	2
Information sessions	2	2

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Strategy 1: Training Employees. The legal standard this strategy addresses, as quoted in MCCC LF, reads, “A school should provide training to all employees likely to witness or receive reports of sexual violence.” (p.3). The legal standard proceeded to indicate the intended effects of the training:

Universities must ensure that responsible employees with the authority to address sexual violence know how to respond appropriately to reports of sexual violence; that other responsible employees know that they are obligated to report sexual violence to appropriate school officials; and that all other employees understand how to respond to reports of sexual violence. (p.7).

Princeton RA indicated that its compliance strategy for addressing this legal standard was, “All faculty and staff are required to take several trainings every year addressing sexual harassment prevention, discrimination and the legal aspects of supervision.” Rutgers RA3 provided for in-

person or online training: “The University will provide in-person or online training to all staff who are responsible for investigating complaints of sexual harassment and sexual assault/violence, regarding the University’s obligations under Title IX.” Rutgers RA1 reviewed the content of the trainings, which included:

The grievance procedures; how to recognize and appropriately address allegations and complaints pursuant to Title IX; identifying sex discrimination and sexual harassment, including sexual assault and sexual violence; [and] the University’s responsibilities under Title IX to address such allegations (p.4).

Strategy 2: Improving Grievance Procedures. The legal standard for grievance procedures is that they provide for “prompt and equitable” resolution of complaints. As quoted in MCCC LF, the OCR employed the following standards to assess whether an institution’s grievance procedures met this standard, including:

Whether the procedures provide for: (a) notice to students and employees of the procedures, including where complaints may be filed; (b) application of the procedures to complaints alleging discrimination or harassment carried out by employees, students, and third parties; (c) adequate, reliable, and impartial investigation, including an opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the grievance process; (e) notice to parties of the outcome of the complaint and any appeal; and (f) assurance that the institution will take steps to prevent further harassment and to correct its discriminatory effects on the complainant and others if appropriate. (p.1)

MCCC RA added an additional strategy for compliance in providing for, “notice of the procedures and how to file a complaint that is easily understood, easily located and widely

distributed; such notice must include the contact information . . . for the individual with whom complaints may be filed.” In Princeton RA, the university reported that it had submitted its revised grievance procedures to the OCR for review and approval, an additional compliance strategy: “The University has submitted to OCR for its review and approval revised grievance procedures to address complaints of sexual misconduct.” (p.2)

Strategy 3: Designation of a Title IX Coordinator. The applicable legal standard, as quoted in Princeton RA, is, “The Title IX implementing regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law.” Princeton RA reviewed the Title IX Coordinator’s duties as part of the university’s compliance strategies:

The University’s Title IX Coordinator has the authority to investigate allegations of sex and gender-based harassment, discrimination and violence prohibited by Title IX. The Title IX Coordinator is also responsible for providing annual training to members of the University community regarding the application and implementation of policies and procedures related to Title IX. The University has regularly notified all students and employees of the Title IX Coordinator’s contact information and responsibilities. (p.8)

Making the Title IX Coordinator accessible to members of the college or university community was an important compliance strategy, as reflected in Princeton RA and in MCCC RA, as follows: “The College will take steps to clearly and adequately notify all new and existing students and employees of the name and/or title [and other contact information] of the person(s) designated to coordinate its efforts to comply with Title IX.”

Strategy 4: Complaint Reviews. Complaint reviews were reviews of all complaints of sexual harassment or misconduct filed during a given interval of time. The following objectives

for compliance in complaint reviews were established in MCCC RA, in which the college undertook to review all complaints it received from 2014 until the date of the RA:

These reviews will carefully scrutinize whether the College failed to investigate a complaint of which it had notice; whether the College failed to promptly and adequately investigate a complaint or report of harassment; whether the College provided written notice of the outcome of the complaint investigation to the alleged victim and the alleged harasser; and, whether the College took steps to prevent the recurrence of harassment and to address any hostile environment created by the harassment. (p.9)

Princeton RA added the following compliance strategies for that university's complaint review:

“Assessing whether the appropriate definitions and analyses were used under Title IX; the appropriate evidence standard in investigating allegations of sexual misconduct; the interim relief provided to protect the complainant during the pendency of the investigation.”

Strategy 5: Notice of Non-discrimination. The applicable legal standard was quoted in Princeton RA, which indicated that complaint recipients are required to, “Notify applicants for employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in its education programs or activities.” Recipients are further required to give notice that non-discrimination is a requirement under Title IX. Princeton RA specified the following compliance strategy:

The University has maintained and widely distributed a notice of non-discrimination affirming that the University does not discriminate on the basis of sex in its education programs or activities and that it is required by Title IX not to discriminate in such a manner. (p.5)

Strategy 6: Climate Checks. Princeton RA stated the goal of the climate check compliance strategy, which consisted of surveying students to assess whether other compliance strategies were successful: “The University will conduct a climate check with students to assess the steps and measures taken pursuant to this Resolution Agreement and otherwise by the University to achieve its goal of a campus free of sexual misconduct.” Princeton RA proceeded to indicate that the climate check would be conducted via a written or electronic survey, “provided that students receiving the survey also are notified of a contact person, such as a counselor, should they wish to discuss this issue in person” (p.7).

Strategy 7: Information Sessions. Princeton RA provided that, “The University will offer annual information sessions to students so they are aware of the University’s prohibition against sexual misconduct; how to recognize sexual misconduct when it occurs; and how and with whom to report incidents of sexual misconduct.” The information sessions would also cover the university’s grievance procedures, per Princeton RA.

Theme 4: Strategies to improve compliance after sex-based discrimination in athletics complaints. This theme emerged during data analysis when six related initial codes were grouped. The findings indicated that the following strategies were recommended to improve compliance in sex-based discrimination in athletics complaints: provide participation for female athletes, provision of facilities, provision of publicity, provision of support services, survey female students about athletic opportunities, and travel and per diem allowance. Table 7 indicates the initial codes that were grouped to form this theme.

Table 8*Theme 4 Initial Codes*

Initial code grouped to form theme	<i>n</i> of sources in which code was identified	<i>n</i> of data excerpts assigned to code
Provide participation for female athletes	3	7
Provision of facilities	1	1
Provision of publicity	2	2
Provision of support services	2	2
Survey female students about athletic opportunities	1	1
Travel and per diem allowance	1	1

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Strategy 1: Provide participation for female athletes. The applicable legal standard is the three-part test reviewed under Theme 2. A compliance strategy for meeting this standard was listed in Monmouth RA: “Provide participation opportunities for female and male students that effectively accommodate the athletic interests and abilities of members of both sexes by affording athletic participation opportunities that are either substantially proportionate to each sex’s enrollment.” A further compliance strategy was listed in Monmouth RA as follows: “The University asserts that it has reviewed the results of the survey it conducted in April 2015 to determine the existence and/or scope of any unmet athletic interests of female students.” This strategy was intended to meet the compliance standard based on whether the existing programs were adequate to fulfill the level of interest among the underrepresented sex. Monmouth RA listed the following additional strategy: “If through the above-described assessment the University identifies a sport or sports in which there is sufficient but unmet interest, and if applicable, ability of female students to participate at the intercollegiate level, the University will add athletics opportunities.” This strategy was intended to assist the institution in meeting the standard of expanding programs in favor of the underrepresented sex. Rutgers RA3 added the

following compliance strategy related to equity in athletics scholarships: “The provision of reasonable opportunities for each sex to receive athletic scholarships and/or grants-in-aid in proportion to the number of students of each sex participating in intercollegiate athletics.”

Strategy 2: Provision of Facilities. The applicable legal standard was the requirement to provide equal athletic opportunities for members of both sexes in the provision of facilities. Rutgers RA3 presented the compliance strategy for this standard: “The University will provide its women’s intercollegiate athletics teams with locker and team rooms of equivalent quality, size, amenities (defined to include size and quality of lockers as well as proximity and access to shower areas, toilets, and sinks.”

Strategy 3: Provision of Publicity. Language in Rutgers LF3 noted the university’s defense that some of its publicity related to men’s teams was associated with greater public interest in those teams. Acknowledging this defense, the OCR replied, “universities have an obligation under Title IX to not only react to interest in their most popular teams, but also to market and promote interest in all of their teams equivalently” (Rutgers LF3). Strategies for equalizing publicity across teams included, “the University’s revised website includes comparable coverage for all its teams. While the University may not have control over local and national broadcasting decisions, it has control over certain campus productions, such as webstreaming of its games and programs” (Rutgers (LF3). Rutgers RA3 prescribed this compliance strategy as follows: “Effective the 2014-2015 academic year, the University will ensure that it provides equal athletic opportunities for members of both sexes in the provision of publicity.”

Strategy 4: Provision of Support Services. The applicable legal standard was the requirement to provide equal athletic opportunities for members of both sexes in the provision of

support services. Rutgers RA3 provided for the following compliance strategy: “The University will ensure that the office space provided for the coaches and administrative staff of men's and women's teams is substantially equivalent.” Rutgers LF3 noted that the disparity was an issue that needed to be addressed because, “Men’s teams had access to substantially more office space and to better amenities than the women’s teams. As a result, men’s teams were afforded greater access to space in which to conduct meetings and other team-related activities.” Language included in LF3 noted, however, that it was not an issue that some teams were provided with cubicle office space while others were provided with rooms.

Strategy 5: Survey female students about athletic opportunities. The applicable legal standard is that athletic opportunities must either be proportional to enrollment or to the underrepresented sex’s level of interest, as discussed under Theme 2. Level of interest is assessed through surveys. Monmouth RA provided for an ongoing practice of biannual surveys: “The University will continue its practice of surveying students on a two-year rotational cycle, utilizing an OCR-approved survey during the monitoring period, to determine female students’ interest and ability to participate in sports not currently offered by the University.” To determine whether a new sport should be added to the university’s roster of female athletic teams, Monmouth RA indicated,

The University will determine whether there is a sufficient number of female students with sufficient interest, and if applicable, ability to support the addition of a team in sports not currently offered by the University as intercollegiate sports, and whether there is sufficient competition within the University’s normal competitive division for those teams/sports. (p.6)

Strategy 6: Travel and per diem allowance. Rutgers RA3 provided for the following compliance strategy for travel and per diem allowances: “The University will review and revise its athletics travel expenses for men’s and women’s athletics teams to ensure that such expenditures are provided in proportion to their rates of participation.”

Summary

Three research questions were used to guide this study. RQ1 was: How does OCR respond to complaints of how institutions of higher education handle Title IX in New Jersey? The theme presented to address this question was: OCR responds to complaints by conducting an investigation, issuing findings, and reaching a resolution agreement. RQ2 was: What themes are found in OCR’s Letters of Findings and Resolution Letters for institutions of higher education in New Jersey? The findings presented to address this question indicated that the following themes emerged in OCR letters: (a) summary of the complaints, (b) establishment of OCR jurisdiction, (c) review of applicable legal standards, and (d) prohibition of retaliation against the complainant. RQ3 was: What strategies do the OCR suggest to improve Title IX compliance in institutions of higher education in New Jersey? The findings indicated that the following strategies were recommended to improve compliance in sexual harassment discrimination cases: training employees, improving grievance procedures, designation of Title IX Coordinator, complaint reviews, notice of non-discrimination, climate checks, and information sessions. The following strategies were recommended to improve compliance in sex-based discrimination in athletics complaints: provide participation for female athletes, provision of facilities, provision of publicity, provision of support services, survey female students about athletic opportunities, and travel and per diem allowance. Chapter V includes discussion, interpretations, recommendations, and conclusions derived from these findings.

CHAPTER V

Discussion, Recommendations, and Conclusions

The problem addressed in this study was that while previous scholars have explored Title IX compliance, it was not clear how the OCR interprets Title IX noncompliance in higher education institutions (James & Hetzel-Riggin, 2022; Karp, 2019). The Department of Justice (DOJ) allows colleges and universities to determine the standards they will utilize during a hearing. In turn, this creates ambiguity that does not allow for formal guidance to the hearing officials (Karp, 2019). There was a need to investigate sexual assault incidences in higher learning institutions in New Jersey to discover how OCR personnel interpret Title IX noncompliance in higher education institutions. In this regard, the aim of this qualitative content analysis (QCA) study was to explore how (OCR) interprets Title IX noncompliance in New Jersey's higher education institutions.

A document analysis was conducted using Qualitative content analysis (QCA). The QCA is a method for systematically describing the meaning of qualitative material (Selvi, 2019). The study used secondary data from all OCRs from 2015 to 2022, and the data that were analyzed for this study were retrieved from the U.S. Department of Education's website after successfully seeking permission through the FOIA request. Qualitative content analysis was designed to systematically review and analyze archival data (Selvi, 2019).

Three research questions were used to guide this study. RQ1 was: How does OCR respond to complaints about how institutions of higher education handle Title IX in New Jersey? The theme presented to address this question was: OCR responds to complaints by conducting an investigation, issuing findings, and reaching a resolution agreement. RQ2 was: What themes are found in OCR's Letters of Findings and Resolution Letters for institutions of higher education in

New Jersey? The findings presented to address this question indicated that the following themes emerged in OCR letters: (a) summary of the complaints, (b) establishment of OCR jurisdiction, (c) review of applicable legal standards, and (d) prohibition of retaliation against the complainant.

RQ3 was: What strategies does the OCR suggest to improve Title IX compliance in institutions of higher education in New Jersey? The findings indicated that the following strategies were recommended to improve compliance in sexual harassment discrimination cases: training employees, improving grievance procedures, designation of Title IX Coordinator, complaint reviews, notice of non-discrimination, climate checks, and information sessions. The following strategies were recommended to improve compliance in sex-based discrimination in athletics complaints: provide participation for female athletes, provision of facilities, provision of publicity, provision of support services, survey female students about athletic opportunities, and travel and per diem allowance. Chapter V includes discussion, interpretations, recommendations, and conclusions derived from the study findings.

Discussion and Interpretation of Findings

The discussion and interpretation of findings were based on the research questions and themes generated during the content analysis procedure.

Research Question One

RQ1 was: How does OCR respond to complaints about how institutions of higher education handle Title IX in New Jersey? The findings indicated that the first major actions after OCR receives a complaint, is to conduct an investigation which is summarized into sexual harassment and assault complaint as quoted from Princeton LF. On the same note, Rodriguez, 2020) revealed that the Department of Justice remains committed to pursuing the goal of equality

in education through its continued enforcement of Title IX. Lay et al. (2019) also found that Title IX positively influenced administrative policies on sexual assault and triggered positive responses against sexual assault and perpetrators. Moreover, Title IX helped higher education institutions to navigate the complex investigations associated with sexual assault claims.

After conducting an investigation, the OCR's next major action was to issue findings, stating that the University failed to establish that it has effectively accommodated the athletic interests and abilities of women, the underrepresented sex; therefore, OCR determined that the University violated the regulation implementing Title IX. The result is consistent with other studies stating that the Education Amendment of 1972's Title IX prohibited sex discrimination in institutions that received government funding (Chamberlain et al., 2018).

Research Question Two

RQ2 was: What identifiable themes are found in OCR's Letters of Findings and Resolution Letters for institutions of higher education in New Jersey?

Theme 1: Summary of Complaints. The findings revealed the summary of the complaints without case details but the legal standards were alleged to have been violated. This was manifested by the failure to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student complaints of sex discrimination/harassment, including sexual assault. However, other studies revealed that the decision-making process for Title IX complaints was not something that Title IX Coordinators had to oversee, nor were they forbidden from doing so (Caron & Mitchell, 2022)

The complainants alleged that the University failed to respond appropriately to complaints of sexual assault that three students made demonstrating that the university discriminated against students, based on sex orientation. Similarly, Castellanos and Huyler

(2018) argued that the increase in unreported sexual cases resulted from universities and law enforcement officers mishandling, even with effective sexual assault policies such as Title IX, many students and faculty members failed to report the cases. Webermann and Holland (2022) revealed that the mishandling of sexual assault complaints by HEIs is more likely to develop into and persist as a social problem if OCR portrays and interprets it as a social problem since OCR has the authority to enforce Title IX and the power to withhold federal money from HEIs in non-compliance.

Theme 2: Establishment of Jurisdiction. The findings revealed that OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX). Further, the College is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX. Consistent with current results, past research demonstrates that the United States would be subject to discrimination under any educational program or activity receiving federal financial assistance, be denied the benefits of such a program or activity or be excluded from participation in such a program or activity based on sex (Jessup-Anger et al., 2018). However, some scholars have reported that Title IX provisions are inadequate in handling sexual misconduct allegations, given the learning institutions' responsibility to address sexual misconducts that could be beyond their jurisdiction (Comvalius-Goddard, 2021).

Theme 3: Review of Applicable Legal Standards. Research findings indicated the review of applicable legal standards including the legal standards for sexual harassment, and the legal standards for equal opportunity in athletics. The relevant legal standards for sexual harassment investigated by the OCR were not those used to determine whether sexual harassment had occurred, but those used to determine whether the recipient of a sexual harassment complaint had

responded appropriately. Though, OCR asserts that the preponderance of the evidence standard, which was created for civil rights statutes, is the most suited for examining claims of sexual harassment or sexual violence, which are kinds of sex discrimination (Miller, 2018).

To determine whether the recipient of the complaint has been guilty of discrimination, the first applicable legal standard is that the recipient must take immediate and appropriate action to determine what occurred. The standard for charges of sexual assault, including rape, has drawn criticism from FIRE (Sokolow, 2020).

Research Question Three

RQ3 was: What strategies does the OCR suggest improving Title IX compliance in institutions of higher education in New Jersey? Two themes were used to address this question.

Current research findings indicated strategies to improve compliance after sexual harassment. Training ensures that responsible employees with the authority to address sexual violence know how to respond appropriately to reports of sexual violence; know that they are obligated to report sexual violence to appropriate school officials; and that all other employees understand how to respond to reports of sexual violence. Similarly, OCR addressed the requirement for extensive Title IX training for those who hear reports of sexual violence, including coordinators, investigators, and law enforcement (Buffkin et al., 2018). Yet, in contrast to earlier advice, it stated the need for expanded training guidelines to cover any worker or student who is probably to witness or hear about harassment or violence (Buffkin et al., 2018). The findings add to past research indicating that faculty and staff are required to take several trainings every year addressing sexual harassment prevention, discrimination and the legal aspects of supervision.

The result indicated the need to improve grievance procedures to enhance compliance after sexual harassment. The legal standard for grievance procedures is that the university should provide for prompt and equitable resolution of complaints such as a notice to parties of the outcome of the complaint and any appeal; and assurance from the institution. Previous studies indicate that some colleges and universities were applying the clear and convincing level, or beyond a reasonable doubt, a far higher threshold required in criminal prosecutions posed difficulties (Miller, 2018). OCR reminded institutions that publishing a notice of non-discrimination and implementing suitable grievance procedures is a necessity that functioned as preventative measures against harassment, similar to the amended guideline document released in 2001 (Newberry, 2018).

Another strategy as demonstrated in this study findings was the designation of a Title IX coordinator. The findings indicated that the Title IX Coordinator is responsible for providing annual training to members of the University community regarding the application and implementation of policies and procedures related to Title IX. The University has regularly notified all students and employees of the Title IX Coordinator's contact information and responsibilities. These findings have also been reported in other studies which indicate that each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under Title IX Coordinator who would be involved in creating the recipient's sexual harassment and discrimination policies to ensure that grievance procedures adhere to Title IX (Caron & Mitchell, 2022).

Making the Title IX Coordinator accessible to members of the college or university makes the college take steps to clearly and adequately notify all new and existing students and employees of the name of the person(s) designated to coordinate its efforts to comply with Title

IX. Prior research also highlights that under Title IX, higher institutions of learning were required to create OCR managed by a Title IX coordinator who would guide and advise the institution on its response to sexual assault cases, handle sexual harassment complaints in addition to ensuring the school's compliance with Title IX (Holland et al., 2018)

Another strategy in the study was to review the complaints to determine if resolutions were provided. The objective was to scrutinize whether the College failed to investigate a complaint; whether the College provided written notice of the outcome of the investigation to the alleged victim and the alleged harasser; and, whether the College took steps to prevent the recurrence of harassment or any hostile environment created by the harassment.

The findings are consistent with previous studies which indicate that Title IX policy is often referred to as a living law given that it has been subjected to more than two dozen proposed amendments, reviews, supreme court cases, and presidential political actions that add to the complexity of the definitions of sexual violence, institutional responses and (in) action and clarifications of which students are protected by the law (Valentin, 1997; Wadley & Bicolazzo, 2021).

The results demonstrated the need for notice of non-discrimination in which complaint recipients are required to notify applicants for employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate based on sex in its education programs or activities. The concept of non-discrimination notice has also been reported in other studies indicating that OCR reminded institutions that publishing a notice of non-discrimination, implementing suitable grievance procedures, and having a Title IX Coordinator were necessities that functioned as

preventative measures against harassment, similar to the amended guideline document released in 2001 (Newberry, 2018).

The study findings also revealed that climate checks as a strategy to enhance compliance after sexual harassment. Princeton RA stated the goal of the climate check compliance strategy, which consisted of surveying students to assess whether others complied. Cantalupo (2019) reported that to properly comprehend OCR's recommendations and their legal responsibilities regarding Title IX and sexual violence, OCR encouraged institutions to use the 45-page Q&A paper in conjunction with the 2001 Guidance and the 2011 Dear Colleague Letter for climate checks (Cantalupo, 2019).

Information sessions was another strategy suggested in the current study findings to improve compliance after sexual harassment Princeton RA provided that the University can offer annual information sessions to students so that they can be aware of the University's injunction against sexual misconduct; how to recognize sexual misconduct when it occurs; and how and with whom to report incidents of sexual misconduct. The information sessions would also cover the university's grievance procedures, per Princeton RA. Information sessions as a strategy have also been indicated by past research that OCR decided it would be advantageous to provide more information on Title IX duties in the form of a published paper (Richards, 2019). Following the 2011 Dear Colleague Letter's publication, OCR responded to calls for help defining institutions' responsibilities concerning sexual violence under Title IX by creating this Q&A document (Richards, 2019).

The findings also indicated that that providing equal participation for female athletes can improve compliance with sex-based discrimination in athletics complaints.

Providing participation opportunities for female and male students effectively accommodates the athletic interests and abilities of members of both sexes by affording athletic participation opportunities that are either substantially proportionate to each sex's enrollment. The result is similar to Chamberlain et al.'s (2018) finding that Title IX increased the number and percentage of women enrolling in postsecondary institutions, as well as fairer educational and job possibilities for females. Despite the importance of this legislation, Title IX has received little attention from historians (Chamberlain et al., 2018).

The results indicate the need to provide facilities to athletes of both sexes for improved compliance with sex-based discrimination in athletics complaints. The applicable legal standard was the requirement to provide equal athletic opportunities for members of both sexes in the provision of facilities. Rutgers RA3 presented the compliance strategy for this standard indicating that the University will provide its women's intercollegiate athletics teams with locker and team rooms of equivalent quality, size, and amenities defined to include size and quality of lockers as well as proximity and access to shower areas, toilets, and sinks. Student-athletes were engaged in most sexual assault cases reported in the media and filed with the courts (Buffkin et al., 2018). OCR also clarified that these situations needed to be considered and decided upon as part of the institution's Title IX proceedings and should not be handled only through athletic department processes (Buffkin et al., 2018).

Study findings demonstrated providing publicity would improve compliance with sex-based discrimination in athletics complaints. Rutgers RA3 prescribed this compliance strategy so that the University would ensure that it provides equal athletic opportunities for members of both sexes in the provision of publicity. Study results concur with other studies indicating that Title IX is a federal law that guarantees equal opportunity and access to programs, activities, and

employment at educational institutions that receive federal funds (Chiste, 2005). The primary objective of Title IX is to address sexual discrimination in education (Chiste, 2005).

Consequently, when learning institutions hesitate to respond to sexual misconduct on campuses, Title IX law dictates that this inaction constitutes sexual discrimination (Gibbs, 2009). The findings contribute to previous research by establishing the need for equal athletic opportunities for members of both sexes in the provision of publicity.

The findings revealed that the applicable legal standard was to provide equal athletic opportunities for members of both sexes in the provision of support services. On the other hand, previous research revealed that disciplinary procedures related to sexual assault are only meant to allow learning institutions to meet their obligation of providing a safe and supportive learning environment; and not equal athletic opportunities (Fronius et al., 2019). In most cases, such mandate and duty could be confined to traditional disciplinary practices embedded in finding to solve crimes (DeKeseredy et al., 2019). Therefore, the findings add to the empirical literature by revealing the need for providing equal support services across all sexes.

The current research findings also demonstrated the applicable legal standard was that athletic opportunities must either be proportional to enrollment size or the underrepresented sex's level of interest. This standard implies both and female and male students should be surveyed regarding athletic opportunities. The findings confirm Conn's (2020) results that compared to male students, female students were discriminated against and harassed sexually, and as a result, the number of female students enrolling for business majors in American universities has reduced significantly. Besides declining enrollment, some scholars reported that due to sexual harassment and mishandling of such cases by institutions of learning, the performance of many students has plunged (Bovill et al., 2022; Castellanos & Huyler, 2018; O'Callaghan et al., 2021).

Provision of travel and per diem allowance was one of the strategies indicated in this study findings to enhance improve compliance with sex-based discrimination. Rutgers RA3 provided for the compliance strategy for travel and per diem allowances stating that the University would revise its athletics travel expenses for men's and women's athletics teams to ensure that such expenditures are provided in proportion to their rates of participation. Female athletes received less travel and per diem allowance, if received at all (Buzuvis, 2020). To enhance equity, universities should provide equal travel and per diem allowance to all athletes regardless of their gender.

Limitations

The material availability was a limitation in this study because it was challenging to generate additional data given the research design selected for the study. However, the study material that was provided by OCR was publicly available. The number of documents used in the study was another source of limitation because limited materials were accessed for content analysis.

The study was also limited to Title IX analysis and OCR's office interpretation of Title IX, and how noncompliance occurs. Further, the study was limited by social constructionism which employed the QCA design to conduct the policy analysis for this study.

Implication for Policy

The study findings provide important insight for policymakers to create and implement compliance policies concerning Title IX in Universities and the overall education sector. Compliance with Title IX remains a top concern for administrators in higher education institutions (Cantalupo, 2021). The cost of being found liable or non-compliant with the Title is great. Not only HEIs concerned about the monetary damages they can face for Title IX violations

(Nite & Nauright, 2020, Richards & Kafonek, 2016), but they also worry about compliance reviews that could possibly halt federal funds for noncompliance (Koss et al., 2014).

Training and development policies can be implemented by policymakers to enhance the compliance procedures among the universities who may find they are acting against the Title IX compliance policies. Training helps staff understand requirements under the Title IX standards and compliance policies. Amid the Title IX compliance concerns, there are unanswered questions and concerns regarding OCR's Title IX guidance (Nite & Nauright, 2020). Despite the guidance provided by OCR, HEIs are failing to comply with Title IX, thus failing to properly protect and serve students. Campus administrators can use this study to implement compliance training and mentorship, as well as adhere to the Title IX compliance standards to avoid punishments and penalties.

Recommendations for Future Research

Future research should be conducted using a qualitative study design with primary sources of data in universities and colleges to explore how gender impact the application of compliance policies. There is also a need to implement alternative approaches to address sexual misconduct on campuses in Title IX compliance institutions to evaluate the effectiveness of such changes (Del Gobbo, 2021).

Although the study material that was retrieved from OCR was publicly available, it was challenging to generate additional data given the restrictions of the research design selected for the study. In this regard, the researcher recommends that future studies should be conducted using primary sources of data and interviews as data collection tools for enhanced participant expression concerning the topic of study. Future researchers are advised to conduct further

studies to examine the strategies to improve compliance after sex-based discrimination in athletics complaints.

The recommendations discussed should provide greater insight into how Title IX regulations can be applied to prevent sexual misconduct and highlight the need to implement alternative strategies to sexual misconduct on campuses. The recommendations to use primary sources such as interviews may offer clarity of how students perceive their institution's response to the complaints based on gender and sexual orientation. Future researchers may find these recommendations useful in identifying how Title IX compliance institutions can improve their compliance with the regulations. The understanding of non-compliance of Title IX and its implications for the student experience can be applicable in various areas of research within the education sector.

Conclusion

There was a need to investigate sexual assault incidences in higher learning institutions in New Jersey to discover how OCR personnel interpret Title IX noncompliance in higher education institutions. In this regard, the aim of this qualitative content analysis (QCA) study was to explore how (OCR) interprets Title IX noncompliance in New Jersey's higher education institutions. The study provides insight into how OCR responds to complaints by conducting an investigation, issuing findings, and reaching a resolution agreement. The findings also indicated that a summary of the complaints, the establishment of OCR jurisdiction, a review of applicable legal standards, and the prohibition of retaliation against the complainant were the key strategies for enhancing compliance. The study may be useful to education stakeholders responsible for training employees. Improving grievance procedures, designation of a Title IX Coordinator, complaint reviews, drafting notices of non-discrimination, climate checks, and information

sessions may be used to strengthen compliance resolutions. Compliance with sex-based discrimination in athletics complaints can also be improved through providing participation for female athletes, provision of facilities, publicity, support services, and travel and per diem allowance. Further, research should be conducted to determine how training can impact non-discrimination Title IX compliance.

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Appendix A: Approval Letter



June 29, 2023

Monise Princilus
Seton Hall University

Dear Monise,

The IRB is in receipt of the application for your study entitled “A Content Analysis of Title IX Sexual Misconduct Violations Using the Office of Civil Rights Investigative Findings for Higher Education in New Jersey” After reviewing the inclusive content, the proposed study was deemed to be “Not Human Subjects Research” and is therefore beyond the purview of the IRB. Therefore, you are under no obligation to submit any further correspondence to the IRB regarding this effort, unless of course there are any changes made to the design or intent of your study that may otherwise change the designation to human subject’s research.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Buschman".

N.R.

John Buschman
Interim Associate Provost for Research and Innovation

Appendix B: CITI Training Certificate

		Completion Date 04-Mar-2023 Expiration Date N/A Record ID 54755721
This is to certify that:		
Monise Princilus		
Has completed the following CITI Program course:		Not valid for renewal of certification through CME.
Responsible Conduct of Research (Curriculum Group)		
Social and Behavioral Responsible Conduct of Research Course (Course Learner Group)		
1 - Basic Course (Stage)		
Under requirements set by:		
Seton Hall University		
 Collaborative Institutional Training Initiative 101 NE 3rd Avenue, Suite 320 Fort Lauderdale, FL 33301 US www.citiprogram.org		
Verify at www.citiprogram.org/verify/?wb0d30bad-b65c-4af1-ae36-3f088de29b83-54755721		

Appendix C: FOIA Request



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

RACHEL POMERANTZ
DIRECTOR
NEW YORK OFFICE

June 12, 2023

Sent by email only to moniseprincilus@gmail.com

Monise Princilus, Ed.S., ABD
moniseprincilus@gmail.com

Re: Freedom of Information Act Request No. 23-01180-F

Dear Monise Princilus:

On March 6, 2023, the U.S. Department of Education (the Department), Office for Civil Rights (OCR) received your request for records which was then forwarded to the New York Office for Civil Rights on May 17, 2023. You requested "the Letter of Findings from April 4, 2011,- February 2023' issued by OCR in complaints involving "Title IX Misconduct" in colleges in New Jersey. During a telephone call on June 8, 2023, you modified your request. You clarified that you are seeking the resolution letters and resolution agreements issued by OCR to colleges in New Jersey in which OCR resolved Title IX issues between April 4, 2011 and February 2023. The Freedom of Information Act (FOIA), 5 U.S.C. § 552, and its implementing regulation, at 34 C.F.R. Part 5, govern your request to OCR for this information. Accordingly, your request was processed under the provisions of FOIA and the applicable departmental regulations.

In an email dated June 8, 2023, OCR informed you that it had identified seven cases that are responsive to your request. OCR also informed you that each of the resolution letters and resolution agreements issued to the colleges in these seven cases had been posted on OCR's website and are publicly available. OCR also provided you with the links to the websites for these documents in the email. Those links can also be found below:

Rutgers University

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02182096-a.pdf>

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02182096-b.pdf>

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/02086001.html>

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02086001-b.pdf>

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02162315-a.pdf>

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.
www.ed.gov

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02162315-b.pdf>

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02182251-a.pdf>

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02182251-b.pdf>

Mercer County College

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02152290-a.pdf>

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02152290-b.pdf>

Princeton University

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/02112025.html>

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02112025-a.pdf>

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02112025-b.pdf>

Monmouth University

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02156001-a.pdf>

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02156001-b.pdf>

OCR has determined that there are no other documents that are responsive to your request and that require processing under FOIA. Accordingly, OCR has closed your FOIA request as of the date of this letter.

You have the right to seek assistance and/or dispute resolution services from the Department's FOIA Public Liaison or the Office of Government Information Services (OGIS). The FOIA Public Liaison is responsible, among other duties, for assisting in the resolution of FOIA disputes. OGIS, which is outside the Department of Education, offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation.

They can be contacted by:

Mail:	FOIA Public Liaison Office of the Chief Privacy Officer U.S. Department of Education 400 Maryland Ave., SW, LBJ 2E321 Washington, DC 20202-4536	Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road College Park, MD 20740-6001
E-mail:	robert.wehausen@ed.gov	OGIS@nara.gov
Phone:	(202) 205-0733	(202) 741-5770; toll free at 1(877) 684-6448
Fax:	(202) 401-0920	(202) 741-5769

Lastly, you have the right to appeal this determination. You must submit any appeal within 90 calendar days after the date of this letter. Using the services described above does not affect your right, or the deadline, to pursue an appeal. An appeal must be in writing and must include a detailed statement of all legal and factual bases for the appeal; it should be accompanied by a copy of this letter, the initial letter of request, and any documentation that serves as evidence or supports the argument you wish the Department to consider in resolving your appeal.

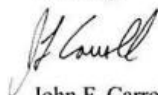
Appeals may be submitted using the on-line form available at www.ed.gov/policy/gen/leg/foia/foia-appeal-form.pdf.

Appeals can also be submitted by:

E-mail: EDFOIAappeals@ed.gov
Fax: 202-401-0920
Mail: Appeals Office
Office of the Chief Privacy Officer
U.S. Department of Education
400 Maryland Avenue, SW, LBJ 2W218-52
Washington, DC 20202-4536

If you have any questions, please contact me at john.carroll@ed.gov.

Sincerely,



John F. Carroll
Program Manager