



eCOMMONS

## Journal of Critical Scholarship on Higher Education and Student Affairs

---

Volume 3

Issue 3 *Resilience, Resistance, & Reclamation:  
Changing the Narrative of Higher Education*

Article 5

---

2018

### The Personal Is Still Political: A Feminist Critical Policy Analysis of the Rollback of Title IX

Leslie Duadua Cabingabang  
*University of Hawai'i at Mānoa*

Follow this and additional works at: <https://ecommons.luc.edu/jcshesa>



Part of the [Higher Education Commons](#)

---

#### Recommended Citation

Cabingabang, L. D. (2018). The personal Is still political: A feminist critical policy analysis of the rollback of Title IX. *Journal of Critical Scholarship on Higher Education and Student Affairs*, 3(3), 38-47.

This Conceptual Framework is brought to you for free and open access by the Journals and Magazines at Loyola eCommons. It has been accepted for inclusion in *Journal of Critical Scholarship on Higher Education and Student Affairs* by an authorized administrator of Loyola eCommons. For more information, please contact [ecommons@luc.edu](mailto:ecommons@luc.edu).



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 License](#).

---

## The Personal Is Still Political: A Feminist Critical Policy Analysis of the Rollback of Title IX

### Cover Page Footnote

Thank you, Dad, for a wealth that can never be stolen.

# The Personal is Still Political:

## A Feminist Critical Policy Analysis of the Title IX Rollback



**Leslie Duadua Cabingabang**  
*University of Hawai'i at Mānoa*

In November 2016, Republican candidate Donald Trump won the presidential election with 304 electoral votes over Democrat Hillary Clinton's 227, despite the difference of 2.9 million in the popular vote in favor of Clinton. The discriminatory and hate-filled rhetoric of the Trump campaign raised concerns that the advancements of rights for "sexual and gender minorities made under President Barack Obama's administration would be limited or rescinded" (Veldhuis, Drabble, Riggie, Wootton & Hughes, 2018, p. 27). The fate of Title IX of the Education Amendments was of concern due to the calamitous appointment of Trump's nominee, Betsy DeVos as Secretary of Education. DeVos signaled no commitment to upholding the previous guidance during her confirmation hearing. Advocates contend that the Department of Education Office of Civil Rights' (OCR) release of the 2011 Dear Colleague Letter (DCL), charging institutions of higher education (IHE) with the responsibility of direct involvement in complaints of sexual misconduct, advanced the movement toward the elimination of sexual violence. On September 7, 2017, DeVos announced her intent to repeal the 2011 DCL, criticizing the guidance as

illegally implemented having not been vetted through a rulemaking process of notice and comment (Rider-Milkovich, 2017). She characterized it as a failed system that had not brought fairness to either party involved in alleged campus sexual violence (Yoffe, 2017). Later that month, a new Dear Colleague Letter rescinding the 2011 and 2014 guidance (United States Department of Education [DOE], 2017) was released, signed by Acting Assistant Secretary for Civil Rights, Candice Jackson. In place of the repealed Obama-era guidance, the new DCL outlined significant changes that provided a glimpse of this administration's direction. The future of Title IX reform seems dim and uncertain given an administration overlaid with "grab her by the pussy" recordings (Fahrenthold, 2016), inexperienced female "inheritors" (Bensimon & Marshall, 2003) inducted into the old boys' club under the auspices of the Department of Education and the default to fake news to evade responsibility.

The purpose of this article is to employ a feminist critical policy analysis (Marshall, 1998) of Title IX guidance from the Department of Education. The Obama-era

guidance was heralded as successful in bringing national attention to campus sexual violence, and mobilized universities to update practices to address the issue (Collins, 2016). The current administration, however, has left many worried about the legitimization of messages of exclusion, hate and violence (Veldhuis et al., 2018). The discourse of campus sexual violence from the current administration reflects dominant narratives of rape that "blame the victim, question the victim's credibility, imply that the victim deserved being raped, denigrate the victim, and trivialize the rape experience" (Ward, 1988 as cited in Nagal, Matsuo, McIntyre, & Morrison, 2005, p. 726). Negative attitudes toward rape victims are exacerbated by perceptions of race, culture, and gender (Collins, 2018; Crenshaw, 1989; Nagal et al., 2005). Feminist analysis using a critical lens recognizes intersections of identities and the impact these have on marginalized groups (Biklen, Marshall & Pollard, 2008; Shaw, 2004). Utilizing feminist critical analysis, I aim to expose the prevailing power relations in Title IX policy for a more complete understanding of its implementation from the perspectives of both the policymakers and those affected by the policy (Shaw, 2004, p. 57).

Feminist critical analysis can be applied to the spectrum of sex-based discrimination defined by Title IX. However, for this analysis, I will focus specifically on regulations regarding sexual violence and rape. According to the Office of Civil Rights, sexual violence refers to "physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent," including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion (United States Department of Education, 2011, p. 1). In this article, I begin with an overview feminist critical policy analysis and explain its use to analyze Title IX guidance. Next, with the intent to expose the intersections of sexism with other forms of oppression and further marginalization, I will use critical feminist thought to (a) examine rape; (b) review the implementation and responses to the 2011 DCL; and (c) examine the five significant changes in the interim Title IX guide. Finally, I will provide discussion points to facilitate future considerations for Title IX implementation.

### Feminist Critical Policy Analysis

Feminist critical analysis problematizes policies to reveal sexism and discrimination, including racial, sexual, and social class biases, inherent in commonly accepted theories, constructs, and concepts (Bensimon & Marshall, 2003; Marshall, 1999). According to Marshall (1997 as cited in Shaw, 2004), White, well-educated males dominate approaches to policy analysis; therefore, the worldview of this group is valued and widely accepted. Feminist critical analysis reveals androcentrism (centered on male or masculine interests) in the

ways policies exclude women or proclaim neutrality, essentially disenfranchising or denying women opportunity, agency, or power (Biklen, Marshall & Pollard, 2008). Simply adding sex, or women, as a protected class is not in itself transformative (Bensimon & Marshall, 2003; Shaw, 2004). The key tenets of feminist critical theory shape policy analysis toward the goal of challenging dominant structures that deny access to power and further oppress marginalized groups. First, gender must be the center of analysis, whereby assessment of structures and policies is gender conscious, not gender blind or neutral (Bensimon & Marshall, 2003; Shaw, 2004). As in critical theory, lived experiences are essential in data collection. Feminist critical policy analysts rely on the "lived experiences of women, as told by women, and they also utilize discourse analysis to uncover the ideologies and assumptions embedded in policy documents" (Shaw, 2004, p. 59). Analysis must be viewed from the counter narratives and voices of those disenfranchised or discriminated (Bensimon & Marshall, 2003). Critical feminism recognizes the intersections (Crenshaw, 1989) of gender, race, sexuality and social class; thus, the purpose of this approach is not to develop a generic universal understanding of the human experience, rather it is to underscore the ways in which these identities vary the effects of policies (Shaw, 2004). Finally, feminist critical policy analysis must be transformative, a form of action research (Bensimon & Marshall, 1997 as cited in Shaw, 2004).

### Using Feminist Critical Analysis with Title IX

One could assume that a feminist critical policy analysis framework was applied at all levels of amending Title IX because sex is a variable in the policy. Or per-

**"Feminist critical analysis problematizes policies to reveal sexism and discrimination, including racial, sexual, and social class biases, inherent in commonly accepted theories, constructs, and concepts."**



haps because sex is embedded in the policy, gender biases are not a concern. Conventional policy analysts would argue that because sex is the basis of this anti-discrimination policy, it is not necessary to analyze its potential for gender bias toward males. A close examination of perceptions of rape is paramount in the analysis of the current status and direction of Title IX. The current administration's approach in repealing previous Title IX guidance mirrors patriarchal and racist attitudes toward sexual violence and exposes the prevalence of an unwritten threat to power (Crenshaw, 1991; Harris & Linder, 2017; Nagal et al., 2005). DeVos and critics of the Obama-era guidance have focused much of their attention on the negative impact these changes have had on students accused of sexual violence. Many of the examples used to support this claim follow the dominant narrative of sexual violence, implying Title IX provides a venue for false reporting against innocent White male students (Joyce, 2017; Taylor & Johnson, 2015; Yoffe, 2017). Employing feminist critical analysis has the potential to fully realize the spirit of Title IX by revealing the groups that are recognized or excluded by the policy (Collins, 2016; Crenshaw, 1991; Marshall, 1999; Shaw, 2004). Feminist critical scholarship is limited in regards to Title IX because of the policy's prevailing ambiguous status. However, the basis of gender in Title IX and the complexities of sexual violence fortify how the personal lives of those directly impacted by policy change remains political; hence, a feminist critical approach is exceptionally appropriate.

An area of contention in using feminist critical analysis on Title IX is that the policy is inherently gender-charged, whereas the literature on this method is typically applied to seemingly neutral structures. Instead of focusing on gender in this policy, feminist critical analysis problematizes the policymakers and the political processes that govern gender. Activism to implement firm Title IX guidelines was led by policymakers who may identify as feminist and advocate for feminism in government. In her article "Trading the Megaphone for the Gavel in Title IX Enforcement," Halley (2015) called out feminists within the govern-

ment that pushed for the Obama-era Title IX regulations (p. 103). These "strategic feminists" (Bensimon & Marshall, 2003, p. 347) or "femocrats" (Franzway, Court, & Connell, 1989 and Watson, 1990 as cited in Marshall, 1999, p. 66) perhaps neutralized the discourse of campus sexual violence as all-inclusive to remain at the table for governmental power over Title IX regulation (Collins, 2016; Halley, 2015). Although this tactic conflicts with critical feminism, the use of heterocentrism (assumption that all people are heterosexual),



Image by Natalie Battaglia

gender binarism (system that limits gender identity to opposite categories i.e. boy and man or girl and woman), and neutralization to develop, implement and govern Title IX, was perhaps necessary to win the approval of the dominant center. Neutralizing Title IX in this way, however, eradicates the experiences of the disproportionate number of women that are sexually assaulted. Even more troublesome is the absence of the impact that race, class, and ability have in the discourse on prevention and intervention of campus sexual violence. Furthermore, the assertion of the dominant narrative where women are victims and men are rapists excludes the experiences of male survivors, transgender survivors or sexual violence in same-sex relationships (Davies & Hudson, 2011; Harris & Linder, 2017; Marine, 2017), which critics can use to counter any attempt toward gender equity. Yet, the same heterocentric and gender binary assumptions are being used to charge Obama-era guidance with inequitable practice. Exposing and navigating the nuances of patriarchal politics requires the use of a lens that unsettles the power dynamics and facilitates transformation.

Traditional policy analysis believes in a single truth and assumes objectivity is achievable and desirable (Shaw, 2004), contrary to critical analysis. Critical feminism threatens power structures by revealing the potential flaws in practices and decisions that would otherwise be normalized and accepted. Bensimon and Marshall (2003) explain that traditional analysis positions gender as an environmental variable referring "only to those areas both structural and ideological involving relations between the sexes and therefore gender is not seen as relevant to issues where gender is not explicit" (p. 344). "As an environmental variable the implication is that gender is a concept associated with the study of things related to women" (Bensimon and Marshall, 2003, p. 344), thus, only problematizing women. A feminist critical approach would position gender as a category to analyze policies to shine light on how "they can and do result in perverse obstinate consequences for women" (Bensimon and Marshall, 2003, p. 344). Positioning gender as a category of analysis instead of an environmental variable shifts interpretation away from problematizing women "(blame-the-victim or change-the-victim approach)" (Bensimon and Marshall, 2003, p. 344). Consequently, reframing questions using this approach changes the focus of the solution. I hope to disrupt the discourse of campus sexual violence by reframing the analysis of Title IX reform, and provide critical discourse for professionals in higher education.

### Title IX Analysis

#### Rape

Interestingly, much of the literature used to examine Title IX in this article does not include a definition of rape; I begin by providing a base for understanding its complexities as an essential component in analyzing Title IX policy. The common denominators in the various criminal and civil definitions of rape are sexual penetration and the absence of consent (Estrich, 1986; Hickman & Muehlenhard, 1999 as cited in Jozkowski, 2015; Rape Abuse Incest National Network [RAINN], 2018). Rape laws have been adjusted over the years to include forms of sexual violence other than penile penetration of the vagina (Corrigan, 2013). For example, some statutes vary in recognizing anal penetration, stipulations around statutory rape, oral penetration by a sex organ, digital penetration, penetration with foreign objects, rape between married individuals, and so forth.

Conceptualization of rape follows the dominant narrative in which White cisgender women are victims of rape by straight, cisgender men of color (Crenshaw, 1991; Harris & Linder, 2017). This patriarchal and racist perception constructs stereotypical attitudes toward victims (Crenshaw, 1991; Davies & Hudson, 2011;

Nagal et al., 2005) and disregards the experiences of survivors of color; transgender and male survivors; lesbian, gay, bisexual and queer survivors; and survivors with disabilities (Crenshaw, 1991; Harris & Linder, 2017). In rape law, "the male standard defines a crime committed against women, and male standards are used not only to judge men, but also to judge the conduct of women victims" (Estrich, 1986, p. 1091). The widely accepted patriarchal view of women's sexuality places property-like aspects on her chastity, while men's sexuality and even sexual aggression is celebrated (Crenshaw, 1991). Additionally, traditional gender roles shape attributions of rape victimization. Consequently, victims that deviate from socially accepted gender roles (i.e. transgender, lesbian, gay, bisexual, queer) experience higher rates of sexual violence, but the stigmatization of their identities pushes them further to the margins, limiting access to services and justice (Davies & Hudson, 2011; Grubb & Turner, 2012; Veldhuis, et al., 2018). Racism ascertains who is capable of committing rape and who can be raped. The stereotype that perpetrators of rape are usually men of color is upheld by the sensationalized focus on savage or animalistic representations of Black men (Crenshaw, 1991). The hypersexualization of Black women, and commodification of Asian women, narrows the perception of "true victims" to White females, eliminating the experiences of sexual violence in communities of color (Crenshaw, 1989; Crenshaw, 1991; Harris, 2017; Harris & Linder, 2017). These patriarchal and racist views reinforce misconceptions of what constitutes "real" (Estrich, 1986, p. 1088) rape versus, for lack of a better term, non-traditional rape.

At the forefront, the combination of sexual penetration and the absence of consent criminalize rape, yet the vast majority of rapists will not go to jail or prison (RAINN, 2018). Due to this bigoted system, sexual violence remains a highly underreported crime. Federal statistics show that for every 1,000 sexual assaults, 310 are reported to law enforcement, 11 of those are referred for prosecution, and seven lead to felony convictions (RAINN, 2018). RAINN (2018) indicates women and girls experience sexual violence at high rates; one in six American women being victims of attempted or completed rape.

Through a critical feminist lens, the disproportionate number of offenders convicted of rape versus the number of women experiencing sexual violence reveals a prejudiced system governed and privileged by men. Despite updates in rape laws to expand the discourse of sexual violence to look beyond the act of intercourse and include dynamics of power and control, the burden to prove victimization continues to fall on the survivor. Anything that diverges from the dominant narrative of rape questions everything about the survivor's behavior (prior and current) and



identities that contributed to the act of sexual violation. Ultimately, the policies and statutes associated with determining whether a crime of rape occurred, not to mention guilt, preserve male sexual vitality and perpetuate a systematic oppression of females:

Part of the intellectual and political effort to mobilize around this issue [rape] has involved the development of a historical critique of the role that law has played in establishing bounds of normative sexuality and in regulating female sexual behavior. Early carnal knowledge statutes and rape laws understood within this discourse to illustrate that the objective of rape statutes traditionally has not been to protect women from coercive intimacy but to protect and maintain a property-like interest in female chastity (Crenshaw, 1989, p. 157).

**Campus Sexual Violence and the 2011 Dear Colleague Letter**

Despite heightened attention to campus sexual violence recently, rape on college campuses is not a new concept. Sexual violence in postsecondary institutions has remained consistent, with 20-25% of college women experiencing rape or attempted rape (Jessup-Anger & Edwards, 2015). In addition, male college students are approximately five times more likely than their non-student counterparts to be victims of rape or sexual assault (RAINN, 2018). In the light of what is now known as Title IX reform, I ask you to think back to the landscape of sexual violence education and adjudication on college campuses before 2011. Sexual violence was adjudicated on a case-by-case basis and school policies described what behaviors did not amount to consent versus what it is and how it is attained (Childs, 2017; Jozkowski, 2015). Additional factors contributed to how IHE responded to reports of rape: the clout of the accused rapist, the victim's alcohol consumption, the victim's reputation, and so forth. Motivation to establish a standardized approach for campuses to investigate and eliminate sexual violence derived from an increasing number of student narratives that claimed their universities refused to investigate reports of sexual violence, "sweeping issues under the rug" (Childs, 2017). Additionally, there were a growing number of universities being investigated by the Office of Civil Rights for egregious mishandling of sexual misconduct cases which university administrators were aware of, but failed to do anything, i.e. Penn State, Michigan State University and University of Missouri.

To clarify and expand its Revised Sexual Harassment Guidance (2001), the OCR released the infamous 2011 Dear Colleague Letter, compelling schools to standardize definitions of behaviors constituting sex discrimination and developing procedures to handle

campus sexual violence. The OCR clearly stated that "sexual violence refers to physical acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of substances, intellectual or other disability and provides examples of sexually violence acts" (United States Department of Education, 2011). Institutional obligations under this guidance were:

1. The school must take immediate and appropriate action to investigate once they are put on notice;
2. Regardless of an existing criminal investigation, the school must take prompt and effective steps to end the violence, prevent its recurrence and address its effects;
3. Schools must implement interim measures to protect the complainant, even prior to a final decision of investigation;

**"The hypersexualization of Black women, and commodification of Asian women, narrows the perception of "true victims" to White females, eliminating the experiences of sexual violence in communities of color."**

4. Grievance procedures for students to file complaints of sexual violence must be provided. Procedures must include equal opportunity for both parties to a) present witnesses and evidence, and b) the same appeal rights;
5. The preponderance of evidence standard must be used to resolve complaints of sex discrimination; and
6. Both parties must be notified of the final outcome of the complaint (United States Department of Education, 2011).

The Department of Justice (DOJ) reinforced the responsibility of universities to address sexual violence and intimate partner violence in the 2013 Reauthorization of the Violence Against Women Act (VAWA) under

its Campus Sexual Violence Elimination Act (SaVE Act) provision, Section 304" (American Council on Education, 2014). Under VAWA, institutions are required to:

- "1) Report domestic violence, dating violence, and stalking, beyond crime categories the Clery Act already mandates; 2) Adopt certain student discipline procedures such as for notifying purported victims of their rights; and 3) Adopt certain institutional policies to address and prevent campus sexual violence, such as to train in particular respects pertinent institutional personnel" (American Council on Education, 2014).

The White House Task Force to Protect Students from Sexual Assault (Task Force) followed suit and identified four areas of priority in addition to the OCR and DOJ requirements: 1) conduct campus climate surveys to understand the extent of the problem; 2) prevention education and engaging men to change attitudes, behavior and culture; 3) effective response to reports of sexual violence; and 4) increase transparency and improve enforcement of Title IX at the federal and institutional levels (Task Force, 2014).

For the first time, universities were provided tangible procedures that standardized how to address campus sexual violence. Institutions examined their sexual misconduct policies to find outdated, ineffective and irrelevant procedures. IHE designated individual Title IX coordinators to receive all reports of sexual violence and coordinate services and investigations accordingly. State agencies dedicated more resources to implement the new policies and, with increasing national attention on campus rape, institutions could no longer sweep the issues under the rug. Female students were provided options to report rape and figure out what they could do to take back control in their lives. Going beyond the legal requirements, a handful of institu-

tions allocated resources establishing support services for accused students. The discourse on campus rape began to shift the focus from females making false reports of rape, to Title IX policy and institutional responses to sexual violence.

As anticipated, the potential to hold men and colleges accountable roused opposition of this united federal front. Critics neglected any focus on campus sexual violence, immediately charging the then administration with encouraging institutions to violate an individual's right to due process. In their National Review publication "The New Standard for Campus Sexual Assault: Guilty until proven innocent," Taylor and Johnson (2015) disputed the federal findings identifying three myths about campus rape: that an epidemic exists, that it is becoming more problematic, and that nearly all males accused of rape are guilty." The authors claimed that one in thirty women as opposed to the one in five Obama claim are assaulted while in college, and note an increase in accusations against innocent students. A contributor to the *Chronicle of Higher Education* boldly described the procedures meant to protect students as "a declaration of martial law against men, justified by an imaginary emergency, and a betrayal of the Title IX equity law" (Sommers, 2011, para. 17). A myriad of critiques resounded the same message about the Title IX guidance: the rape of college women is invalid compared to the sanctity of college men.

**Analysis of Current Guidance**

In anticipation of Title IX reform under the Trump administration, states and institutions initiated procedures to codify campus sex assault policies established under the previous administration. Since her confirmation hearings in early 2017, Secretary DeVos hinted at changes to the previous Title IX guidance. In July 2017, concerns arose when she held meetings with questionable stakeholders regarding policy change (Kreighbaum, 2017). In her announcement of repeal two months later, she said, "One rape is one too many, one assault is one too many, one aggressive act of harassment is one too many. One person denied due process is one too many" emphasizing the last point (Rothman, 2017). Citing atypical Title IX cases mishandling reports of rape, DeVos announced her intent to review the Obama-era guidance and criticized IHE with running "kangaroo courts" (Rothman, 2017).

Though it does not require campuses to alter current policies, the new OCR Ques-



Image by Natalie Battaglia





Image by Natalie Battaglia

them expelled for “regret sex” (Joyce, 2017). Now that schools have the option to increase the standard of proof, there is worry that students held responsible under the previous policy will return to their institutions to have their cases reheard or file lawsuits (Miltenberg in Joyce, 2017). The Student Affairs Administrators in Higher Education (NASPA) president released a statement soon after the repeal to declare the association’s support of the preponderance of evidence, stating, “singling out sex assault to have higher standard perpetuates rape culture” (Kruger, 2017, para. 5).

**Appeal of outcome of campus investigations.**

Appeals in the current guidance can be filed only under two conditions: by the accused, or (b) by both parties if voluntarily agreed upon. The previous guidance allowed for either party to initiate an appeal, where institutions indicated two conditions in which one could be filed: (a) introduction of new evidence, or (b) a due process violation. The current guidance limits an appeal to the responding party, citing the accused individual is the one who risks penalty and therefore should not be tried twice for the same allegation (United States Department of Education, 2017). Contradictory to the guidance’s commitment to equitable procedures for all parties, the option for a complainant to file an appeal was removed, citing the University of Cincinnati Determination Letter (2006) that indicates no requirement to provide a victim’s right of appeal (United States Department of Education, 2017).

**Set time frame for investigation and resolution.**

The OCR no longer requires a set time frame for campus investigations and leaves it up to the institutions to determine how long an investigation runs. Institutions would be evaluated instead on their good faith effort to provide fair and impartial investigations (United States Department of Education, 2017). Campus administrators acknowledge the 60-day timeframe was too short, however supported this guidance because it placed responsibility on the institution to prevent violence and further harassment. The rationale for removing the timeline would allow for parties, particularly the accused, time to respond to the allegations, gather evidence, and round up witnesses

tion and Answer document (2017) identifies options for IHE to begin implementing. The department made clear that no official changes would be required until the review and comment process is complete. For closer examination, I will concentrate on changes in five areas that significantly impact handling of reports of sexual violence: (a) standard of proof for campus investigations; (b) appeals procedures; (c) set time-frame for investigation and resolution; (d) informal resolutions of complaints and (e) the role of support persons for complainants and respondents (United States Department of Education, 2017).

**Standard of proof.** The current guidance allows institutions the option to increase the standard of proof to clear and convincing evidence in campus sexual violence investigations if it is consistent with other misconduct cases. The preponderance standard was utilized by approximately 80 percent of college that had one and it was consistent with civil rights violations like sexual harassment (Joyce, 2017). In my earlier discussion on defining rape, I discussed the burden of proof as a barrier to reporting rape because it almost entirely falls on the complainant; not only to provide evidence of the assault, but also to have her behaviors and character questioned to determine the crime of rape occurred. Advocates that work with complainants say that students often refuse to engage in criminal proceedings because they do not want the accused student to go through that process (Jordan & Wilcox, 2004 as cited in Wies, 2015). Critics of the Obama-era guidance see the lower standard as threatening to college men as no longer presumably innocent, and claiming their female accusers of having

(Joyce, 2017). “Absence of a timeline risks leaving both students in perpetual states of limbo awaiting jurisdiction” (Kruger, 2017, para. 2).

**Informal resolutions.** Inconsistent with the 2001 Guidance, the OCR adds mediation as an option for resolution, previously unwarranted in campus sexual violence adjudications. The irony is that the same administration granting institutions permission to mediate sexual violence also condemned university investigations as “kangaroo courts” (Kreighbaum, 2017). In the master narrative, mediation protects accused male students by eliminating a conduct violation on their education record while the female accuser remains responsible for determining if and how her rapist will be held accountable.

**Support persons.** “Any process made available to one party in the adjudication procedure should be made equally available to the other party (for example, the right to have an attorney or other advisor present and/or participate in an interview or hearing; the right to cross-examine parties and witnesses or to submit questions to be asked of parties and witnesses)” (United States Department of Education, 2017). Though ambiguously positioned in the Q & A document, the OCR now permits “participation” of either party’s attorney or support advisor, contrary to previous guidance. The debate regarding support advisors and their participation in campus sex assault investigations brings up multiple concerns. Though schools can provide this option to both parties, it does not include stipulations for a party that is unable to have an advisor that can participate at the same degree as the other party. Based on my own experiences, it is typical for the accused to hire an attorney, while the reporting party would just like the behavior to stop and avoid legal-like proceedings – often why they prefer university investigations over the courts (Wies, 2015). Most campus policies allow either party to have a support individual present during interviews, however their role is limited to their physical presence and consultation, separate from the proceedings.

Opposing interests motivate the difference between current practices and the OCR’s optional suggestions for revision. The previous administration acknowledged the lived experiences of students experiencing sexual violence by placing the burden on the institutions “to determine whether sexual misconduct occurred, and if so, whether a hostile environment has been created that must be redressed” (United States Department of Education, 2017, pg. 4). The Trump administration echoes the interests of Title IX critics and enacted their opposition through this repeal. In New York Time Magazine article entitled “The Takedown of Title IX,” conservative Republican state representative, Earl Ehrhart, is quoted after meeting with DeVos about

Title IX: “She’s placing this back where it belongs, in the purview of the states” (Joyce, 2017, para. 24). Though the future of Title IX is somewhat of a mystery, one thing is clear: in regard to campus rape, the presumed innocent White male falsely accused of sexual violence, has priority above all else.

**Discussion**

**The Personal is Still Political**

My personal and professional identities are directly impacted by the complexities of Title IX. The fact that policies that mainly impact women (i.e. reproductive rights, Title IX) continue to be governed by lawmakers maintains my personal identities and experiences as political. I am a woman of color with ethnic origins in a country that was colonized for centuries. Documentation of the use of rape as a tool of power in colonization shapes the way women of color perceive our roles in society and how we experience sexual violence, in particular. As a Title IX confidential advocate on a college campus, navigating the evolving institutional policies to address sexual violence is just as much of a learning experience for me as it is for the students I work with. My professional role on my campus allows me to navigate university procedures that are not as accessible to students. I do not mean to point blame at any institution for implementing difficult policies and procedures. Instead I want to shine light on the gap that remains between institutional compliance and the lived experiences of students. Recent Title IX guidance appeared to provide an alternative to the criminal justice system, which was often a barrier for reporting sexual violence. The guidance however continues to mirror the criminal justice system, which has been proven to perpetuate patriarchal and racist structures oppressing minoritized groups. The burden remains on reporting parties to prove victimization, ensuring due process rights for accused individuals. Consequently, critiques of Title IX procedures reflect the expectations of the dominant patriarchal and racist criminal justice system. This paternalistic approach further silences the interests of all the subjects of the law: our students. Political decisions regarding campus sexual violence are extremely personal for the students they are meant to protect. Therefore, is imperative that lawmakers and administrators recognize power, privilege and domination in implementing gender-based policies.

**Missing Voices**

The discourse of Title IX of the Education Amendments of 1972 within the last decade has brought our attention to campus sexual violence, specifically the ways in which IHE’s handled or mishandled reports of these crimes. Absent from many recent discussions are



the victims of rape, sexual assault and discrimination. Even the voices of the student survivor activists that brought these issues to Washington, D. C. have fallen to the back of the room and are silenced by cries for due process – in hopes of upholding the master narratives and directives of those who wish to keep power intact. Also missing from the current conversation are the voices of people of color, homosexual, non-binary, and communities marginalized by socioeconomic and education status. The anti-discrimination law meant to protect marginalized groups, will never be fully realized until the society that renders these communities invisible is dismantled. Moreover, until we can counter the narratives of our sexuality and experiences of rape and sexual violence, we will not know equity.

Feminist critical thought has evolved over the years, recognizing the intersections of identities and layers of oppression that are not validated nor protected by society. Crenshaw (1989) points out how simplifying our understanding of rape further targets our marginalized identities: “The singular focus on rape as a manifestation of male power over [female] sexuality tends to eclipse the use of rape as a weapon of [racial] terror” (p. 158). Critical feminism challenges us to be uncomfortable and confront the status quo. This examination of Title IX reveals that the personal is still very political and to be accountable to critical feminism (Bensimon & Marshall, 2003) it is our voices that must tell our story.

#### Trump and the Trumpeteers

So far, descriptions of the gatekeepers of power are as elite White men, or something to that effect. This allegorical group of White men refers to those who have clout, privilege and influence resulting from patriarchy, not necessarily always White, and not always male. Due to Trump’s election, we have names and faces of those who have hold this power. Feminist critical policy analysis calls upon the disruption of dominant narratives (Biklen et al., 2008) by revealing

the assumptions and ideals of said group, specifically President Donald Trump, Secretary of Education Betsy DeVos and Acting Assistant Secretary of Civil Rights Candice Jackson. I believe the bigotries of the 45th President of the United States are common knowledge internationally. For examples of his prejudices, please refer to the 2005 recording (Fahrenthold, 2016) of our current president bragging about “grabbing them [women] by the pussy” and follow his Twitter account @realDonaldTrump.

The same day the Office of Civil Rights released the interim guidance, Democratic National Jess O’Connell tweeted “banner day when Republicans can find women to do their dirty work against other women” (Rothman, 2017). Bensimon and Marshall (2003) refer Astin and Leland’s 1991 study of women leaders in academia to categorize their positions and perceptions. First, the “predecessors” of the 1940s and 1950s were women who were against the grain in their time, but gender restrictions forced them to sacrifice their

fits of patriarchal privilege” (p. 348). DeVos and Jackson are inheritors and have been indoctrinated into patriarchy. DeVos’ first official conversation about Title IX was a meeting with Georgia State Representative Earl Ehrhart, who characterizes the law as “enabling rampant false allegations” (Joyce, 2017). In a Title IX Summit in July 2017, she spent a significant amount of time with men’s rights organizations fueling skepticism among advocates for survivors (Kreighbaum, 2017). Not much is known about the Acting Secretary of Civil Rights, however in one of her initial public interviews, she claimed that ninety percent of campus assault allegations “fall into the category of ‘we were both drunk,’ ‘we broke up, and six months later I found myself under a Title IX investigation because she decided that our last sleeping together was not quite right’” (Kreighbaum, 2017, para. 6). I will be bold and agree with O’Connell to say that DeVos and Jackson are token women to do dirty work against women. The present power structures challenge student affairs practitioners and educators to reignite our activism toward social justice. At the center of our efforts are our students’ right to safety and protection of their access to education.

#### Conclusion

This feminist critical policy analysis of Title IX only hit the tip of the iceberg, revealing the further subordination of women and other oppressed groups through policies and structures governed by ideals and assumptions that view women as less-than. For true transformation, there is a need to reframe all

steps of policy development, implementation, and analysis. Of utmost importance, is a reminder that the personal is still political, especially when addressing sexual violence. The hostilities in Washington, D. C. are very far removed from the lived experiences of our students, and pose a disservice at the sake of people’s lives. DeVos has expressed that the spirit of the law of the current administration remains to protect student rights and prevent sexual violence. However the ongoing struggle has created an environment of compliance, overshadowing the intended priorities of student interest. Campus personnel, specifically student affairs professionals, have a significant role in seeking effective best practices to support all students’ well-being. In the spirit of critical feminism, as unsettling as it may be, we must seek spaces of resistance (Biklen et al., 2008) to initiate true change.

#### \*References:

Can be found at the end of this special issue.



Image by Natalie Battaglia

**For true transformation, there is a need to reframe all steps of policy development, implementation, and analysis. Of utmost importance, is a reminder that the personal is still political, especially when addressing sexual violence.**

personal lives for their careers. The “instigators” of the 1960s and 1970s took leadership by broadening awareness of women’s issues, calling out patriarchy, and helping bring about change in education and social justice. The “inheritors” – more recently, assumed leadership positions as the women’s movement evolves (Astin & Leland, 1991 as cited in Denmark, 1993). Bensimon and Marshall (2003) say inheritors do not believe sexism exists because they “reap the bene-

#### Suggested Citation:

Cabingabang, L. D. (2018). The personal is still political: A feminist critical policy analysis of the rollback of Title IX. *The Journal of Critical Scholarship on Higher Education and Student Affairs*, 3(3), 38-47.