Spotlight on Campus Due Process

2022

FIRE
Foundation for Individual Rights and Expression

Executive Summary

FIRE's fifth annual Spotlight on Campus Due Process report arrives at a precarious moment for due process rights on college campuses. As a result of federal regulations that took effect on August 14, 2020, students in Title IX hearings currently possess increased due process rights. There have even been some modest improvements in other campus proceedings, likely another positive consequence of these regulations.

However, on June 23, 2022, the Department of Education proposed new Title IX regulations that, if implemented, would roll back many of the improvements made by the adoption of the current regulations. For example, the proposed regulations would eliminate students' right to a live hearing with the opportunity to cross-examine witnesses against them and would instead permit institutions to adopt the disastrous single-investigator model, in which a single campus bureaucrat serves as investigator, judge, and jury. Meanwhile, colleges and universities across the country still consistently refuse to provide their students with sufficient due process protections and fundamental fairness in other disciplinary proceedings. Too many institutions appear all too eager to return to the status quo in place before the current regulations.

On September 12, 2022, the Foundation for Individual Rights and Expression (FIRE[1]) submitted its comment opposing much of these

1 Formerly known as the Foundation for Individual Rights in Education, FIRE changed its name on June 6, 2022, to reflect its expanded mission of protecting free expression beyond colleges and universities.

proposed regulations. If finalized, the proposed regulations will mark a return to an unfortunately familiar era of Title IX proceedings in which institutions of higher education stage proceedings that one federal judge compared unfavorably to "those of the infamous English Star Chamber," utterly failing to protect the due process rights of students and faculty.

FIRE's research makes clear that when not explicitly required by federal regulations, colleges and universities around the country consistently fail to provide their students with traditional due process protections — including the presumption of innocence, the right to see the evidence against you, the right to face your accuser, and the right to a neutral decision-maker — that Americans so often take for granted.

As students wait to see what basic rights they will have on campus next year, FIRE's Spotlight on Campus Due Process 2022 serves as a snapshot of the current landscape. And while the procedural protections currently in place are grossly inadequate, we may soon be calling these the "good old days."

Summary of Findings:

In 2017, for the first time, FIRE rated the top 53 universities in the country (according to *U.S. News & World Report*) based on 10 fundamental elements of due process. Our initial findings were troubling; The vast majority of institutions lacked most of the procedural safeguards that are customary in the American justice system and that would be expected in colleges' written policies. Since 2018, we have continued to assess the same institutions, while slightly adjusting our criteria in order to best capture the varied ways that universities adjudicate misconduct allegations.

Since the adoption of the current Title IX regulations in 2020, the rated institutions have shown a consistent unwillingness to apply the procedural protections mandated for Title IX proceedings to contexts in which such protections are not legally required. In practice, this means that most rated colleges have three separate systems of disciplinary policies: one for sexual misconduct that takes place within the college's educational program and is therefore covered by Title IX; one for sexual misconduct that the college believes it can punish but which did not take place in a context within its control (for example, between a student and a non-student while home on summer break); and one for all other non-academic offenses, such as theft, alcohol violations, property destruction, and so forth. FIRE therefore rated 155 policies among the 53 rated schools.

With the exception of Title IX processes, our 2022 findings are dire:

- Nearly two-thirds (60.4%) of America's top 53 universities do not explicitly guarantee students that they will be presumed innocent until proven guilty. By contrast, nearly 95% of rated colleges' Title IX policies include a presumption of innocence, as required by the 2020 regulations.

- More than seven in 10 schools (71.7%) do not provide timely and adequate notice of the allegations to students accused of wrongdoing before expecting them to answer questions about the incident. By contrast, only nine schools (17%) have a Title IX policy that fails to provide such notice.

- Fewer than one in six schools rated (15%) guarantee students a meaningful hearing, where each party may see and hear the evidence being presented to fact-finders by the opposing party, before a finding of responsibility. On the other hand, 32 schools (60.4%) have a Title IX policy that guarantees a meaningful hearing.

- A dismal 44 out of the 53 universities receive a grade of D or F from FIRE for at least one disciplinary policy, meaning that they fully provide no more than 4 of the 10 elements that FIRE considers critical to a fair procedure. This number remains unchanged from the previous report — another sign that many schools are in a holding pattern, not significantly altering their procedures while awaiting the potential implementation of the Title IX regulations proposed in 2022.

- Most institutions maintain one set of standards for adjudicating charges of sexual misconduct and another set for adjudicating Title IX complaints. Nearly 70% of rated universities' non-Title IX sexual misconduct policies receive a D or F for protecting the due process rights of students accused of sexual misconduct. In contrast, only two universities' Title IX policies (less than 4%) receive such low grades.

- For the first time in the history of FIRE's Spotlight on Campus Due Process report, a single policy, at Cornell University, received an A grade. This means that the policy provides more than 8 of the 10 elements that FIRE considers critical to a fair procedure. Of the other 154 policies rated at the 53 schools in this report, not one earns higher than a B.

- Compared to prior editions of this report, there were two significant changes overall in safeguards provided by the rated universities to students. First, thanks to the safeguards required by the current Title IX regulations, such policies were routinely the highest scoring policies at their institutions. Second, the mean score for non-Title IX sexual misconduct policies has continued to increase since the current Title IX regulations went into effect in 2020. In the 2019–2020 edition of this report, the mean score for non-Title IX sexual misconduct policies was 5.49. In last year's report, that score increased to 7.64, and this year's report saw a more modest increase, to 7.71. Overall, this represents an increase of more than 40%.

Cornell University's Title IX sexual misconduct and non-Title IX sexual misconduct procedures each earned Bs, with each receiving 16 points out of a possible 20 points. However, it was Cornell's other misconduct policy that made history, earning 18 points and the first A grade in the five-year history of FIRE's Spotlight on Campus Due Process report. Needless to say, Cornell University's policies best incorporate the procedural safeguards in FIRE's checklist. Georgia Institute of Technology performed admirably as well, earning Bs across the board, receiving 15, 15, and 14 points, for their Title IX sexual misconduct, non-Title IX sexual misconduct, and other misconduct procedures, respectively.

In stark contrast, the University of Notre Dame once again stands out as the worst school overall, as it is the only institution that earned *just one point* for each of its non-Title IX misconduct procedures.

New regulations threaten to reverse modest gains in procedural fairness

FIRE has publicly led the fight to restore due process on our nation's campuses by highlighting abuses and bringing the attention of media, lawmakers, and the public to the problem. With this report, we hope to once more make abundantly clear to students, administrators, and policymakers across the country how badly reform is needed, and what kind of changes could benefit campus communities most.

Much needs to be done. The current Title IX regulations have led to some sustained improvements in scores among non-Title IX sexual misconduct policies. But overall, the findings in this report — specifically, the fact that when forced to reexamine their policies, colleges chose to go out of their way to minimize the impact of new protections rather than design uniform, fair processes for all students — indicate that it is no longer credible to suggest that our nation's universities will, of their own initiative, adopt policies likely to provide a fundamentally fair process to students.

That the Title IX regulations proposed in 2022 seek to roll back the most consequential improvements in campus due process protections in years only serves to clarify the dire situation facing students on campuses across the country.

Students, faculty, alumni, and all who care about procedural rights should demand that colleges and universities take the necessary steps to protect those rights.

Methodology:

For this report, FIRE analyzed disciplinary procedures at the 53 top-ranked institutions nationwide according to *U.S. News & World Report*'s national university rankings for 2017, the year our first report was released. (The last four institutions that year were each ranked #50.)

Where institutions maintain different policies for academic and non-academic cases, we analyzed only the procedures for non-academic cases. Where institutions maintain different policies for cases in which suspension or expulsion may result and for cases limited to less severe sanctions, we analyzed only the procedures for cases involving potential suspension or expulsion. Where institutions maintain different policies for different colleges or graduate schools, we analyzed the policy for the undergraduate arts and sciences school at the main campus, unless otherwise specified. We did not consider faculty disciplinary procedures, which may differ significantly from those used for students.

Where, as in most cases, institutions maintain different policies for cases involving Title IX sexual misconduct complaints, alleged sexual misconduct not covered by Title IX, and other cases, we analyzed each set of policies. The vast majority of schools have maintained separate policies for sexual misconduct and other misconduct since the federal Department of Education's Office for Civil Rights issued its April 4, 2011 "Dear Colleague" letter, which imposed extensive new obligations on universities with regard to their handling of sexual misconduct claims. (This letter was rescinded on September 22, 2017, and, as noted above, the Department of Education has released new regulations to replace the rescinded instructions.) With the enactment of the current Title IX regulations in 2020, the vast majority of schools adopted yet another set of additional policies in order to satisfy their legal obligations without extending many of their basic due process protections to other disciplinary proceedings.

Where institutions maintained their own policies but also purported to follow the policies of the broader state university system, both sets of policies were assessed together.

Some institutions may have revised their policies and procedures as FIRE was finalizing our research. The overwhelming majority of procedures reviewed for this report were in place during the 2021-2022 academic year. Accordingly, this report might not reflect very recent policy changes.

In analyzing each set of disciplinary procedures, FIRE looked for 10 critically important procedural safeguards. For each element, institutions did not receive any points if the safeguard was absent, was too narrowly defined to substantially protect students, or was subject to the total discretion of an administrator; received one point if the policy provided some protection with respect to that element; and received two points if the safeguard was clearly and completely articulated.

FIRE recognizes that distilling the concept of due process down to 10 elements is necessarily reductive. In order to be truly "fair," some proceedings may require elements we did not list or stricter adherence to those we did. In other proceedings, some of the safeguards we list may not prove to have an effect on the ultimate outcome. Additionally, while this report may award "passing" grades to policies that don't fully provide each safeguard, it is important to note that even a single procedural error or shortcoming can undermine the overall fairness of a proceeding. We welcome discussion about what we might include in, or exclude from, future reviews.

After each institutional policy set was awarded 0-20 points, it was graded as follows:

A = 17-20 points
B = 13-16 points
C = 9-12 points
D = 5-8 points
F = 0-4 points

Because each policy is written differently, points awarded to institutions are contingent upon wording, the overall structure of the proceedings described, and FIRE's decision to resolve ambiguities against the institution where more clarity could reasonably be expected. Vaguely written provisions, or those that grant broad discretion to administrators, may easily be abused to deprive students of their right to a fair hearing, and therefore FIRE considers them inadequate to protect students and secure fundamentally fair proceedings.

Where institutions provide certain procedural safeguards only on appeal, and appeals are allowed only on certain grounds, the institutions do not earn points for those safeguards.

We awarded points for the following safeguards:

- **A clearly stated presumption of innocence, including a statement that a person's silence shall not be held against them.**

In order to receive any points, the institution must explicitly include one of these elements in its policies. A statement that a respondent is allowed to decline to answer questions was not sufficient to earn full points, since this could simply mean that the student wouldn't be punished for that choice as a separate matter from the pending case. Instead, the statement must specify that no negative inference, whatsoever, may be drawn from a student's decision not to participate.

- **Timely and adequate written notice of the allegations before any meeting with an investigator or administrator at which the student is expected to answer questions. Information provided should include the time and place of alleged policy violations, a specific statement of which policies were allegedly violated and by what actions, and a list of people allegedly involved in and affected by those actions.**

For this safeguard to be meaningful, and thus to earn one point, notice must include information about both the policy at issue and the underlying behavior, and it must explicitly be granted in advance of questioning. Where no time frame was specified, FIRE did not assume information would be given with sufficient time to prepare for interviews. An additional point was awarded for the specificity of the information provided and a guarantee of three or more days to prepare.

- **Adequate time to prepare for a reasonably prompt disciplinary hearing. Preparation shall include access to all evidence to be used at a hearing as well as any other relevant evidence possessed by the institution.**

For this safeguard to be meaningful, and thus to earn one point, an institution's policy must explicitly state that evidence is shared in advance of the hearing. Providing parties access only to summaries of evidence was not sufficient to earn points. Any allowances for new evidence to be introduced after evidence is initially shared with the respondent must be narrowly written and should ensure that the respondent has adequate time to review the new evidence. Ideally, students would have at least seven days' notice of the hearing date, at least five days with the evidence to prepare, and the ability to receive copies of documents. Additionally, students should receive access to all evidence gathered, including not only evidence to be used against the respondent, but also exculpatory evidence, unless the specific evidence is privileged. Full points were awarded to schools whose policies substantially encompass those elements.

- **The right to impartial fact-finders, including the right to challenge fact-finders for conflicts of interest.**

To receive one point, the institution must explicitly state that fact-finders must be free from conflicts of interest. Provisions instructing fact-finders to recuse themselves were not sufficient to earn a second point. General language in policy introductions broadly promising a fair or unbiased procedure was not sufficient to earn points. Articulating a process for students to challenge a fact-finder for conflicts of interest was necessary to earn two points.

- **The right to a meaningful hearing process. This includes having the case adjudicated by a person — ideally, a panel — distinct from the person or people who conducted the investigation (i.e., the institution must not employ a "single-investigator" model) before a finding of responsibility.**

Live hearings are best equipped to secure fair, reliable proceedings when they allow each party to directly observe all other parties (including an institutional prosecutor, complainant, and respondent) as they present evidence to the fact-finder, and to respond to that evidence in real time. Institutions that purport to employ a hearing but whose procedures left ambiguous whether a respondent would have the opportunities described above, or whose policies clearly impede these opportunities, were not awarded any points. For example, where the respondent is not able to see and hear evidence presented against them, or is allowed to respond only in a written statement, points were not awarded.

- **The right to present all evidence directly to the fact-finders.**

For this safeguard to be meaningful, and thus to earn points, students must be granted an opportunity to present all relevant evidence to the fact-finders — the person or people who decide whether or not the accused student committed the offense. Institutions did not receive any points if they limit the amount of relevant information a respondent can provide fact-finders directly, such as by imposing hard limits on how many words or minutes students may use for their arguments. Institutions also did not receive any points if they allowed someone other than the fact-finders and the respondent to determine what exculpatory evidence will be considered by the fact-finders (other than determining relevance). This includes policies that grant broad discretion to exclude the respondent's choice of witnesses. Institutions received one point if a respondent may present all relevant evidence to fact-finders, whose determination must then receive final approval from an administrator or other individual.

- **The ability to question witnesses, including the complainant, in real time, and respond to another party's version of events.**

Institutions were awarded a full two points for this safeguard if they explicitly allow respondents to cross-examine adverse witnesses in real time, either directly or through an advisor or chair who relays all relevant questions as written. Institutions received one point if respondents may cross-examine adverse witnesses through a third party, but the institution's policy does not specify to what extent all relevant questions are relayed as written. Institutions did not receive any points where it is not clear that respondents have an opportunity to question adverse witnesses, where a third party has broad discretion to omit or reword questions, where questioning does not occur in real time, or where the respondent or fact-finder cannot see and hear the person testifying.

- **The active participation of an advisor of choice, including an attorney (at the student's sole discretion), during the investigation and at all proceedings, formal or informal.**

For this safeguard to be meaningful, and thus to earn points, institutions must fully allow an attorney/advisor to speak on behalf of the respondent. Institutions were awarded one point if an advisor, who is explicitly prohibited from being an attorney, may participate fully or if an attorney advisor may participate in a limited capacity, like cross-examining witnesses.

- **The meaningful right of the accused to appeal a finding of responsibility.**

Institutions were awarded full points if grounds for appeal included (1) new information or evidence that was previously unavailable, (2) procedural error, and (3) findings that were clearly not supported by the evidence. Institutions received one point if grounds for appeal included only two of these circumstances. To receive any points, the appellate decision-making body or individual must be different from the original fact-finders.

- **A requirement that factual findings leading to expulsion be agreed upon by a unanimous panel or supported by clear and convincing evidence.**

In order to earn points for requiring a unanimous fact-finding panel decision, panels must consist of three or more individuals.

Asterisks

Finally, FIRE has placed an asterisk by institutions whose policies grant an administrator or judicial body discretion to have a case adjudicated through a different, less protective procedure, or to not follow written procedures, without clear guidelines as to how such a decision may be made. We rated the more protective procedure and awarded an asterisk only where the disciplinary policy, as a whole, suggests that the procedure in question is the one ordinarily used. Where a student is very likely to be subjected to the less protective procedure, that was the one rated for this report.

Ratings

FIRE has placed an asterisk by institutions whose policies grant an administrator or judicial body discretion to have a case adjudicated through a different, less protective procedure, or to not follow written procedures, without clear guidelines as to how such a decision may be made.

Institution	Total Score of 20		Meaningful presumption of innocence	Timely and adequate written notice	Time to prepare with evidence	Impartial fact-finders	Meaningful hearing process	Right to present to fact-finder	Right to meaningful cross-ex	Active participation of advisor	Meaningful right to appeal	Unanimity or clear and convincing evidence
*Boston College**	3/20	F	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🔴	🟡	🔴
Boston College Sexual Misconduct	5/20	D	🟡	🔴	🟢	🟡	🔴	🔴	🔴	🔴	🟡	🔴
Boston College Title IX	12/20	C	🟡	🟡	🟡	🟡	🟢	🟢	🟢	🟡	🟡	🔴
Boston University	2/20	F	🔴	🔴	🔴	🟡	🔴	🔴	🔴	🔴	🟡	🔴
Boston University Sexual Misconduct	5/20	D	🟡	🟡	🔴	🟢	🔴	🔴	🔴	🔴	🟡	🔴
Boston University Title IX	15/20	B	🟢	🟡	🟢	🟢	🟢	🟢	🟢	🟡	🟡	🔴
*Brandeis University**	9/20	C	🟡	🟡	🔴	🟢	🟢	🟢	🔴	🔴	🟡	🔴
Brandeis University Sexual Misconduct	5/20	D	🔴	🟢	🔴	🟢	🔴	🔴	🔴	🔴	🟡	🔴
Brandeis University Title IX	13/20	B	🔴	🟢	🟢	🟢	🟢	🟡	🟢	🟡	🟡	🔴
Brown University	12/20	C	🟡	🟢	🟢	🟢	🟢	🟢	🔴	🔴	🟡	🔴
Brown University Sexual Misconduct	6/20	D	🟡	🔴	🟡	🟢	🔴	🔴	🔴	🔴	🟢	🔴
Brown University Title IX	10/20	C	🟡	🔴	🟡	🟢	🟢	🔴	🟡	🟡	🟢	🔴
*California Institute of Technology**	1/20	F	🔴	🔴	🔴	🔴	🔴	🟡	🔴	🔴	🔴	🔴
California Institute of Technology Sexual Misconduct	6/20	D	🟡	🔴	🟢	🟢	🔴	🔴	🔴	🔴	🟡	🔴
California Institute of Technology Title IX	12/20	C	🟡	🔴	🟢	🟢	🟢	🟢	🟢	🔴	🟡	🔴
Carnegie Mellon University	6/20	D	🔴	🔴	🔴	🟢	🟢	🔴	🔴	🔴	🟢	🔴
Carnegie Mellon University Sexual Misconduct	6/20	D	🔴	🔴	🔴	🟢	🟢	🔴	🔴	🔴	🟢	🔴
Carnegie Mellon University Title IX	12/20	C	🔴	🔴	🟢	🟢	🟢	🟢	🟢	🟡	🟡	🔴
Case Western Reserve University	8/20	D	🔴	🔴	🟢	🔴	🟢	🟢	🟡	🔴	🟡	🔴

Institution	Total Score of 20		Meaningful presumption of innocence	Timely and adequate written notice	Time to prepare with evidence	Impartial fact-finders	Meaningful hearing process	Right to present to fact-finder	Right to meaningful cross-ex	Active participation of advisor	Meaningful right to appeal	Unanimity or clear and convincing evidence
Case Western Reserve University Sexual Misconduct	**6/20**	**D**	🔴	🟡	🔴	🟢	🔴	🟡	🟡	🔴	🟡	🔴
Case Western Reserve University Title IX	**15/20**	**B**	🟡	🟢	🟢	🟢	🟢	🟢	🟢	🟡	🟡	🔴
College of William & Mary	**13/20**	**B**	🟡	🟡	🟡	🟢	🟢	🟢	🟢	🔴	🟢	🔴
College of William & Mary Sexual Misconduct	**8/20**	**D**	🟢	🟢	🔴	🟢	🔴	🔴	🔴	🔴	🟢	🔴
*College of William & Mary Title IX**	**13/20**	**B**	🟢	🟢	🟢	🟢	🔴	🔴	🟢	🟡	🟢	🔴
*Columbia University**	**4/20**	**F**	🟡	🔴	🔴	🔴	🔴	🟢	🔴	🔴	🟡	🔴
Columbia University Sexual Misconduct	**7/20**	**D**	🟢	🔴	🔴	🟢	🟢	🔴	🔴	🔴	🟡	🔴
Columbia University Title IX	**16/20**	**B**	🟢	🟢	🟢	🟢	🟢	🟢	🟢	🟡	🟡	🔴
Cornell University	**18/20**	**A**	🟢	🟢	🟢	🟢	🟢	🟡	🟢	🟡	🟢	🟢
Cornell University Sexual Misconduct	**16/20**	**B**	🟢	🟢	🟢	🟢	🟢	🟡	🟢	🟡	🟢	🔴
Cornell University Title IX	**16/20**	**B**	🟢	🟢	🟢	🟢	🟢	🟡	🟢	🟡	🟢	🔴
Dartmouth College	**7/20**	**D**	🔴	🟡	🟡	🟢	🟢	🔴	🔴	🔴	🟡	🔴
Dartmouth College Sexual Misconduct	**13/20**	**B**	🟢	🟢	🟢	🟢	🟢	🟢	🔴	🔴	🟡	🔴
Dartmouth College Title IX	**16/20**	**B**	🟢	🟢	🟢	🟢	🟢	🟢	🟢	🟡	🟡	🔴
Duke University	**8/20**	**D**	🔴	🟡	🔴	🟢	🟢	🔴	🔴	🔴	🟡	🟢
Duke University Sexual Misconduct	**8/20**	**D**	🟡	🔴	🔴	🟢	🟢	🔴	🔴	🔴	🟡	🟢
Duke University Title IX	**12/20**	**C**	🟡	🟢	🟢	🟢	🟡	🔴	🟢	🟡	🟡	🔴
*Emory University**	**8/20**	**D**	🔴	🔴	🔴	🟢	🟢	🟢	🔴	🔴	🟢	🔴

Institution	Total Score of 20		Meaningful presumption of innocence	Timely and adequate written notice	Time to prepare with evidence	Impartial fact-finders	Meaningful hearing process	Right to present to fact-finder	Right to meaningful cross-ex	Active participation of advisor	Meaningful right to appeal	Unanimity or clear and convincing evidence
Emory University Sexual Misconduct	**1/20**	**F**	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🟡	🔴
Emory University Title IX	**12/20**	**C**	🟡	🟢	🟢	🔴	🟡	🟢	🟢	🟡	🟡	🔴
*Georgetown University**	**6/20**	**D**	🟡	🔴	🟢	🔴	🟢	🔴	🔴	🔴	🟡	🔴
*Georgetown University Sexual Misconduct**	**3/20**	**F**	🔴	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🟡	🔴
Georgetown University Title IX	**14/20**	**B**	🟡	🟢	🟢	🟡	🟢	🟢	🟢	🟡	🟡	🔴
*Georgia Institute of Technology**	**14/20**	**B**	🟢	🟢	🔴	🟢	🟡	🟢	🟢	🟡	🟢	🔴
Georgia Institute of Technology Sexual Misconduct	**15/20**	**B**	🟢	🟢	🔴	🟢	🟢	🟢	🟢	🟡	🟢	🔴
Georgia Institute of Technology Title IX	**15/20**	**B**	🟢	🟢	🔴	🟢	🟢	🟢	🟢	🟡	🟢	🔴
Harvard University	**1/20**	**F**	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🟡	🔴
Harvard University Sexual Misconduct	**6/20**	**D**	🟡	🔴	🔴	🟡	🔴	🟢	🔴	🔴	🟢	🔴
Harvard University Title IX	**14/20**	**B**	🟡	🟡	🟢	🟡	🟢	🟢	🟢	🟡	🟢	🔴
*Johns Hopkins University**	**5/20**	**D**	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🔴	🟡	🟢
Johns Hopkins University Sexual Misconduct	**7/20**	**D**	🔴	🟢	🔴	🟢	🔴	🔴	🔴	🔴	🟡	🟢
Johns Hopkins University Title IX	**14/20**	**B**	🟡	🟢	🟢	🔴	🟢	🟢	🟢	🟡	🟢	🔴
*Lehigh University**	**11/20**	**C**	🟢	🔴	🔴	🟢	🟢	🟢	🟢	🔴	🟡	🔴
Lehigh University Sexual Misconduct	**N/A**											
Lehigh University Title IX	**13/20**	**B**	🟡	🟢	🟢	🟢	🔴	🟢	🟢	🟡	🟡	🔴
*Massachusetts Institute of Technology**	**4/20**	**F**	🔴	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🟢	🔴
*Massachusetts Institute of Technology Sexual Misconduct**	**2/20**	**F**	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🔴	🟢	🔴

Institution	Total Score of 20		Meaningful presumption of innocence	Timely and adequate written notice	Time to prepare with evidence	Impartial fact-finders	Meaningful hearing process	Right to present to fact-finder	Right to meaningful cross-ex	Active participation of advisor	Meaningful right to appeal	Unanimity or clear and convincing evidence
Massachusetts Institute of Technology Title IX	**11/20**	**C**	Red	Red	Green	Red	Green	Green	Green	Yellow	Green	Red
*New York University**	**9/20**	**C**	Yellow	Green	Green	Yellow	Green	Red	Red	Red	Yellow	Red
New York University Sexual Misconduct	**15/20**	**B**	Green	Green	Green	Green	Green	Yellow	Green	Yellow	Yellow	Red
New York University Title IX	**15/20**	**B**	Green	Green	Green	Green	Green	Yellow	Green	Yellow	Yellow	Red
*Northeastern University**	**11/20**	**C**	Red	Yellow	Yellow	Green	Green	Green	Green	Red	Yellow	Red
*Northeastern University Sexual Misconduct**	**6/20**	**D**	Yellow	Green	Red	Green	Red	Red	Red	Red	Yellow	Red
*Northeastern University Title IX**	**8/20**	**D**	Yellow	Green	Red	Green	Red	Red	Yellow	Yellow	Yellow	Red
Northwestern University	**5/20**	**D**	Yellow	Red	Red	Green	Red	Red	Red	Red	Green	Red
Northwestern University Sexual Misconduct	**4/20**	**F**	Red	Red	Red	Green	Red	Red	Red	Red	Green	Red
Northwestern University Title IX	**15/20**	**B**	Yellow	Green	Green	Green	Green	Green	Green	Yellow	Yellow	Red
Pennsylvania State University	**4/20**	**F**	Yellow	Red	Red	Red	Red	Green	Red	Red	Yellow	Red
Pennsylvania State University Sexual Misconduct	**5/20**	**D**	Yellow	Yellow	Green	Red	Red	Red	Red	Red	Yellow	Red
Pennsylvania State University Title IX	**10/20**	**C**	Yellow	Red	Yellow	Yellow	Green	Green	Yellow	Yellow	Yellow	Red
Pepperdine University	**3/20**	**F**	Red	Yellow	Red	Red	Red	Red	Red	Red	Green	Red
*Pepperdine University Sexual Misconduct**	**10/20**	**C**	Yellow	Green	Green	Green	Green	Red	Red	Red	Yellow	Red
Pepperdine University Title IX	**13/20**	**B**	Yellow	Green	Green	Green	Green	Red	Green	Yellow	Yellow	Red
*Princeton University**	**11/20**	**C**	Green	Yellow	Red	Yellow	Green	Green	Red	Yellow	Red	Green
*Princeton University Sexual Misconduct**	**12/20**	**C**	Yellow	Green	Green	Green	Red	Green	Green	Red	Yellow	Red

Institution	Total Score of 20		Meaningful presumption of innocence	Timely and adequate written notice	Time to prepare with evidence	Impartial fact-finders	Meaningful hearing process	Right to present to fact-finder	Right to meaningful cross-ex	Active participation of advisor	Meaningful right to appeal	Unanimity or clear and convincing evidence
*Princeton University Title IX**	15/20	B	🟡	🟢	🟢	🟢	🟢	🟢	🟢	🟡	🟡	🔴
Rensselaer Polytechnic Institute	3/20	F	🔴	🔴	🔴	🔴	🔴	🟢	🔴	🔴	🟡	🔴
Rensselaer Polytechnic Institute Sexual Misconduct	14/20	B	🟡	🟡	🟢	🟢	🟢	🟢	🟢	🟡	🟡	🔴
Rensselaer Polytechnic Institute Title IX	14/20	B	🟡	🟡	🟢	🟢	🟢	🟢	🟢	🟡	🟡	🔴
*Rice University**	4/20	F	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🔴	🟢	🔴
Rice University Sexual Misconduct	4/20	F	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🔴	🟢	🔴
Rice University Title IX	14/20	B	🟢	🟡	🟢	🟡	🟢	🟢	🟢	🟡	🟡	🔴
Stanford University	15/20	B	🟢	🔴	🟢	🟢	🟢	🟢	🟢	🔴	🟡	🟢
Stanford University Sexual Misconduct	8/20	D	🔴	🟡	🔴	🟢	🟢	🟢	🔴	🔴	🟡	🔴
Stanford University Title IX	12/20	C	🟡	🟡	🔴	🟢	🟢	🟢	🟢	🟡	🟡	🔴
Tufts University	9/20	C	🟡	🟡	🔴	🟢	🟢	🟢	🔴	🔴	🟡	🔴
Tufts University Sexual Misconduct	3/20	F	🔴	🔴	🔴	🟢	🔴	🔴	🔴	🔴	🟡	🔴
Tufts University Title IX	12/20	C	🟡	🟢	🟢	🟢	🟡	🔴	🟢	🟡	🟡	🔴
Tulane University	4/20	F	🔴	🔴	🔴	🟡	🔴	🟢	🔴	🔴	🟡	🔴
Tulane University Title IX	12/20	C	🟡	🟢	🔴	🟡	🟢	🟢	🟢	🟡	🟡	🔴
*University of California, Berkeley**	13/20	B	🟢	🟢	🟡	🔴	🟢	🟢	🟢	🔴	🟢	🔴
University of California, Berkeley Sexual Misconduct	8/20	D	🟢	🟢	🟡	🟢	🔴	🔴	🔴	🔴	🟡	🔴
University of California, Berkeley Title IX	13/20	B	🟢	🟢	🟡	🟢	🔴	🟢	🟢	🔴	🟢	🔴
University of California, Davis	10/20	C	🟢	🔴	🟡	🟢	🔴	🟢	🟡	🔴	🟢	🔴

Institution	Total Score of 20		Meaningful presumption of innocence	Timely and adequate written notice	Time to prepare with evidence	Impartial fact-finders	Meaningful hearing process	Right to present to fact-finder	Right to meaningful cross-ex	Active participation of advisor	Meaningful right to appeal	Unanimity or clear and convincing evidence
University of California, Davis Sexual Misconduct	**8/20**	**D**	🟢	🟢	🟡	🟢	🔴	🔴	🔴	🔴	🟡	🔴
University of California, Davis Title IX	**13/20**	**B**	🟢	🟢	🟡	🟢	🔴	🟢	🟢	🔴	🟢	🔴
University of California, Irvine	**9/20**	**C**	🟢	🔴	🔴	🔴	🟢	🟢	🟢	🔴	🟡	🔴
University of California, Irvine Sexual Misconduct	**8/20**	**D**	🟢	🟢	🟡	🟢	🔴	🔴	🔴	🔴	🟡	🔴
University of California, Irvine Title IX	**13/20**	**B**	🟢	🟢	🟡	🟢	🔴	🟢	🟢	🔴	🟢	🔴
University of California, Los Angeles	**11/20**	**C**	🟢	🟢	🔴	🟢	🟢	🟢	🔴	🔴	🟡	🔴
University of California, Los Angeles Sexual Misconduct	**6/20**	**D**	🟢	🟡	🔴	🟡	🔴	🔴	🔴	🔴	🟢	🔴
University of California, Los Angeles Title IX	**13/20**	**B**	🟢	🟢	🟡	🟢	🔴	🟢	🟢	🔴	🟢	🔴
University of California, San Diego	**14/20**	**B**	🟡	🟢	🟡	🟢	🟡	🟢	🟢	🟡	🟢	🔴
University of California, San Diego Sexual Misconduct	**8/20**	**D**	🟢	🟢	🟡	🟢	🔴	🔴	🔴	🔴	🟡	🔴
University of California, San Diego Title IX	**13/20**	**B**	🟢	🟢	🟡	🟢	🔴	🟢	🟢	🔴	🟢	🔴
University of California, Santa Barbara	**10/20**	**C**	🟢	🔴	🔴	🟡	🟢	🟢	🟡	🔴	🟢	🔴
University of California, Santa Barbara Sexual Misconduct	**8/20**	**D**	🟢	🟢	🟡	🟢	🔴	🔴	🔴	🔴	🟡	🔴
University of California, Santa Barbara Title IX	**13/20**	**B**	🟢	🟢	🟡	🟢	🔴	🟢	🟢	🔴	🟢	🔴
*University of Chicago**	**6/20**	**D**	🟡	🔴	🟡	🟡	🟢	🔴	🔴	🔴	🟡	🔴
University of Chicago Sexual Misconduct	**4/20**	**F**	🔴	🔴	🟡	🟢	🔴	🔴	🔴	🔴	🟡	🔴
University of Chicago Title IX	**11/20**	**C**	🟡	🟢	🟢	🟢	🔴	🔴	🟢	🟡	🟡	🔴
University of Florida	**8/20**	**D**	🟡	🟡	🟡	🟢	🔴	🟢	🔴	🔴	🟡	🔴

Institution	Total Score of 20		Meaningful presumption of innocence	Timely and adequate written notice	Time to prepare with evidence	Impartial fact-finders	Meaningful hearing process	Right to present to fact-finder	Right to meaningful cross-ex	Active participation of advisor	Meaningful right to appeal	Unanimity or clear and convincing evidence
University of Florida Title IX	**12/20**	**C**	yellow	red	green	yellow	green	green	green	yellow	yellow	red
University of Illinois Urbana-Champaign	**8/20**	**D**	red	green	yellow	green	green	red	red	red	yellow	red
University of Illinois Urbana-Champaign Sexual Misconduct	**8/20**	**D**	red	green	yellow	green	green	red	red	red	yellow	red
University of Illinois Urbana-Champaign Title IX	**13/20**	**B**	yellow	green	green	green	green	red	green	yellow	yellow	red
University of Miami	**8/20**	**D**	red	red	yellow	green	yellow	green	green	red	red	red
University of Miami Sexual Misconduct	**9/20**	**C**	red	red	yellow	green	green	green	green	red	red	red
University of Miami Title IX	**14/20**	**B**	yellow	yellow	green	green	green	green	green	yellow	yellow	red
University of Michigan-Ann Arbor	**10/20**	**C**	green	red	yellow	red	yellow	green	green	red	green	red
University of Michigan-Ann Arbor Title IX	**12/20**	**C**	yellow	green	green	green	yellow	red	green	yellow	yellow	red
University of North Carolina at Chapel Hill	**14/20**	**B**	yellow	green	yellow	yellow	green	green	green	red	yellow	green
University of North Carolina at Chapel Hill Sexual Misconduct	**10/20**	**C**	red	green	green	green	red	green	yellow	red	yellow	red
University of North Carolina at Chapel Hill Title IX	**15/20**	**B**	yellow	green	green	green	green	green	green	yellow	yellow	red
University of Notre Dame	**1/20**	**F**	red	red	red	red	red	red	red	red	yellow	red
University of Notre Dame Sexual Misconduct	**1/20**	**F**	red	red	red	red	red	red	red	red	yellow	red
University of Notre Dame Title IX	**13/20**	**B**	yellow	green	green	red	green	green	green	yellow	yellow	red
University of Pennsylvania	**13/20**	**B**	yellow	red	yellow	green	green	green	green	red	yellow	green
University of Pennsylvania Sexual Misconduct	**9/20**	**C**	green	red	yellow	green	red	red	green	yellow	green	red

Institution	Total Score of 20		Meaningful presumption of innocence	Timely and adequate written notice	Time to prepare with evidence	Impartial fact-finders	Meaningful hearing process	Right to present to fact-finder	Right to meaningful cross-ex	Active participation of advisor	Meaningful right to appeal	Unanimity or clear and convincing evidence
University of Pennsylvania Title IX	**9/20**	**C**	🟢	🔴	🟡	🟢	🔴	🔴	🟢	🟡	🟢	🔴
University of Rochester	**5/20**	**D**	🔴	🔴	🟡	🔴	🟢	🔴	🔴	🔴	🟢	🔴
University of Rochester Sexual Misconduct	**6/20**	**D**	🟡	🟡	🟡	🟢	🔴	🔴	🔴	🔴	🟡	🔴
University of Rochester Title IX	**13/20**	**B**	🟡	🟡	🟢	🟡	🟢	🟢	🟢	🟡	🟡	🔴
University of Southern California	**8/20**	**D**	🔴	🟢	🔴	🟢	🟢	🟡	🔴	🔴	🟡	🔴
University of Southern California Sexual Misconduct	**16/20**	**B**	🟢	🟢	🟢	🟢	🟢	🟢	🟢	🟡	🟡	🔴
University of Southern California Title IX	**16/20**	**B**	🟢	🟢	🟢	🟢	🟢	🟢	🟢	🟡	🟡	🔴
University of Virginia	**12/20**	**C**	🟡	🔴	🔴	🟢	🟢	🟢	🟢	🔴	🟡	🟢
University of Virginia Sexual Misconduct	**10/20**	**C**	🟢	🟢	🟢	🟢	🔴	🟡	🔴	🔴	🟡	🔴
University of Virginia Title IX	**12/20**	**C**	🟡	🟢	🟢	🟢	🔴	🟡	🟢	🟡	🟡	🔴
University of Wisconsin-Madison	**7/20**	**D**	🔴	🔴	🔴	🔴	🔴	🟢	🔴	🟢	🟡	🟢
University of Wisconsin-Madison Sexual Misconduct	**9/20**	**C**	🟡	🔴	🟢	🔴	🟡	🟢	🔴	🟡	🟢	🔴
University of Wisconsin-Madison Title IX	**9/20**	**C**	🟡	🔴	🟢	🔴	🟡	🟢	🔴	🟡	🟢	🔴
Vanderbilt University	**5/20**	**D**	🔴	🔴	🔴	🟡	🔴	🟢	🔴	🔴	🟢	🔴
Vanderbilt University Sexual Misconduct	**13/20**	**B**	🟡	🔴	🟢	🟢	🟡	🟢	🟢	🟡	🟢	🔴
Vanderbilt University Title IX	**15/20**	**B**	🟡	🟢	🟢	🟢	🟡	🟢	🟢	🟡	🟢	🔴
*Villanova University**	**4/20**	**F**	🔴	🔴	🟡	🟢	🔴	🔴	🔴	🔴	🟡	🔴
Villanova University Sexual Misconduct	**10/20**	**C**	🟡	🔴	🟡	🟢	🔴	🟢	🟢	🟡	🟡	🔴

Institution	Total Score of 20		Meaningful presumption of innocence	Timely and adequate written notice	Time to prepare with evidence	Impartial fact-finders	Meaningful hearing process	Right to present to fact-finder	Right to meaningful cross-ex	Active participation of advisor	Meaningful right to appeal	Unanimity or clear and convincing evidence
Villanova University Title IX	**12/20**	**C**	🟡	🟡	🟢	🟢	🔴	🟢	🟢	🟡	🟡	🔴
Wake Forest University	**8/20**	**D**	🟡	🔴	🟡	🔴	🟡	🟢	🟡	🔴	🟢	🔴
Wake Forest University Sexual Misconduct	**7/20**	**D**	🟡	🟢	🟢	🟡	🔴	🔴	🔴	🔴	🟡	🔴
Wake Forest University Title IX	**14/20**	**B**	🟡	🟢	🟢	🟢	🟡	🟢	🟢	🟡	🟡	🔴
Washington University in St. Louis	**5/20**	**D**	🟡	🔴	🔴	🔴	🟢	🟢	🔴	🔴	🟡	🔴
Washington University in St. Louis Sexual Misconduct	**6/20**	**D**	🟡	🔴	🟢	🟢	🔴	🔴	🔴	🔴	🟡	🔴
Washington University in St. Louis Title IX	**8/20**	**D**	🟡	🔴	🟢	🟢	🔴	🔴	🟡	🟡	🟡	🔴
Yale University	**6/20**	**D**	🔴	🟢	🟡	🟢	🔴	🔴	🔴	🔴	🟡	🔴
Yale University Sexual Misconduct	**8/20**	**D**	🟡	🔴	🟢	🟢	🟢	🔴	🔴	🔴	🟡	🔴
Yale University Title IX	**15/20**	**B**	🟡	🟢	🟢	🟢	🟢	🟢	🟢	🟡	🟡	🔴

Trends

Written disciplinary policies and procedures varied greatly among the 53 institutions FIRE rated for this report. There were, however, some notable trends.

Rating distributions, best institutions, and worst institutions

Of the 53 institutions and 155 policies rated for this report, only one policy received an A grade.

Cornell University's Title IX sexual misconduct and non-Title IX sexual misconduct procedures each earned B grades, with each receiving 16 points out of a possible 20 points. Cornell's other misconduct policy earned 18 points and the first A grade in the five-year history of FIRE's Spotlight on Campus Due Process report. While Cornell's other misconduct policy already provided a hearing process that includes critical procedural safeguards, their current policy now also guarantees a presumption of innocence, a guarantee that fact-finders will not draw a negative inference when a party exercises their right to remain silent, and provides parties with timely and adequate written notice of the allegations when a formal complaint is filed.

Georgia Institute of Technology was the only other school in the report to earn at least a B for each of its policies governing Title IX sexual misconduct, non-Title IX sexual misconduct, and other misconduct, receiving 15 points, 15 points, and 14 points, respectively.

Number ratings among the 155 policies rated for this report ranged from 1 (five policies at four institutions) to 18 (one policy at Cornell) out of 20. The average non-Title IX policy earned 7.7 points out of 20, or a D. Meanwhile, the average Title IX policy earned 12.9 points out of 20, or a B.

Three institutions received 4 points or fewer — an F grade — for at least two of their policies: Massachusetts Institute of Technology, Rice University, and the University of Notre Dame. Still, this marks a notable (if modest) improvement, as nine institutions received an F for both of their non-Title IX policies as recently as the 2019–2020 edition of this report.

Notre Dame once more stands out as the worst institution overall, as it is the only school to earn just one point for both its other misconduct and non-Title IX sexual misconduct policies.

Title IX versus non-Title IX sexual misconduct

When the Department of Education's current regulations on Title IX took effect in August 2020, institutions adopted new policies to comply. The impact of the regulations remains clear in our grading: Title IX sexual misconduct policies were the highest-scoring type of policy at more than 85% of the institutions rated for this report, with only six schools having any policy that earned more points than their Title IX policy. No institution's non-Title IX sexual misconduct policy earned more points than their Title IX policy.

While schools could have simply incorporated the newly mandated procedural safeguards into their existing sexual misconduct procedures, an overwhelming majority drafted an entirely new set of policies to address sexual misconduct covered by Title IX, while keeping in place existing policies for non-Title IX sexual misconduct. (This outcome was a foreseeable result of a provision in the regulation that noted that "inappropriate or illegal behavior may be addressed by a [school receiving federal funding] even if the conduct clearly does not meet the [Title IX sexual misconduct] standard or otherwise constitute sexual harassment under § 106.30, either under a recipient's own code of conduct or under criminal laws in a recipient's jurisdiction." As a result, the majority of institutions continue to maintain two entirely separate definitions of sexual harassment with correspondingly distinct procedural protections. Such a process has invited administrators to decide which definition and procedures to apply to each case, a scenario that invites administrative abuse and puts due process rights at risk.)

Title IX policies adopted to comply with the current regulations provide valuable safeguards that are too often absent from non-Title IX sexual misconduct policies. Of the 53 surveyed institutions, Title IX policies at 48 (90.6%) provide parties with the ability to question witnesses, in real time, during a Title IX hearing, while only 10 institutions' (20.4%) non-Title IX sexual misconduct policies provide the same safeguard.

Similarly, 46 schools (86.8%) maintain a Title IX policy that earned a point for allowing some active participation of an advisor during disciplinary proceedings, while only nine schools (18.4%) use a non-Title IX sexual misconduct policy that earned a point for that same protection.

Despite institutions' continued efforts to distinguish the policies, as mentioned above, there was nonetheless a "spillover" effect resulting in improved scores among non-Title IX sexual misconduct for the second straight year. The mean score for non-Title IX sexual misconduct policies rose to 7.71/20. This marked a modest improvement from last year's mean score of 7.64/20 and represents a substantial increase from 2019–2020's mean score of 5.49/20. Since the current regulations went into effect, the mean score of non-Title IX sexual misconduct policies has increased by 2.22 points, or more than half a letter grade. While still within the D-grade range, since our first report was released five years ago, this is by far the most significant change overall in safeguards provided by the rated universities to students. Over the 2-year stretch, this represents an increase of more than 40%.

Yet even with the spillover effect, Title IX sexual misconduct policies uniformly score much higher marks. Over 95% of surveyed institutions' Title IX policies earned at least a C grade, with over 60% earning a B. On the other side of the ledger, nearly 70% of those institutions' non-Title IX sexual misconduct policies earned either a D or F grade.

Predicting the impact of the 2022 regulations

The proposed Title IX regulations being considered by the Department of Education would eliminate many of the rights that currently see the widest gulf in scores between universities' Title IX sexual misconduct policies and non-Title IX sexual misconduct policies, suggesting that unless explicitly required to provide those rights, schools typically will not do so.

For example, the proposed regulations will eliminate the current requirement that accused students must be offered an opportunity to have a live hearing to contest the allegations against them. Currently 39 institutions' (73.6%) Title IX policies earned at least one point for providing a meaningful live hearing process, while 32 institutions (65.3%) maintain non-Title IX sexual misconduct policies that fail to provide a meaningful live hearing process to accused students.

By revoking the requirement to offer accused students an opportunity to have a live hearing to contest claims, the proposed regulations also eliminate the right to cross-examine witnesses providing testimony against them as well as the right to active assistance of an advisor of choice as accused students navigate the process. FIRE's research makes clear that, when it comes to critical procedural protections and fundamental fairness, the proposed regulations spell disaster for students.

Sexual misconduct versus all other non-academic misconduct

All but four institutions rated for this report — Lehigh University, Tulane University, the University of Florida, and the University of Michigan — maintain separate policies and procedures for the adjudication of cases alleging sexual misconduct that does not fall under Title IX.

Of the remaining 49 institutions, 23 institutions (46.9% of all rated institutions) maintain non-Title IX sexual misconduct policies that are less protective of students' rights than other misconduct policies, 21 institutions (42.9%) maintain other misconduct policies that are less protective than sexual misconduct policies, and the two policy categories receive the same number of points at 5 institutions (10.2%). This is consistent with the findings of our last report, which marked an improvement over prior reports. Nonetheless, there are still too many policies governing alleged non-Title IX sexual misconduct that provide fewer procedural safeguards.

Sexual misconduct cases are often where procedural safeguards are most needed in order to ensure fundamental fairness and protect accused students against the life-changing effects of erroneous findings of responsibility. For example, cross-examination is a critically important tool in cases of alleged sexual assault, where cases are more likely to hinge on witness credibility because of the frequent lack of concrete evidence and the presence of few or no outside witnesses. As the United States Court of Appeals for the Sixth Circuit wrote in *Doe v. University of Cincinnati*: "[W]e acknowledge that witness questioning may be particularly relevant to disciplinary cases involving claims of alleged sexual assault or harassment. Perpetrators often act in private, leaving the decision maker little choice but to weigh the alleged victim's word against that of the accused." 872 F.3d 393, 406 (6th Cir. 2017).

The mean score for other misconduct policies is 7.79 out of 20, while the mean score for non-Title IX sexual misconduct policies is 7.71. Prior to the current Title IX regulations, the mean score for non-Title IX sexual misconduct policies was nearly two points lower than the mean score for other misconduct policies. Some significant disparities remain between the two categories of policies. For example, only 15 (30.6%) institutions provide a meaningful hearing in non-Title IX sexual misconduct cases, while 29 (54.7%) institutions provide a meaningful hearing in other misconduct cases.

While both policies' mean scores still earn a D grade, each score continues to increase, a positive and significant trend that appears primarily to be a result of the current Title IX regulations on campus. After two reports, it is safe to say that the impact of the current Title IX regulations has been to increase fundamental procedural protections in all manner of policies at many of America's top universities.

Safeguard-specific trends

Meaningful presumption of innocence

Alarmingly, 32 institutions (60.4% of rated schools) do not explicitly guarantee accused students the right to be presumed innocent until proven guilty. The presumption of innocence is perhaps the most fundamental right that can be granted to students accused of misconduct. Without it, other procedural safeguards still may not be enough to protect students from the risk of inaccurate findings of guilt. (For purposes of this section, unless otherwise specified, institutions are deemed to afford the safeguard being discussed if they guarantee that right in cases involving allegations of Title IX misconduct, sexual misconduct, and other non-academic misconduct.)

Unanimity or clear and convincing evidence

Of the procedural safeguards enumerated in FIRE's checklist, the rarest among surveyed schools is the guarantee that a student's expulsion be preceded either by a unanimous fact-finding panel decision or by a finding based on clear and convincing evidence. Not a single school of the 53 surveyed provided this guarantee. Courts have questioned whether, in the high-stakes setting of a sexual misconduct adjudication, preponderance of the evidence is a sufficiently high standard to effect due process. *See Doe v. University of Mississippi*, 361 F. Supp. 3d 597, 613 (S.D. Miss. Jan. 16, 2019); *Doe v. DiStefano*, 2018 U.S. Dist. LEXIS 76268, at *6 (D. Colo. May 7, 2018).

Active participation of advisor

Nearly as rare is the right to active assistance from an advisor of the student's choice. Only three schools (5.7%) allow attorneys to participate in all non-academic cases with only minor limitations: Cornell University, Georgia Institute of Technology, and the University of Wisconsin-Madison. Instead, most rated institutions simply allow students to have an advisor of their choice accompany them to meetings and hearings, so long as the advisor doesn't actively participate.

Timely and adequate written notice and right to meaningful cross-examination

The right to conduct meaningful cross-examination and receive advance written notice of the allegations against a student — including the policy at issue and underlying behavior — were also exceedingly rare. For cross-examination, 45 out of 53 schools (84.9%) did not receive any points, and for advance written notice, 38 schools (71.7%) did not receive any points, meaning that they do not guarantee students these safeguards in at least some non-academic cases.

As a number of courts have recognized, the ability to cross-examine witnesses in real time is particularly crucial in campus sexual assault cases; these cases often lack witnesses and physical evidence and therefore may rely heavily on the relative credibility of the accuser and the accused. In September 2018, in a case following *Doe v. University of Cincinnati*, the Sixth Circuit held in *Doe v. Baum* that cross-examination is an essential element of due process in campus judicial proceedings turning on credibility. The court wrote that "if a public university has to choose between competing narratives to resolve a case, the university must give the accused student or his agent an opportunity to cross-examine the accuser and adverse witnesses in the presence of a neutral fact-finder." 903 F.3d 575, 578 (6th Cir. 2018).

In August 2019, the U.S. Court of Appeals for the First Circuit issued a decision in *Haidak v. University of Massachusetts Amherst*, quoting FIRE's *amicus curiae* brief to hold that "due process in the university disciplinary setting requires 'some opportunity for real-time cross-examination, even if only through a hearing panel.'" And in May 2020, the U.S. Court of Appeals for the Third Circuit held in *Doe v. University of the Sciences* that "contractual promises of 'fair' and 'equitable' treatment to those accused of sexual misconduct require at least a real, live, and adversarial hearing and the opportunity for the accused student or his or her representative to cross-examine witnesses — including his or her accusers." 961 F.3d 203 (3d Cir. 2020).

Yet 37 institutions (75.5%) do not provide students a meaningful opportunity to cross-examine witnesses in cases of non-Title IX sexual misconduct. Only five institutions (9.4%) provide an opportunity for cross-examination in all non-academic cases and clear guidelines that ensure all relevant questions are relayed to the party being questioned.

Time to prepare with evidence

The right to sufficient time, with access to all relevant evidence, unless it is subject to a legal privilege, to prepare for a hearing is not guaranteed at 35 schools (66%), and it is guaranteed as robustly as FIRE believes is appropriate at only two institutions (3.8%), Cornell University and New York University. The importance of guaranteeing access to all relevant evidence, including exculpatory evidence, is highlighted by cases such as one accused student's lawsuit against the University of Mississippi, in which the plaintiff alleged that the university's Title IX coordinator deliberately refused to consider certain exculpatory evidence. *Doe v. University of Mississippi*, 361 F. Supp. 3d 597 (S.D. Miss. 2019). And in 2018, a judge overturned a guilty finding by the University of California, Santa Barbara, holding that it denied an accused student access to critical evidence in his case. The judge ruled that "without access to the [medical] report, John [Doe, the accused student] did not have a fair opportunity to cross-examine the detective and challenge the medical finding in the report. The accused must be permitted to see the evidence against him. Need we say more?" *Doe v. Regents of the University of California*, 28 Cal. App. 5th 44, 57 (Cal. Ct. App. Oct. 9, 2018).

Meaningful hearing process

The right to a meaningful hearing in front of a fact-finding panel is not guaranteed at 41 institutions (77.4%). Of these, many refer to their core proceedings as a "hearing," but fail to provide the critically important elements described in the Methodology section above, such as an opportunity for each party to see and hear the evidence being presented to fact-finders by the opposing party.

While the current Title IX regulations do not permit the problematic "single-investigator model," the proposed Title IX regulations currently advanced for comment by the Department of Education would allow institutions to use it. The model, in which one person serves as the investigator, fact-finder, and disciplinarian, presents significant and obvious due process concerns. As we wrote in our comment to the Department of Education, opposing this change to the current regulations: "Placing the authority to perform each of these functions in the hands of one person is a recipe for injecting bias—subconscious or otherwise—into an already fraught process."

Courts have taken notice of the problematic nature of the "single-investigator model," particularly in sexual misconduct cases. In upholding an accused student's challenge to a policy employing a single-investigator model at Brandeis University, a federal judge in Massachusetts wrote: "The dangers of combining in a single individual the power to investigate, prosecute, and convict, with little effective power of review, are obvious. No matter how well-intentioned, such a person may have preconceptions and biases, may make mistakes, and may reach premature conclusions." *Doe v. Brandeis University*, 177 F. Supp. 3d 561, 606 (D. Mass. 2016).

Impartial fact-finders

The right to challenge fact-finders for bias or partiality is guaranteed at only 19 institutions (35.8%). An additional 12 institutions (22.6%) specify that fact-finders should be impartial, but do not specifically provide a mechanism for students to challenge their participation in a case. Yet courts take the impartiality of fact-finders very seriously. Several court decisions favorable to accused students, for example, have involved allegations that the university used biased materials to train its Title IX hearing panels. (Both the current and proposed Title IX regulations require such materials be made public.) In *Doe v. University of Mississippi*, a federal district court held: "This is a he-said/she-said case, yet there seems to have been an assumption under [the] training materials that an assault occurred. As a result, there is a question whether the panel was trained to ignore some of the alleged deficiencies in the investigation and official report the panel considered." 2018 U.S. Dist. LEXIS 123181, at *28–29 (S.D. Miss. July 24, 2018). Similarly, in *Doe v. Trustees of the University of Pennsylvania*, a federal district court held that "the Complaint's allegations regarding the training materials and possible pro-complainant bias on the part of University officials set forth significant circumstances suggesting inherent and impermissible gender bias to support a plausible claim" that the university discriminated against the accused student on the basis of sex. 270 F. Supp. 3d 799, 824 (E.D. Pa. 2017).

Right to present to fact-finders

Students have the right to present all relevant evidence directly to fact-finders at only 11 institutions (20.8%). Students at 38 institutions (71.7%) are limited in what relevant evidence they may present to fact-finders and sometimes cannot present evidence directly to fact-finders at all.

Meaningful right to appeal

Among the most commonly granted procedural safeguards is the right to appeal, particularly based on new information or procedural errors. Of the 53 surveyed institutions, 5 schools (9.4%) allow for appeals based on all three grounds to which FIRE looks: new information, procedural errors, or if the finding is not consistent with the weight of evidence on the record. Additionally, 45 schools (84.9%) allow for appeals based on two of the three grounds enumerated in FIRE's checklist. Only three institutions failed to provide the right to appeal on more than one of these grounds.

FIRE believes these safeguards are essential in order to ensure fair proceedings for all students. While some safeguards, such as the presumption of innocence, specifically protect accused students against erroneous findings of responsibility, most of these safeguards are tailored to allow all parties and fact-finders to receive all relevant information in an organized fashion so that the results are as accurate as possible.

This goal serves all students, as well as the rest of the campus community, as the impact of these proceedings is often felt throughout the institution. Ensuring that the proceedings are conducted in a fair and reliable manner is of the utmost importance. Yet, at most surveyed institutions, disciplinary policies and procedures do not appear designed to reach that goal.

"Educational" versus "adversarial" processes

Many institutions emphasize in their written policies that the disciplinary process is meant to be "educational," not "adversarial." But with students facing sanctions as serious as expulsion, with alleged facts in dispute, and with some underlying offenses also constituting criminal behavior, many of the cases institutions adjudicate are necessarily adversarial. To characterize the process as merely "educational" is to ignore the very serious impact that the outcomes can have on students' lives. Indeed, in response to a University of Notre Dame administrator's testimony that the university's sexual misconduct adjudication process was an "educational" process (and thus that important procedural safeguards were unnecessary), a federal judge in Indiana put it bluntly: "This testimony is not credible. Being thrown out of school, not being permitted to graduate and forfeiting a semester's worth of tuition is 'punishment' in any reasonable sense of that term." *Doe v. University of Notre Dame*, 2017 U.S. Dist. LEXIS 69645, at *34–35 (N.D. Ind. May 8, 2017). With so much at stake, policies that guarantee meaningful due process protect all parties by providing credibility to the proceeding and reduce the likelihood of a court overturning the results over faulty procedures, which has subjected complainants to having to re-do the process multiple times.

Yet some institutions explicitly reject important safeguards in the name of avoiding an "adversarial process." Perhaps no school in the report illustrates this problem as well as the Massachusetts Institute of Technology, in its other misconduct policy. The policy explains that accused students can very rarely utilize attorneys when facing MIT's Committee on Discipline (COD):

> The COD process is not intended to be a legalistic or adversarial process. Attorneys for either party cannot participate in any part of the COD process except by serving as advisors [in limited, defined situations]. Attorneys are not permitted to serve as advisors in any other type of case. ... [A]dvisors are not permitted to serve as a witness, make arguments on behalf of or represent students, question witnesses, or author documents.... **The Chair may ask for an attorney for the COD to be present if the Chair decides the COD may benefit from legal advice.** [Emphasis added.]

In sum, students navigating a complicated administrative process that may result in their suspension or even expulsion cannot be assisted by an attorney to make arguments on their behalf, engage in examination of witnesses, or author documents. However, if the Chair decides the COD "may benefit from legal advice," they may have an attorney present, at the Chair's discretion. It is no coincidence that this absurdity is preceded by the statement that MIT's process is not "legalistic" or "adversarial."

Brandeis University, in its Title IX sexual misconduct policy, also demonstrates the way many universities flippantly dismiss critical procedural safeguards as "courtroom theatrics":

> **The Hearing is an administrative proceeding and is not meant to replicate a courtroom environment. As such, there is no room for what might be considered "courtroom theatrics" in the Hearing.** The expectation is that all participants in the Hearing, including the parties and their support person/advisor, will remain seated during the Hearing and will maintain a respectful and civilized tone towards all participant [*sic*] in the Process, including the Panel, other parties and witnesses. **There is no place in the Hearing for argument**, badgering, abusive language, raised voices, or disrespectful treatment of any Hearing participant. **There will be no opening or closing statements by the parties in the Hearing.** [Emphases added.]

While many university policies go to great lengths to distinguish their hearings from legal proceedings, Brandeis may be the only one to actually belittle critical aspects of the courtroom environment as "theatrics." When safeguards as fundamental as opening and closing statements (and even "argument" in general) are viewed as no more than "courtroom theatrics," it becomes easier to understand how so many institutions' policies fall short of providing fundamental fairness to their students. Despite this dismissive attitude towards the legal process and procedural safeguards, Brandeis' Title IX sexual misconduct policy still manages to earn a B grade, with 13 points. This is surely a testament to the current Title IX regulations, considering that Brandeis' non-Title IX sexual misconduct receives a D, earning just 5 points of a possible 20.

Discretion to omit procedural safeguards

Written provisions designed to help fact-finders do their job well and to protect against inaccurate findings should be guaranteed fully for all students subjected to the disciplinary process. These safeguards may not help students if administrators are granted broad discretion to omit them, or if there are exceptions to those safeguards that threaten to swallow the rule. Unfortunately, this is the case at many universities.

As noted above, the institutions marked by an asterisk are those at which an administrator or judicial body decides between two or more potential channels through which a case can be resolved. Provisions allowing for alternative procedures often do not describe the alternative procedures or explain when the adjudicating entity would choose one procedure over another. Each of these shortcomings leaves students unsure of which safeguards are fully guaranteed at their institutions, and makes it all too easy for institutions not to provide respondents with a fair hearing.

Many of the policies reviewed grant discretion to administrators to omit procedural safeguards, without adequate guidelines to limit that discretion.

The College of William and Mary's non-Title IX sexual misconduct procedures, for example, allow investigators to "exercise their professional judgment" to "exclude evidence that is… confusing."

Meanwhile, Massachusetts Institute of Technology's other misconduct policy grants the Chair of their hearings significant discretion to alter hearing procedures and reject witnesses. In providing an outline of the hearing process to students, the policy states: "The hearing usually proceeds as follows, although the Chair may vary the procedure at their discretion." Simply requiring that the hearing follow standard procedures would provide important clarity to students trying to prepare for their hearing and would also allow the policy to earn more points than it does.

The other misconduct policy at the University of California, Berkeley allows students to "request that the advisor be allowed to make arguments and/or question witnesses on the student's behalf during the hearing, and the Independent Hearing Officer will decide whether to grant that request" after considering a variety of factors. Considering that only two of the 155 policies reviewed for this report permit the full participation of an advisor of choice, Berkeley's provision is notable. However, by granting the Independent Hearing Officer discretion for whether to honor this request, the policy earns no points. A safeguard that can be removed at the discretion of the very individuals it is guarding against is no safeguard at all.

Numerous, inconsistent, and unclear policies

Students' ability to obtain a fair hearing is hindered not just by policies that lack procedural safeguards, but also by confusing or poorly drafted policies. In assessing disciplinary procedures for this report, the following problems became readily apparent and require attention.

Multiple policies

As noted, nearly all institutions rated for this report maintain not one policy, or even two, but *three* policies for non-academic misconduct alone that overlap and sometimes conflict with each other. Multiple policies inevitably confuse students and administrators, and make it harder for fair disciplinary proceedings to take place. They also increase the potential for procedural inconsistencies among similar cases.

As has been the case since the first edition of this report, the six rated campuses of the University of California system follow system-wide policies, but also maintain their own individual, overlapping disciplinary policies. As a result, students may have to sift through several different policies governing the same type of offense before they can attain a full understanding of their rights and the process they are facing, and students attending different institutions within the UC system are sometimes left with drastically different procedural rights. Students in the UC system would be far better served if the system consolidated its overlapping policies and ensured that safeguards which are presently only granted in some cases at some campuses are instead guaranteed at all campuses in all non-academic cases where suspension or expulsion are potential sanctions.

Poorly drafted policies

Frequently, policies are drafted in a way that fails to convey information in a clear, concise way. Policies at several institutions lack important details about what exactly happens during hearings and other proceedings. These omissions most often crop up in discussions of a hearing process, where it is sometimes difficult to tell whether students are guaranteed critical safeguards, including an opportunity to question witnesses or present evidence directly to fact-finders. Like other ambiguous or vague provisions, these insufficiently detailed policies create an opportunity for administrators to treat cases differently based on a desire for a certain outcome or prejudice against a certain party or type of allegation. Even when this implicit or explicit bias isn't present, the lack of clarity alone can make navigating a life-altering process that much more difficult for students.

It is also possible that students at some institutions are afforded greater procedural safeguards in practice than those they are explicitly guaranteed in writing. Administrators who are aware of such discrepancies must aim to codify into written policies all those procedural safeguards they provide in practice. This way, students can be confident that all respondents receive the same procedural protections, and that administrators' successors will enforce a given policy in an equally fair way.

Princeton University's non-Title IX sexual misconduct policy, for example, says, "While the Hearing Panel will generally conduct a live hearing during which it assembles (in person or virtually) all of the parties together at the same time, it reserves the right to conduct a hearing without assembling all of the parties together at the same time." This provision may only be employed in rare, extenuating circumstances, such as when it is necessary to conduct a hearing without parties that are actively declining to participate or when one party poses a threat to another. However, merely saying that a live hearing is "generally" conducted with all parties present is too general to earn any points.

Notably, Princeton's Title IX sexual misconduct policy cures this language, saying, "If the complainant, the respondent, or a witness informs the University that they will not attend the hearing (or will refuse to be crossexamined), the hearing may proceed, as determined by the University Sexual Misconduct/Title IX Coordinator." As a result, the hearing process in the Title IX policy earns full points and the hearing process in the non-Title IX sexual misconduct process earns no points, with this proving to be the difference between the Title IX policy earning a B grade and the non-Title IX sexual misconduct policy earning a C grade.

Pennsylvania State University's Title IX policy guarantees that written notice will include information about the alleged behavior that forms the basis of the complaint, but fails to guarantee that the notice will specify what policies are allegedly violated by that behavior. Specifying what policies are implicated is particularly important as many schools now have multiple systems to investigate sexual misconduct. It is vital that institutions do everything they can to limit potential confusion for students.

Moreover, where institutions' ratings have suffered because of imprecise language or administrators' reliance on the mere implication of a safeguard, those schools may easily improve their ratings by simply revising the language of their policies to be clear and explicit. Tulane University, for example, states that, before an investigative report is finalized, "necessary individuals and/or organizations will be given the opportunity to review a draft of the investigation report," without stating who these necessary individuals may be. Perhaps Tulane typically considers respondents a necessary individual and shares the investigative report with them. However, by not specifying as much in its written policies, Tulane leaves open the possibility that respondents will be denied access to information critical to their proceeding. FIRE cannot give institutions the benefit of the doubt on such critical questions for the purpose of this report.

Some institutions may better protect students by simply eliminating unnecessary and problematic alternatives to appropriate standard hearing formats, or by eliminating unnecessary provisions granting administrators discretion in certain areas. The University of Florida's other misconduct policy allows parties to participate in the hearing process "via audio or live-video from another location." As a result of the audio options, not all respondents will necessarily be able to see and hear the complainant as they testify. The policy states that this is intended to provide complainants with the ability to avoid "direct contact" with the accused student, but that objective could be met by the live-video option, which still allows all parties to see and hear each other.

Still other institutions initially appear to grant students procedural rights but then maintain provisions that serve to negate those rights. Yale University's other misconduct policy allows students to request witnesses to appear at their hearing, but then states: "The invitation of any witness will be made at the discretion of the Coordinating Group." Such unfettered discretion means students are not truly guaranteed the right to present and question witnesses.

Conclusion:

As Proposed Regulations Threaten Progress Toward Fundamentally Fair Proceedings, Institutions Nationwide Must Strengthen Policies

The current Title IX regulations have provided students in Title IX hearings with much improved due process rights. They have also had a positive impact on students dealing with any other campus charges, though they still too often face wildly unjust kangaroo courts. While most of the deficiencies discussed above may be readily fixed through policy revisions, FIRE's research reveals that institutions are refusing to implement fair disciplinary processes for all students. Compounding the problem, the proposed regulations being considered by the Department of Education would erase almost all of the procedural protections currently in place in Title IX cases.

As the leader in the fight for student rights nationwide, FIRE stands ready to help institutions, lawmakers, and other stakeholders work to revise these disciplinary policies and procedures to better protect due process rights and fundamental fairness on campus.

If you would like to work with FIRE to ensure your campus maintains clear and essential due process policies, please email us at dueprocess@thefire.org.

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