

WRITTEN SUPPLEMENTAL TESTIMONY of JOSEPH COHN
Legislative and Policy Director,
Foundation for Individual Rights in Education

Before the

**UNITED STATES HOUSE OF REPRESENTATIVES
BIPARTISAN TASK FORCE TO END SEXUAL VIOLENCE**

October 26, 2017 Roundtable on

**Campus Sexual Violence and Promoting Healthy Relationships and
Consent Education in K-12 Schools**

October 26, 2017

Representative Ann McLane Kuster
Task Force co-chair

Representative Patrick Meehan
Task Force co-chair

Representative Jackie Speier
Task Force co-chair

Representative David Joyce
Task Force co-chair

RE: Verbal Testimony of Joe Cohn before the House Bipartisan Task Force To End Sexual Violence, October 26, 2017

Dear Representatives Kuster, Meehan, Speier, Joyce, and honorable members of the Task Force to End Sexual Violence,

My name is Joe Cohn, and I am the Legislative and Policy Director at the Foundation for Individual Rights in Education, or as we are better known, FIRE. I thank you for the opportunity to discuss this critical issue.

One of the core constitutional rights that FIRE defends is due process.

Universities are both morally and legally obligated to respond to known instances of sexual misconduct. And for more than 50 years, courts have repeatedly held that the Constitution requires public universities to provide meaningful due process to accused students.

The stakes are extremely high for everybody in campus disciplinary proceedings. When a college sweeps an allegation of sexual misconduct under the rug, it has not only behaved immorally, it is in clear violation of Title IX. It is similarly unethical and unlawful when an institution punishes a student for alleged sexual misconduct without a truly fair and impartial process. We must not concede that either situation is acceptable.

The attention focused on this issue in recent years by student activists and the Department of Education has shed important light and opened the door for a much-needed examination of whether institutions have been adequately addressing sexual violence.

Unfortunately, however, some of the particular strategies implemented have had a pernicious effect. We have too often seen a disregard for the rights of victims of sexual violence replaced by a disregard for the rights of the accused. Two wrongs do not make a right.

Addressing campus sexual misconduct must continue to be a priority. We believe that by working together, we can — and indeed, must — do a better job of protecting the rights of victims and accused students alike. That is why we are pleased that the Department of Education has committed itself to engaging in formal notice and comment to craft a new policy with both of those goals in mind.

So, today, I'd like to set forth a few principles that we hope will guide you and the Department of Education in your collective efforts to ensure that campuses are free from sex discrimination.

First, we must not, under any circumstances, return to the days when allegations of sexual violence on campus were brushed aside and concealed. At a minimum this will require insisting that institutions have clear, accessible policies, and that they make efforts to inform the campus community of them and enforce them fairly but unequivocally when necessary.

Second, we must recognize that government actors and institutions cannot solve this problem alone. We will all need to work in partnership with each other and many committed activists, practitioners, and experts not now in this room. Today you are undertaking the necessary work of listening to a broader range of stakeholders affected by campus sexual assault. If we want our nation's colleges to employ clear, equitable, and fair procedures in which everyone can trust — and I believe we all do — we must hear from everyone affected and everyone committed to addressing these issues.

That is why FIRE is adamant that at the regulatory level, government agencies engage in formal notice and comment rulemaking to hear insight from all parties.

Through this process, the Department of Education can combine institutional knowledge, professional expertise, and the experiences of students to create a workable, fair, and effective set of Title IX regulations. Crafting a policy on campus sexual assault without hearing from complainants, the accused, the institutions themselves, medical professionals, victim's rights advocates, civil rights advocates, parents, and the many law enforcement professionals who have dedicated their careers to ending sexual violence, is bound to be inadequate.

Third, our national policy must be careful to assign only those responsibilities to institutions that we are confident they can perform well. Consulting with professional experts only goes so far if the resulting policy delegates tasks that

require particular expertise to those without the sufficient background, training, and tools to perform those functions properly.

Colleges and universities have a vital role to play in addressing campus sexual assault. They cannot simply refer complainants to law enforcement and wash their hands of the problem. Likewise, we must not allow ourselves to continue under the dubious assumption that with a few hours of annual training colleges are equipped to handle these challenging investigations and adjudications. They are not well-suited to adjudicating these complex cases. This gap between what we demand of institutions and what they are well-suited to perform has been one of the significant causes of the injustices — which flow in both directions — with which we are all too familiar.

The final broad principle is that the only way our solutions will be sustainable is if they are mindful of the rights of all students. No one benefits from a system that does not have the public's trust — not victims, not accused students, not institutions, and not the public.

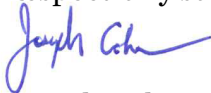
FIRE wants every institution to know how to assist when a student calls for help in the middle of the night. We want institutions to dedicate enough resources to ensure that the well-being of victims is a top priority. We want every student to know that their case will be handled fairly.

Due process — equal justice under law — is not an abstract principle; it is the foundation of any system of justice worthy of the name, whether on campus or off. We agree with the Secretary that we must ensure that every student's case is handled with the care that we would expect if one of our loved ones were a party, regardless of which side of the table they are sitting on.

The status quo is unacceptable. It isn't working for anyone. It isn't working for victims. It isn't working for institutions of higher education. And it isn't working for accused students. We must protect students. We must make sure hearings are fair and accurate. We must help institutions get it right. And we must continue to hold them accountable when they do not.

I thank you for the opportunity to address you today, and look forward to working with you on this important mission.

Respectfully submitted,



Joseph Cohn