Introduction
SAFER ("Students Active For Ending Rape") analyzed data from 50 U.S. universities and colleges to better understand how often sexual misconduct occurs, is reported, investigated, and adjudicated on campuses. SAFER’s goal is to determine whether the Department of Education’s ("DOE") new focus on the due process rights of students accused of sexual misconduct is an appropriate response to the reality of campus sexual violence.¹

We found that an extraordinarily small fraction of students participate in the institutional adjudication process as a responding party, while a much larger percentage of students experience sexual violence. Based on this data, SAFER seeks to reframe the narrative regarding campus sexual assault. Focusing a dialogue about campus sexual violence on due process and the rights of the accused obscures the reality of what students experience on college campuses. The data that we have assessed demonstrates that the rates at which students experience sexual violence are far greater than the rates at which students are accused of or punished for perpetrating sexual violence.

Instead of rewriting the rules about due process and campus adjudication, the DOE should seek to protect the hundreds of thousands of students affected by campus sexual violence, including both those filing and responding to complaints. To attain truly fair adjudication processes, the DOE must respect the rights and autonomy of all students, instead of restricting the services and opportunities available to survivors under the guise of civil liberties.

Method
SAFER reviewed all publicly-available sexual misconduct data from the 50 institutions in FIRE’s report (e.g. campus climate survey reports, misconduct reports, and annual security reports). Using these reports, we determined the frequency with which students experienced and reported sexual misconduct, as well as the frequency with which institutions investigated these reports and determined that violations of institutional policy occurred.³ Our methodology is explained in further detail in the endnotes.

Background
In September 2017, Secretary of Education Betsy DeVos announced that the DOE would rescind guiding documents—most notably the 2011 Dear Colleague Letter issued under the Obama Administration—that sought to increase accountability for colleges and universities responding to sexual violence. Secretary DeVos has shifted the DOE’s focus to protecting the rights of student respondents, which the Foundation of Individual Rights in Education ("FIRE") sought to justify in its report, “Spotlight on Due Process 2017.” In this report, FIRE applied its own metric to assess whether school policies ensure a student’s right to due process. FIRE concluded that highly ranked universities in the United States do not provide adequate due process protections. However, the data suggests there is no correlation between FIRE scores and policy violation rates. As such, the DOE lacks empirical support for its shift in focus.

Both FIRE and the DOE assert that too many students are wrongfully accused of sexual violence and are wrongfully punished after inadequate adjudication processes. We examined the same institutions as FIRE’s report to ascertain the validity of their claim that due to the frequency of wrongful accusations and sanctions, federal policy should prioritize the protection of due process. However, SAFER found that an extraordinarily small fraction of students participate in “full blown Title IX investigations.”² SAFER believes this focus on due process to be an inversion of priorities, and that a student’s right to an education free from the fear of sexual violence is paramount.

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Data-Informed Reality

50 of the 53 institutions identified in FIRE's report have policies and procedures specific to sexual misconduct. Of those 50, only 21 institutions publicized information regarding the investigation and adjudication of sexual misconduct.

Figure 1 illustrates the estimated prevalence of reported and unreported sexual misconduct, the total number of formal investigations, and the number of adjudication proceedings resulting in a finding of responsibility.

Figure 2 plots the number of sexual misconduct policy violations determined after a formal investigation and adjudication per 1,000 students (based on the total student population) against the score assigned to each of these 21 institutions by FIRE (which assesses how well or how poorly institutional policies ensure due process rights of accused students). The trendline, with a slope of 0.002, suggests there is no correlation between FIRE scores and policy violation ratios.
Challenging DeVos's Priorities

Secretary DeVos has indicated that she believes wrongful accusations of sexual misconduct are an epidemic on college campuses. The data collected for this report indicates otherwise. On September 7, 2017, DeVos spoke privately at the George Mason Antonin Scalia School of Law, saying "One rape is 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." Using this language, DeVos equates the seriousness and prevalence of assault with the prevalence of false accusation, misconstruing what is actually reported on college campuses.

According to the campus climate survey reports from these 50 universities, we estimate that 15.09%4 of students experience sexual misconduct in some form. This is consistent with, though slightly higher than, data from other publications.5 According to the data from the most recent year available, 21 of the 50 institutions studied published Title IX, sexual misconduct, or discipline summaries. At those 21 institutions, 3,304 sexual misconduct reports were filed. These 21 institutions formally investigated only 525 claims—less than 16%. Of those investigations, schools determined 223 policy violations to have occurred. This means that 223 students (or fewer, if a student was found responsible for multiple policy violations) were found responsible, though there were 3,304 sexual misconduct violations reported—meaning that only 6.75% of reports result in institutions finding that a violation occurred. DeVos describes a broken system in which the students experiencing sexual misconduct do so at the same rate that school adjudicators wrongfully punish innocent students. The reality on campuses is dramatically different.

Conclusion

Secretary DeVos's distorted portrayal of campus adjudication proceedings is misguided. A far greater number of students self-report experiencing sexual violence (about 15.1% of all students at the 50 institutions studied) than students alleged to have violated institutional misconduct policy (which is, at most, 0.107% of students at the 50 institutions studied). At maximum, only 0.046% of students are sanctioned for sexual misconduct violations. The number of accused students, whether wrongfully accused or not, is still drastically smaller than the number of students that experience sexual violence.

According to the DOE, college campuses in 2014 reported 27,000 criminal incidents, which were then reported to law enforcement, including 13,500 burglaries and 6,700 forcible sex offenses.6 However, as SAFER’s research demonstrates, students are far more likely to report sexual misconduct to their school’s administration than to law enforcement. The number of Title IX complaints an institution receives is much higher than the number of forcible sex offenses that same institution discloses in an annual security report.7

There are many social and psychological factors that discourage students from reporting or seeking justice after experiencing sexual misconduct. A 2007 study conducted by the National Institute of Justice reported that “the likelihood of reporting assault is lower on college campuses,” because “date and acquaintance rapes,” when a victim knows the perpetrator, “are less likely to be reported than stranger rapes,” and less than 5% of completed or attempted rapes were reported to law enforcement. This same study identified many reasons why students chose not to report incidents of sexual violence:
Conclusion (Continued)
many believed that their experience “would not be considered serious enough by authorities,” and many did not want “family members and others to know about the victimization.” Other research indicates that between 65% and 90% of people who experience sexual assault do not report what happened; that between 25% and 63% of perpetrators are repeat offenders; and that only 2% to 10% of reports of sexual assault are false. These studies suggest that the number of students experiencing sexual violence is even greater than reports indicate, and helps to explain the disparity between the expected frequency of sexual misconduct, filed reports, and investigated claims. The data reflects a need for dramatic re-prioritization at the DOE, as the number of accused students remains comparatively minuscule, while campus sexual violence remains an epidemic. The data analyzed for this report does not support the conclusion that an overwhelming number of students are wrongfully accused, nor does it support the conclusion that many students are wrongfully found responsible. On the contrary, the evidence shows that while there is an epidemic of sexual misconduct, only a tiny fraction of students are held responsible. The reporting and adjudicatory processes employed by colleges and universities are highly skewed—not in favor of complainants against accused students, but in a way that discourages students from participating in adjudication proceedings at all. Current administrative policies actually lessen the likelihood that students will be accused, investigated, and punished for sexual misconduct violations. SAFER believes that the DOE should prioritize the needs of the hundreds of thousands of students who experience sexual violence. We believe that survivors should be supported and not doubted. The DOE must implement policies that address the real epidemic on campuses, and serve the hundreds of thousands of students who experience sexual violence.

About SAFER
SAFER empowers student movements to combat sexual violence on college campuses.

We generate knowledge that equips student activists with the evidence and resources they need to reform campus sexual assault policies and strengthen actions to reduce campus assaults. We envision a world where survivors receive support, schools are held accountable, and students hold the power to effect change.

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Endnotes

1. “Sexual violence” is a broad term that refers to many different actions and behaviors, such as sexual assault, sexual abuse, and intimate-partner violence. Many behaviors that constitute sexual violence are crimes. However, when speaking of college campus policies and adjudication procedures, we are not commenting on the criminality or legality of these actions, only their accordance with specific institutional conduct policy. “Sexual misconduct” refers to the behaviors and actions that do not comply with an institution’s conduct policy, which typically includes non-consensual sexual contact, like rape or groping, as well as sexual harassment. When sexual violence occurs between affiliates of a college or university and is adjudicated by these institutions, it is referred to as sexual misconduct. For more information, see SAFER’s resources on institutional policies: http://safercampus.org/policy.

2. U.S. Department of Education, “Secretary DeVos Prepared Remarks on Title IX Enforcement,” September 7, 2017, https://www.ed.gov/news/speeches/secrety-devos-prepared-remarks-title-ix-enforcement. “Full-blown Title IX investigations” is a term Secretary DeVos uses in her remarks to describe the processes that are utilized by institutions of higher education to address and prevent sex discrimination, which are not criminal processes and are therefore not constitutionally required to ensure strict due process procedures. DeVos’s reference to a “full blown Title IX investigation” alludes to a process in which an institution’s administration conducts an investigation and adjudication process to resolve a Title IX dispute that can be time consuming and arduous for all parties involved. As this report will demonstrate, a “full blown Title IX investigation” is not the only, nor the most frequent, process by which students choose to address instances of sexual violence. Most students who experience sexual violence do not report to their school what has happened to them. Those who do choose to report typically do not choose to pursue investigatory or adjudicatory proceedings. The vast majority of students who perpetrate and experience sexual violence do not participate in “full blown Title IX investigations.” The condemnation of inadequate “due process” in these “full blown Title IX investigations” is a misrepresentation of the processes in which students participate.

3. We used data from campus climate survey reports to assess the frequency of sexual violence at institutions. These surveys vary somewhat in content, but all include reported rates of victimization of non-consensual sexual contact, which includes sexual assault and fondling. Most of the campus climate surveys were administered in 2015, and none before 2014. We used data from other reports (misconduct reports, disciplinary reports, and Title IX reports) to assess the frequency with which students reported experiencing sexual misconduct to their institution, how many investigations institutions opened, and how many policy violations were determined to have occurred. We used the most recent data available, most of which was published in 2016, and none before 2015.

4. To determine this percent, we averaged the rates of students’ experience of non-consensual sexual contact found in campus climate survey summaries.


6. SAFER analyzed the crime statistics identified at institutions of higher education, the disclosure of which is federally required according to the Jeanne Clery Act of 1990. These reports represent the number of sex offenses reported to law enforcement officials. The statistics disclosed in these reports were alarmingly fewer than the statistics disclosed in the Title IX / Sexual Misconduct / Discipline reports from the same institutions. For example, at the College of William & Mary, 13 sex offenses were disclosed as crime statistics, whereas the Title IX Office disclosed that 81 reports had been filed. This same pattern is consistent with other institutions, indicating that students more often report sexual violence to campus administrators rather than criminal law enforcement agencies. Many sexual misconduct reports are not investigated because the reporting student chooses not to undergo the intimate, emotionally strenuous process that is seeking justice for sexual violence. Even using the preponderance of evidence standard of evidence, it is extraordinarily challenging to adjudicate this type of misconduct, which often occurs with few witnesses, the presence of alcohol, and the psychological effects of experiencing sexual trauma (including difficulty recalling the details of events).


*Misguided Guidance: Refuting the Logic of Federal Policy on Campus Sexual Misconduct* was published in May, 2018.