

VERBAL 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.

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.

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 the many committed activists, practitioners, and experts not now in this room.

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

Third, our national policy must be careful to assign only those responsibilities to institutions that we are confident they can perform well.

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. Nevertheless, they are not well-suited to adjudicating these complex cases.

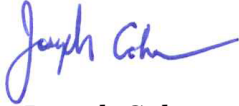
The final broad principle is that the only way our solutions will be sustainable is if they are mindful of the rights of all students.

FIRE wants every institution to take every allegation seriously, and we want every student to know that their case will be handled fairly.

The status quo is unacceptable. It isn't working for anyone. 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,

A handwritten signature in blue ink, appearing to read "Joseph Cohn", with a stylized, flowing script.

Joseph Cohn