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WINTER 2019

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INDIANA UNIVERSITY KOKOMO CENSORED STUDENT ART — AND WARNED IT MAY CENSOR AGAIN TO BE A 'GOOD NEIGHBOR'

• KOKOMO, INDIANA •

On Dec. 20, FIRE and PEN America called on Indiana University Kokomo to commit to respect freedom of expression after it censored two students' sculptures, one of which resembles female genitalia. FIRE's continuing concerns stem from an administrator's suggestion that the art may once again be censored based on complaints from the community.

"When complainers become curators, student expression is sacrificed to the most sensitive members of the community," said FIRE's Sarah McLaughlin, senior program officer. "Freedom of speech doesn't exist to protect only expression that everyone agrees with — it protects unpopular, raw, or uncomfortable expression that's too often threatened by censorship."

The students' sculptures were censored by IUK for three months, during which time FIRE and PEN America first wrote to the

university. The university restored the art to its original location shortly after FIRE sent its letter in October.

Artist and IUK senior Mary Ade told the local newspaper that the art resulted from dealing with a past sexual assault and served as a way for her to heal.

"That experience really changed my relationship with my body," Ade told the Kokomo Perspective. "So a lot of the work I've done, and this sculpture specifically, is about coming to terms with that after sexual trauma and that sort of thing. It really is deeply personal to me, and it matters to me."

In 2017, professor Gregory Steel contacted the university to request placement of several concrete pads for his students' sculptures. The pads and sculptures were installed a year later. After about a week on display, the university

removed the student sculptures Steel chose for display and told Steel that they received complaints about the art.

FIRE requested through an open records request to see the complaints, but the scant records produced by the university contained no complaints at all.

The university provided conflicting excuses for censoring the art, including a claim that the professor didn't go through the right approval process, contradicting Steel's report that the administration warned him of "complaints from the community." However, prior to the sculptures' restoration, an administrator said that in an effort to be a "good neighbor," IUK may reconsider the art's placement on campus based on "concerns from the community."

"We're relieved that the university restored the art, but we can't rest easy knowing that the university failed to make real assurances that they'll protect student expression over alleged community complaints," McLaughlin said. "Beauty is in the eye of the beholder. But freedom of expression is not." 🙄



ART BY MARY ADE, IUK SENIOR
Welded steel, painted



ART BY JONATHAN RESHKUS, IUK SENIOR
Welded steel, painted



SAVE THE DATE

FIRE turns 20!
Help us celebrate in NYC
on Thursday, Oct. 24
with a dinner at the Mandarin Oriental.
[More details to follow.](#)



REPORT: 9 IN 10 AMERICAN COLLEGES RESTRICT FREE SPEECH

• PHILADELPHIA, PENNSYLVANIA •

The vast majority of students at America's top colleges and universities surrender their free speech rights the moment they step onto campus, according to a December report from FIRE.

"Spotlight on Speech Codes 2019: The State of Free Speech on Our Nation's Campuses" analyzed the written policies at 466 of America's top colleges and universities for their protection of free speech. The report rated schools as "red light," "yellow light," or "green light" institutions based on how much speech protected by the First Amendment their policies restrict. FIRE found that 89.7 percent of colleges maintain policies that restrict — or could too easily be applied to restrict — student and faculty expression.

"Most colleges impose burdensome conditions on expression by maintaining policies that restrict students' free speech rights," said FIRE Senior Program Officer Laura Beltz, lead author of the study. "Colleges should be a place for open debate and intellectual inquiry, but today, almost all colleges silence expression through policies that are often illiberal and, at public institutions, unconstitutional."

More than a quarter of institutions in the report received FIRE's poorest, red light rating for maintaining speech codes that both "clearly and substantially" restrict freedom of speech. Alarming, red light schools still make up at least half of FIRE-rated institutions in the District of Columbia and 11 states: Alaska, Delaware, Idaho, Illinois, Louisiana, Massachusetts, New Jersey, South Carolina, Vermont, Washington, and Wyoming.

Only 9 percent of institutions do not maintain any policies that compromise

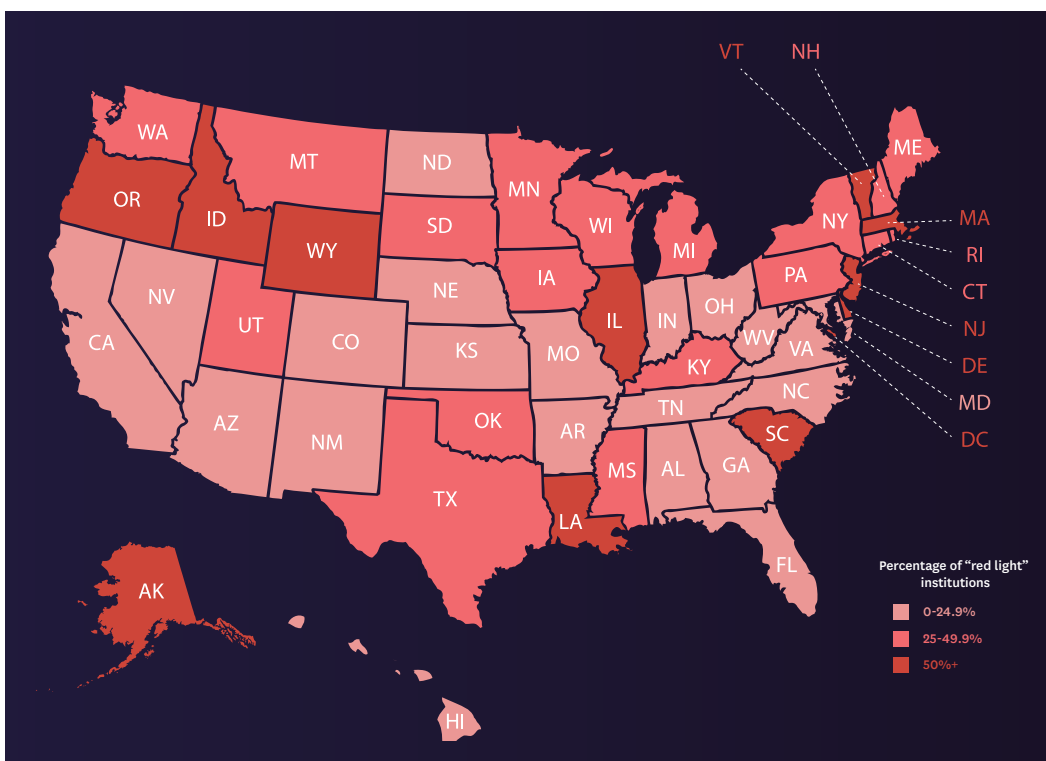
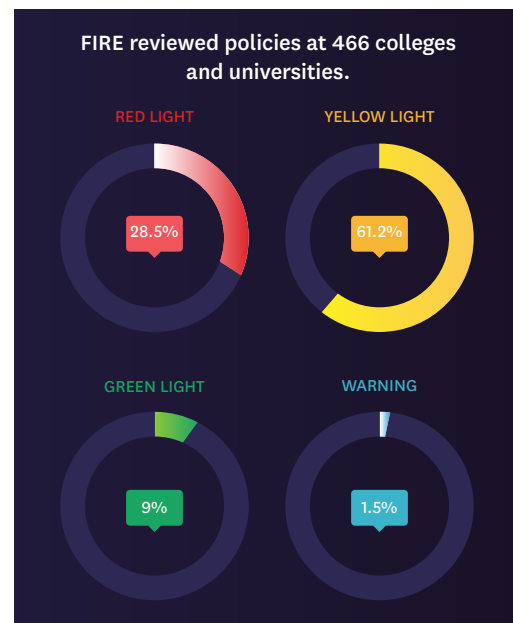
student expression, earning FIRE's highest, green light rating. This total is up from only 2 percent in 2009. Meanwhile, the number of institutions earning a yellow light rating is swelling: from 21 percent in 2009 to 61 percent today. While less restrictive than red light policies, yellow light policies still prohibit or have an impermissible chilling effect on constitutionally protected speech.

Neither public nor private colleges have a monopoly on silencing students and faculty members. Just over 90 percent of public colleges maintain policies that don't live up to their free speech obligations under the First Amendment.

Private institutions are generally not bound by the First Amendment but are responsible for living up to their institutional commitments to free speech. More than 88 percent of private institutions fall short of those promises. Only 6 percent live up to their pledged speech protections, earning a green light rating. Another 6 percent earn a "warning" rating for explicitly promoting other principles, such as religious values, over free speech.

Other findings:

- Almost 800,000 college students attend an institution that maintains a "free speech zone" policy, through which student demonstrations and other expressive activities are quarantined to small or out-of-the-way areas of campus.
- For the first time, the percentage of private universities earning FIRE's worst, red light rating dropped below 50 percent, coming in at 47 percent.





PIERCE COLLEGE STUDENT KEVIN SHAW AND GIRLFRIEND ANGELA MCARDLE
SPREAD THE WORD ABOUT THE LIBERTARIAN PARTY ON THE CAMPUS OF PASADENA COMMUNITY COLLEGE.



COVER STORY

VICTORY: SPEECH RIGHTS OF 150,000 STUDENTS RESTORED AS NATION'S LARGEST COMMUNITY COLLEGE DISTRICT SETTLES LAWSUIT

• LOS ANGELES, CALIFORNIA •

The largest community college district in the country agreed to settle a lawsuit filed in 2017 after an administrator told a student his First Amendment rights were restricted to a tiny “free speech zone.” The Los Angeles Community College District board of trustees agreed Dec. 12 to open the main areas of Los Angeles Pierce College to student expression. The board also agreed to revoke an unconstitutional, district-wide policy that declared all property on its nine campuses to be “non-public forums” and therefore subject to severe speech restrictions. Roughly 150,000 students attend classes at LACCD.

Student Kevin Shaw’s lawsuit was the first in FIRE’s Million Voices Campaign, which aims to free the voices of one million students by striking down unconstitutional speech codes across the country. As part of the settlement, the district agreed to pay \$225,000 in attorneys’ fees.

“More than two years ago, administrators wrongly told Kevin he was not allowed to hand out copies of the U.S. Constitution in the center of his public college campus,” said FIRE Director of Litigation Marieke Tuthill Beck-Coon. “He’s been standing up for his First Amendment rights every day since, and in the process has vindicated the rights of every student in the district.”

In November 2016, Shaw attempted to distribute Spanish-language copies of the U.S. Constitution and recruit members for a new chapter of the student organization

Young Americans for Liberty along the main campus thoroughfare at Pierce College. He was approached by an administrator who told him that he could not distribute literature outside the free speech zone, a tiny, 616-square foot area comprising about .003 percent of the total area of the college’s 426-acre campus.

Shaw was also told that he must fill out a permit application to use the free speech zone — requiring him to get a permission slip to exercise his First Amendment rights. He was informed that he would be asked to leave his own campus if he refused to comply.

“Though it was not without its difficulties, this experience has left me optimistic about the guiding principles of my country,” Shaw said. “Folks of all political dispositions rallied behind this case to declare in no uncertain terms: freedom of speech is essential to the educational process.”

Shaw filed suit in March 2017, challenging Pierce’s free speech zone policies as well as the district-wide policy that mandated the use of a free speech zone and placed all other campus property off-limits to free expression. In January 2018, a federal district court denied the district and Pierce College administrators’ motion to dismiss Shaw’s lawsuit. In its order, the court found that the open spaces of public colleges like Pierce are traditional public forums for student speech regardless of college regulations to the contrary. In October, the Department of Justice filed a statement of interest in Shaw’s case, arguing that Shaw successfully alleged First Amendment violations.

“Hopefully, this settlement will serve as a reminder to both students and their colleges that the free and open exchange of ideas on campus is a precious commodity to be celebrated rather than feared or restricted,” said Arthur Willner, a partner at Leader Berkon Colao & Silverstein and co-counsel with FIRE in the case.

With these policy reforms enacted, the Million Voices Campaign will have freed the voices of over 250,000 students since its launch in 2017. 🔥

FIRE IN THE NEWS

Kevin Shaw’s lawsuit appeared in the Associated Press, Wall Street Journal, Washington Post, Los Angeles Times, CBS News, Fox News, USA Today, Newsweek, Politico, The Hill, Orange County Register, and more.





FIRE WEIGHS IN ON TITLE IX REGULATIONS, TAKES CASE TO THE PUBLIC

• PHILADELPHIA, PENNSYLVANIA •

In November, Secretary of Education Betsy DeVos announced proposed regulations to replace the now-rescinded 2011 guidance known as the “Dear Colleague Letter,” which stripped college students and faculty members of important due process protections. This month, FIRE is working to formally submit our analysis to the Department of Education as part of the notice-and-comment process, which ends Jan. 28.

While FIRE does not agree with everything in the proposed regulations, they are a marked improvement over the previous guidance in a number of important ways.

First, by taking the rights of both complainants and accused students seriously, these proposed regulations make important strides toward ensuring that complaints of sexual misconduct will be neither ignored nor prejudged.

Second, the proposed regulations define sexual harassment in accordance with established Supreme Court precedent, eliminating the confusion that has led institutions nationwide to adopt overly broad definitions of sexual harassment that threaten student and faculty speech.

“FIRE has long argued that everybody on



SAMANTHA HARRIS APPEARING ON CNN'S 'AMANPOUR'

campus benefits from fundamentally fair proceedings,” said Samantha Harris, FIRE’s vice president for procedural advocacy. “While not perfect, the proposed regulations indicate the federal government’s recognition that students accused of serious misconduct are entitled to meaningful due process rights, and the proposed regulations include a number of important procedural protections that will improve the integrity of the process for everyone.”

“FIRE has long argued that everybody on campus benefits from fundamentally fair proceedings.”

SAMANTHA HARRIS, FIRE VICE PRESIDENT FOR PROCEDURAL ADVOCACY

Harris and Joe Cohn, FIRE legislative and policy director, took to the media to rally support for student due process rights, appearing on CNN’s Amanpour, NBC Nightly News, and NPR, and in the pages of The Wall

Street Journal, Washington Post, Los Angeles Times, Politico, and more.

When DeVos spoke about campus sexual assault last year, she argued, “Every survivor of sexual misconduct must be taken seriously. Every student accused of sexual misconduct must know that guilt is not predetermined. These are non-negotiable principles.”

We agree, and we are glad that the proposed regulations faithfully mirror that balanced approach. <#>



SECRETARY OF EDUCATION BETSY DEVOS

RECENT HEADLINES FROM ‘NEWSDESK’

- In blow to free speech, Fourth Circuit reinstates lawsuit against University of Mary Washington
- FIRE year in review: 2018 victories directly benefit 1.7 million college students
- Gonzaga University cites possibility of protests in refusing to host Ben Shapiro
- FIRE calls for reinstatement of U. North Alabama newspaper adviser position



REPORT: AS CHANGES TO TITLE IX LOOM, AMERICA'S TOP UNIVERSITIES FAIL TO GUARANTEE FAIR HEARINGS

• PHILADELPHIA, PENNSYLVANIA •

America's top universities fail to provide students accused of campus misconduct with fair procedures, according to a December report from FIRE. As the Department of Education considers public comments on newly proposed regulations governing Title IX enforcement until Jan. 28, "Spotlight on Due Process 2018" highlights the need for change.

"Students accused of serious campus offenses routinely face life-altering punishment without a meaningful opportunity to defend themselves," said FIRE's Susan Kruth, lead author of the report. "Universities need to provide basic procedural protections that help ensure accurate outcomes, and right now they overwhelmingly do not."

FIRE examined policies at the top 53 universities in the country to see how many of 10 fundamental procedural safeguards they guarantee students, including the presumption of innocence, the right to impartial fact-finders, and the right to appeal. Of the 53 universities studied, 47 receive a D or F grade, meaning that they guarantee no more than 4 of the 10 elements rated.

Most institutions maintain one set of policies for charges of sexual misconduct and another for all other non-academic misconduct, such as theft or physical assault. Notably, of the 15 institutions that received an F rating for their sexual misconduct policies, 11 have been sued by accused students over the lack of fair procedure.

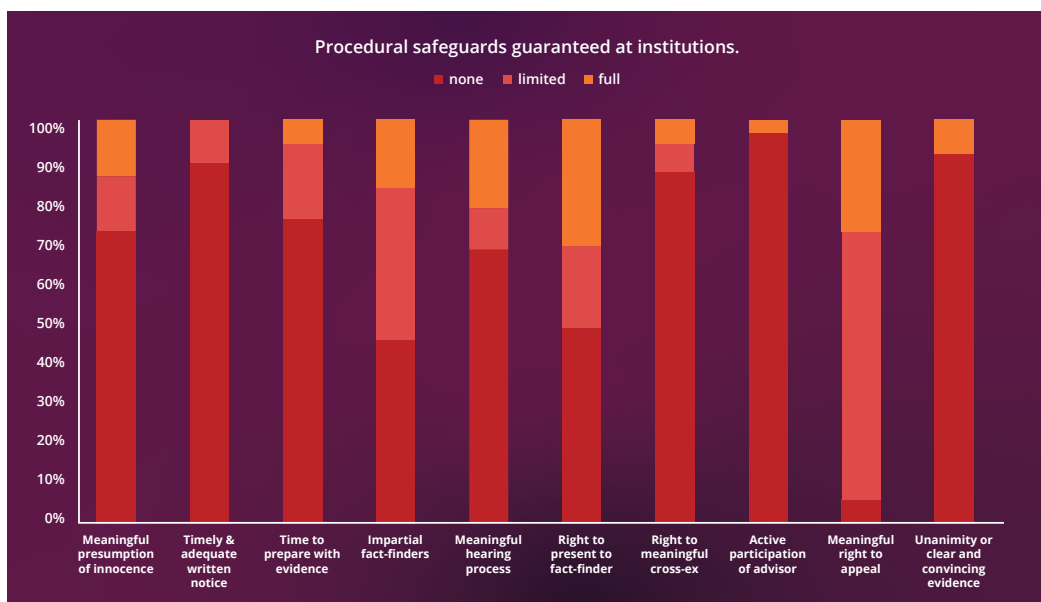
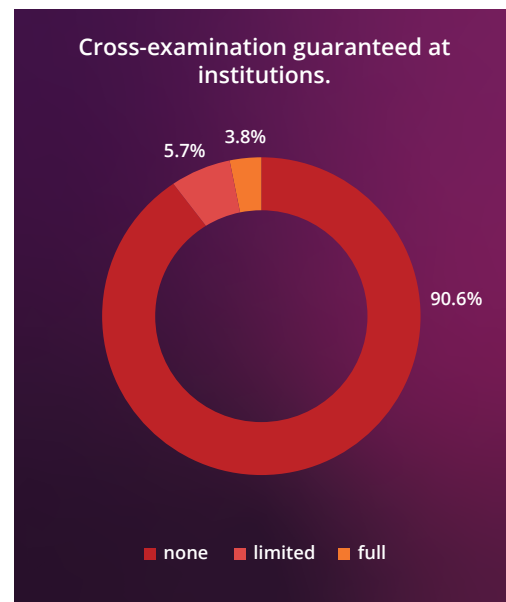
Although universities do not guarantee their students many of these procedural safeguards, it's clear students overwhelmingly want them. Each element

in FIRE's report is supported by a majority of college students surveyed by FIRE last year about their views on campus due process protections:

- 85 percent of students think their accused classmates should be presumed innocent until proven guilty, but only 26 percent of America's top universities explicitly guarantee students that protection.
- Although three-quarters of students support cross-examination, only 1 in 10 institutions guarantees students a meaningful opportunity to cross-examine witnesses.
- 8 in 10 students think students accused of breaking the law should be allowed to have a lawyer present in campus judicial proceedings, but only one institution out of 53 surveyed allows attorneys to participate without significant limitations.

This landscape may shift if the Department of Education's proposed regulations are enacted. 87 percent of institutions receive a D or F for their failure to protect the due process rights of students accused of sexual misconduct, but implementing the proposed regulations would raise surveyed universities' grades to a C or better.

"Of the 104 policies rated, not a single one receives an A grade. This shows just how far removed students have been from real justice in campus proceedings — and how much work is still left to do," said Samantha Harris, FIRE vice president for procedural advocacy. "By adopting the 10 elements of fair process laid out in FIRE's report, universities can ensure that their judicial process protects the interests of everyone involved."





THREE NEW UNIVERSITIES EARN 'GREEN LIGHT' RATING FOR FREE SPEECH

• PHILADELPHIA, PENNSYLVANIA •

Three more universities recently earned FIRE's highest, "green light" rating for protecting student and faculty expression, a distinction held by only 45 institutions in the country. Western Carolina University, the University of North Carolina at Pembroke, and Texas A&M University earned the rating in December and January.

"Due to restrictive speech codes, most students around the country forfeit some First Amendment rights when they step onto campus — but not at these universities," said Azhar Majeed, FIRE's vice president of policy reform. "We're excited that the leadership of these institutions worked to ensure that their students enjoy the same free speech rights that they possess off campus. Colleges should be places of robust debate, but the speech policies maintained by most colleges in the country discourage that kind of discussion."

WCU and UNC Pembroke were the sixth and seventh universities, respectively, to earn a green light rating in 2018. There are now 10 green light schools in North Carolina, more than in any other state in the country. Texas A&M earned its positive rating this month — becoming the first green light institution in Texas.

Public universities like these three are legally bound by the First Amendment, while private institutions are bound by promises of free speech found in their official policies. 🔥

FIRE WOULD LIKE TO THANK RETIRING BOARD CHAIRMAN DANIEL SHUCHMAN

for his vision and leadership. We'd also like to congratulate Anthony Dick on his election as FIRE's new chairman.

