

POLICY FOCUS

Title IX and Freedom of Speech on College Campuses

RECIPES FOR RATIONAL GOVERNMENT FROM THE INDEPENDENT WOMEN'S FORUM

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January 2016

Volume 6, Number 1

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WHAT YOU NEED TO KNOW

Title IX has transformed from a law intended to outlaw sexual discrimination in schools to a government regime that is suppressing free speech on college campuses.

While Title IX's language speaks to the need for equal opportunities for women and men in educational facilities, initially those enforcing the law turned the focus to creating equal outcomes, such as by requiring institutions' sports participation rates to mirror the gender breakdown of the student body.

More recently, the Office of Civil Rights (OCR) has used Title IX as a tool to police and restrict speech on college campuses by telling schools they must not have a hostile environment or they are out of compliance. In response, school officials have been instituting speech codes for students and teachers. These rules can be arbitrary as well as political, and invite continued expansion of what's off limits.

A culture of suppression harms students, and can lead to **distorted thinking**, similar to thoughts known to cause depression and anxiety. Additionally, suppression of speech does students a disservice by leaving them ill-prepared for life after college.

Colleges can reinstitute First Amendment rights by limiting the enforcement powers of the Office of Civil Rights, prioritizing constitutionally-protected speech, and ensuring that students are exposed to a variety of intellectual ideas, while providing a welcoming environment for all students.

WHY YOU SHOULD CARE

Title IX was supposed to ensure all students have access to the educational and other opportunities on college campuses. Yet today it is hamstringing our college campuses and harming students:

- **Campuses are dramatically infringing on free speech rights:** The First Amendment restricts government officials from rebuffing speech the government considers offensive. Yet colleges are working to eliminate words and ideas that might bring about discontent.
- **Expression that is simply unpopular is being silenced and punished:** Speech codes tend to punish unpopular groups and views. This is unfair to those who are being silenced and students who deserve to hear a robust debate.
- **Censorship and punishment harms students:** Defenders of the reinterpretation of Title IX claim it protects and benefits college students. However, micromanaging speech can lead to **distorted thinking**, and leaves students ill-prepared for life after college.

We need our college campuses to be intellectually-stimulating environments in which future citizens and leaders are challenged by new ideas and learn civil debate. Speech codes are undermining this goal and harming individual students and our society as a whole.

MORE INFORMATION

Title IX'S Evolution

Passed in 1972, Title IX sought to provide equal opportunities for men and women, a commendable objective. Title IX reads:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

Unfortunately, the Office of Civil Rights transformed the nature of the law, with the focus moving from ensuring equal opportunities to equal outcomes, particularly by requiring institutions' sports participation rates to mirror the gender breakdown of the student body. Universities were left with little choice: If the OCR finds college administrators in violation of Title IX, the university could face costly legal battles and lose access to significant funding. As a result, many schools resorted to **eliminating men's sports teams** to try to make the numbers add up to the desired quota.

More recently, Title IX has been taken further and used to justify greater policing of how campuses operate. Starting in 2011, the Department of Education under President Obama began writing "**Dear Colleague**" letters to institutions across the country, notifying administrators of their responsibility to regulate harassment and assault among their community members, even if it occurred off campus grounds.

These letters also pushed colleges to embrace a lower standard of proof in adjudicating sexual assault investigations. Institutions had to abandon the “beyond a reasonable” principle used in the U.S. criminal justice system, and instead employ a “preponderance of evidence” standard, meaning that even if it was only 50.01% likely that the crime took place, then the accused would be found guilty:

Schools generally conduct investigations and hearings to determine whether sexual harassment or violence occurred. In addressing complaints filed with OCR under Title IX, OCR reviews a school's procedures to determine whether the school is using a preponderance of the evidence standard to evaluate complaints.

In 2013, the Departments of Justice and Education took this a step further by significantly expanding the definition of sexual harassment on college campuses to incorporate any verbal behavior found to be “unwelcome.” This vague definition led to the reinterpretation of the law to extend to virtually all student activity on school grounds.

In other words, colleges now faced the potential of being non-compliant with Title IX if they failed to adjudicate sexual harassment cases according to a standard that is inconsistent with the basic concepts of due process and innocence until proven guilty. Colleges could also be found out of compliance for failing to crack down on speech that some could find “unwelcome.” Unsurprisingly, given college administrators’ fear of a rebuke from the Office for Civil Rights, a

massive, bureaucratic agency with 650 lawyers at its disposal, many colleges have been erring on the side of caution, and attempting to comply with OCR’s demands, including by cracking down on speech.

Growing Speech Restrictions

Universities exist to educate students. Part of this process is supposed to be exposing students to myriad intellectually-stimulating philosophies, theories, and arguments, including many they disagree with and may even find offensive. Sadly, colleges are increasingly failing in this core function as they seek to restrict what students and teachers can say, in the name of shielding sensitive students from speech and ideas that they may find objectionable.

For example, “microaggression” is the term for a verbal or nonverbal action that appears innocent, but is considered hostile or potentially offensive to some group. Some campuses consider it a microaggression to ask a Latino American or an Asian American where he or she was born, because they claim it implies that individual’s legal status as an American citizen is in question. A number of University of California system schools have deemed statements like “America is the land of opportunity” and “I believe the most qualified person should get the job” to be offensive, thus including such statements on their lists of microaggressions.

Censorship can even extend as far as the teaching curriculum. Increased supervision has

limited what can be taught or what can be said during classroom academic discussions. Classic literary works have been extracted from class syllabi and lectures, including **Mark Twain** and **Scott Fitzgerald**. If a professor does decide to preserve possibly offensive works in a lesson plan, students may demand a **trigger warning** — an alert that a professor is expected to issue if an assignment might cause a negative emotional response.

In its latest **survey** of college and university policies, the Foundation for Individual Rights in Education (FIRE) found that more than 55 percent of colleges maintain intolerant speech codes that forbid constitutionally protected speech despite the legal requirement for public universities to protect their students' free speech rights. This percentage has actually declined over the past six years, largely resulting from the rebranding of speech codes as “anti-harassment policies” following pressure from the Office for Civil Rights. In reality, the problem is almost certainly even more widespread and getting worse.

Clearly, certain types of speech are being unfairly targeted and punished on college campuses, and once a speech code is invoked to silence one form of disliked language, administrators are often pressured to use it again whenever a student's feelings are hurt. Moreover, the accuser has the power to label what is offensive, and therefore nearly any type of speech can be prohibited. These unfair restrictions are preventing students from learning new ideas and

are preventing them from engaging in civil debate. School officials should ensure that students that are properly challenged and educated in the classroom so that they succeed as citizens and leaders after college.

Censorship Harms Students

Defenders of the reinterpretation of Title IX claim it protects and benefits college students. However, there is great reason to believe the opposite, that it is leaving students worse off.

In “The Coddling of the American Mind,” FIRE CEO Greg Lukianoff and Jonathan Haidt, social psychologist and Professor of Ethical Leadership, discuss how micromanaging and punishing speech on campus can lead to **distorted thinking**. They explain that, rather than encouraging rational and critical thinking, speech codes lead to emotional reasoning. Instead of considering the facts of a situation, students are invited to accept the authority of their emotions, which, unfortunately, can lead to counterproductive and irrational thought patterns, in a manner similar to those associated with depression and anxiety.

Haidt and Lukianoff explain that, according to the most basic tenets of psychology, helping people with anxiety disorders avoid the things the fear is misguided and can lead to a lasting phobia. Exposure to the cause of the fear is ultimately the best way to overcome it and return to a normal life. This also holds for speech. Rather than avoiding “triggering” words or ideas that might be upsetting to students, colleges ought to be teaching them

how to deal with their emotions and to be able to continue to function.

Suppression of speech ultimately does students a disservice by leaving them ill-prepared for life after college as adult life often demands interaction with individuals and notions that one finds disagreeable or even offensive. Safe zones or safe spaces—places on campus where students can shield themselves from disagreeable ideas or words— teach students that there is no merit in learning more about an opposing point of view. The option to retreat to a safe zone does not exist in the real world. Instead of protecting students from offensive rhetoric and viewpoints they will surely encounter in the world outside of college, colleges should focus on preparing students to prosper after graduation

Re-embracing Free Speech on Campus

A number of important steps can be taken to reinstitute First Amendment rights on American college campuses. The most important step is to redefine and limit the enforcement powers of the Office of Civil Rights so that institutions are not subjected to unfair investigations and penalties. Educational institutions should also prioritize constitutionally protected speech while still finding ways to welcome students from different backgrounds. Lastly, administrators should prepare students for their post-college careers by ensuring students are exposed to a variety of intellectual works and ideas.

Rape Law Extracted From Law School Classrooms

Lawyers must be equipped to take on serious cases involving heinous acts such as murder, rape, and assault. But criminal law teachers are being asked to provide trigger warnings when teaching rape law in the classroom and to omit rape law questions on exams. Jeannie Suk, a law professor at Harvard, wrote an [article](#) for *The New Yorker* about this new standard

“Individual students often ask teachers not to include the law of rape on exams for fear that the material would cause them to perform less well. One teacher I know was recently asked by a student not to use the word ‘violate’ in class—as in ‘Does this conduct violate the law?’— Because the word was triggering.”

Yet law students are fully aware of the types of issues they are expected to study when selecting this professional path. Simply avoiding these discussions makes it unlikely that students will learn about the laws. If lawyers are not adequately equipped to address these issues in the courtroom, then the real victims of sexual assault will be the ones who are harmed.

WHAT YOU CAN DO

You can help your fellow Americans by drawing light to the harm being inflicted on students on college campuses.

- **Get Informed:** Learn more about Title IX! Visit:
 - The Independent Women's Forum
 - American Enterprise Institute's Factual Feminist
 - Foundation for Individual Rights in Education
- **Talk to Your Friends:** Help your friends and family understand these important issues. Tell them about what's going on and encourage them to join you in getting involved.

- **Become a Leader in the Community:** Get a group together each month to talk about a political/policy issue (it will be fun!). Write a letter to the editor. Show up at local government meetings and make your opinions known. Go to rallies. Better yet, organize rallies! A few motivated people can change the world.
- **Remain Engaged Politically:** Too many good citizens see election time as the only time they need to pay attention to politics. We need everyone to pay attention and hold elected officials accountable. Let your Representatives know your opinions. After all, they are supposed to work for you!

ABOUT THE INDEPENDENT WOMEN'S FORUM

The Independent Women's Forum (IWF) is dedicated to building support for free markets, limited government, and individual responsibility.

IWF, a non-partisan, 501(c)(3) research and educational institution, seeks to combat the too-common presumption that women want and benefit from big government, and build awareness of the ways that women are better served by greater economic freedom. By aggressively seeking earned media, providing easy-to-read, timely publications and commentary, and reaching out to the public, we seek to cultivate support for these important principles and encourage women to join us in working to return the country to limited, Constitutional government.

We rely on the support of people like you! Please visit us on our website www.iwf.org to get more information and consider making a donation to IWF.

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