

Organizational Change through Hybridization: Adjudicating Sexual Assault Amid Conflicting Logics

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BROADER PROJECT

Title IX prohibits sex discrimination in education, including sexual assault. Over the past decade, many higher education institutions (HEIs) have sought to change their policies and procedures in response to pressure from the federal government, the media, and student activism. This study of policies in 2016 is part of a larger project examining changes in sexual misconduct policies (SMPs) during a tumultuous legal period.

CONTEXT

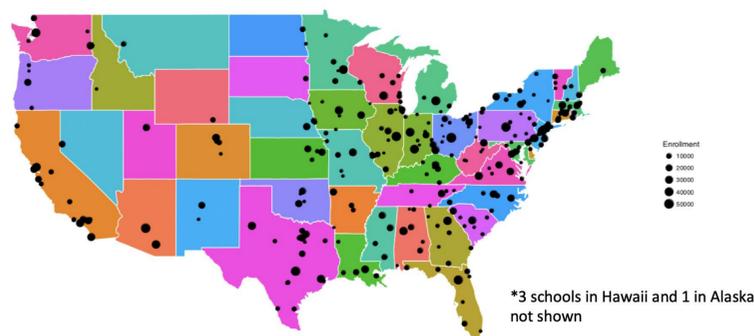
The 2011 Dear Colleague Letter instructed schools to have policies and procedures to respond to sexual misconduct complaints or risk losing federal funding. Subsequently, schools revised their adjudication policies, drawing on OCR guidance, to include victim protections such as having a trained investigator and disallowing cross-examination. By 2016, Nearly 300 schools were under investigation by OCR for complaints related to adjudication. Sec. of Education Betsy DeVos rescinded previous guidance and issued new Title IX regulations bolster rights of the accused, requiring an adversarial hearing and cross examination.

RESEARCH QUESTION

The 2011 DCL advanced the use of the single investigator model, an inquisitorial approach where a single person investigates and renders a decision. By 2016, to what extent had schools adopted this mode of sexual misconduct adjudication? Did schools engineer any procedures that balanced Title IX with due process?

METHODS

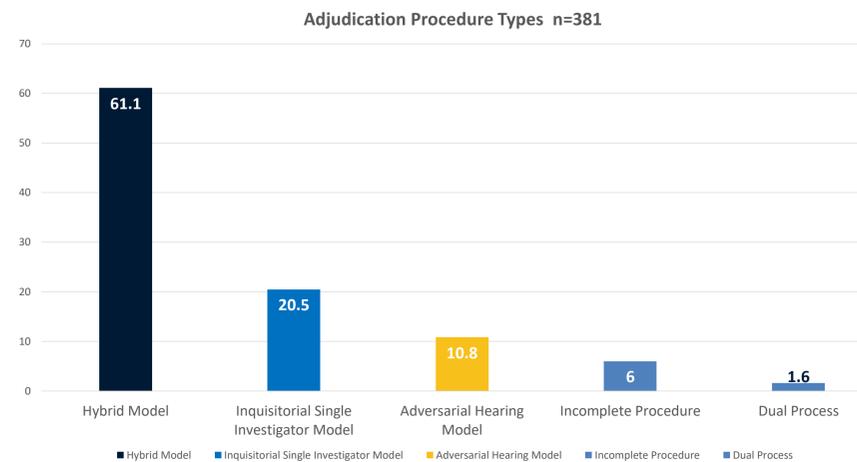
Title IX Project Sample, n = 381



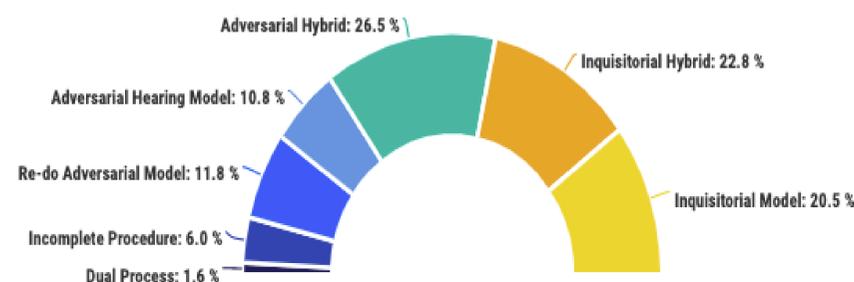
Data comes from a nationally representative sample of 381 US colleges and universities. We collected and coded school policy documents, found in 2016, detailing adjudication procedures. Two trained student coders used an original instrument to individually categorize policy decisions schools used at 7 stages of a complaint process.

RESULTS

By 2016, only 20% of schools used the single investigator model to adjudicate sexual misconduct cases. Contrary to the media narrative, a majority of schools used hybrid procedures that separated the investigation from the determination of the finding to protect due process.



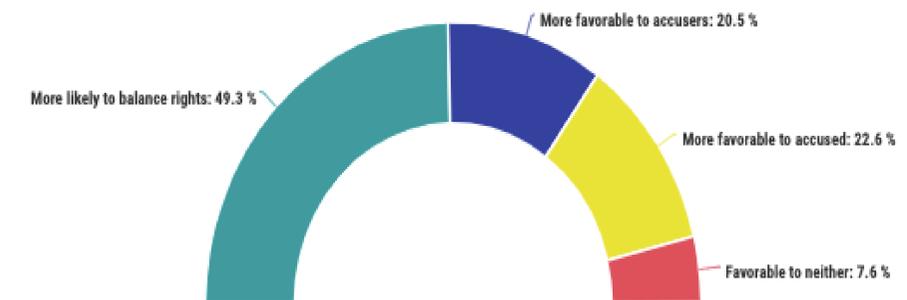
Our analysis found that just four schools (**Morehouse College, University of Baltimore, Harvard University, and Tiffin University**) used an inquisitorial procedure with Title IX professionals overseeing the process from the complaint to the appeal.



Most schools included *procedural handoffs*, where there was an investigation conducted by trained, usually civil rights professional, and the finding of responsibility was decided by another party. **Inquisitorial hybrids** included an investigation and the case was handed off to a more senior official or panel to review and make the determination. **Adversarial hybrids** consisted of an investigation prior to an adversarial hearing, wherein the hearing board weighed evidence from the investigation, the parties, and other evidence to make the determination.

We found a segment of (11.8%) hybrids where the case could be re-heard multiple times prior to appeal. These **Re-Do Adversarial Hybrids** disadvantaged accusers with a lengthier process.

SUMMARY



On paper, almost half of policies were structured to balance Title IX rights with due process protections. The Adversarial Hybrid is the model required by the 2020 Title IX regulations, though cross-examination has been added to the procedure.

DISCUSSION

Contrary to media narratives, most schools did not have a procedure that allowed one official to act as “judge, jury, and executioner.” Rather schools included procedural handoffs to ensure multiple actors were involved in the transition from investigation to determining the finding. These procedures, on paper, attempted to balance Title IX with due process.

The new regulations require schools to use a model similar to the Adversarial Hybrid. However, the mandate of cross examination tips this model in favor of accused students and criminalizes the procedure.

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RESEARCH TEAM

Project Primary Investigators: Elizabeth A. Armstrong and Sandra R. Levitsky
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