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Three Countries, One Problem: How the United States, United Kingdom, and France Handle Sexual Assaults in Higher Education

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THREE COUNTRIES, ONE PROBLEM: HOW THE UNITED STATES, UNITED KINGDOM, AND FRANCE HANDLE SEXUAL ASSAULT IN HIGHER EDUCATION

ABSTRACT

Thirty-five percent of women worldwide will face physical or sexual violence. Female students within the United States, United Kingdom, and France are especially vulnerable to sexual assault and harassment due to a lack of protection from their governments. Failing to address the issue of sexual assault in higher education risks disrupting the education of student victims who are disproportionately women. Despite France and the United Kingdom signing the Istanbul Convention and the United States' implementation of Title IX, these three nations have not done enough to prevent sexual misconduct among university-age students. All three nations have varying campus cultures and different methods of funding higher education institutions, but social norms that ignore violence against women and dissuade victims from reporting sexual assault exacerbates the problem.

All three nations have taken different approaches to address sexual misconduct in higher education. However, students remain at risk of becoming victims of sexual assault and sexual harassment. Each nation needs consistent, strict, and detailed legislation creating a standard for each higher education institution to protect and support victims of sexual assault, while also preventing such violence from occurring. The United States, United Kingdom, and France must educate students from a young age on the importance of gender equality and consent to begin alleviating the issue of sexual assault in higher education.

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INTRODUCTION

Worldwide, thirty-five percent of women have faced some form of sexual or physical violence.¹ The international response to the #Metoo movement highlights the pervasiveness of sexual violence and provides hope for a possible cultural shift as millions of survivors have come forward to find support, community, and justice.² Despite the international attention given to the #Metoo movement and other women's movements, countries still fail to prevent and adequately address sexual misconduct among students in higher education, a problem disproportionately impacting women.³ In higher education, "the

¹ Eleanor Davis, *FUTURES Hosts Congressional Briefing on Gender-based Violence in Humanitarian Settings*, FUTURES WITHOUT VIOLENCE (Apr. 14, 2016), futureswithoutviolence.org/futures-hosts-congressional-briefing-on-gender-based-violence-in-humanitarian-settings.

² Alix Langone, *#MeToo and Time's Up Founders Explain the Difference Between the 2 Movements – And How They're Alike*, TIME (Mar. 22, 2018), <https://time.com/5189945/whats-the-difference-between-the-metoo-and-times-up-movements>.

³ Nicole Fayard & Yvette Rocheron, "Moi Quand on dit qu'une femme ment, eh bien, elle ment": *The Administration of Rape in Twenty-First Century France and England & Wales*, 29 FRENCH POL., CULTURE & SOC'Y 68, 68, 71, 75, 80 (2011); *Campus Sexual Violence: Statistics, RAPE, ABUSE, & INCEST NAT'L NETWORK*

personalization of the pedagogical relationship . . . increases the risk of abuse of power and therefore, in particular, sexual harassment.”⁴ The United States has about twenty million undergraduate and graduate students.⁵ France has approximately four million students enrolled in higher education institutions and the United Kingdom has 2.38 million students.⁶ Preventing sexual assault among university-age students would help protect millions of students within these three nations.

In France, rape “affects mostly females from all social and ethnic backgrounds, particularly between the ages of 18–25.”⁷ In the United States, “13% of all [graduate and undergraduate] students experience rape or sexual assault through physical force, violence, or incapacitation.”⁸ Meanwhile “almost two-thirds of students and graduates have experienced sexual violence at British universities.”⁹ France, the United States, and the United Kingdom have all taken different approaches to prevent sexual harassment and assault among students,¹⁰ but no country stands out as more successful in their efforts. Students within all three countries risk disruptions to their education due to their institutions’ failure to protect them.¹¹

All three countries have acknowledged their issue with campus sexual misconduct and the need to protect students.¹² The United States adopted Title

[hereinafter RAINN], <https://www.rainn.org/statistics/campus-sexual-violence>.

⁴ *S’informer*, COLLECTION DE LUTTE CONTRE LE HARCELEMENT SEXUEL DANS L’ENSEIGNEMENT SUPÉRIEUR, <http://clasches.fr/sinformer/#toggle-id-2>.

⁵ Hannah Muniz, *How Many College Students Are in the U.S.?*, BEST COLLEGES (June 23, 2020), <https://www.bestcolleges.com/blog/how-many-college-students-in-the-us/>.

⁶ France, UNESCO INST. OF STAT., <http://uis.unesco.org/en/country/fr#cb-toggle>; Universities UK, *Higher Education in Numbers*, <https://www.universitiesuk.ac.uk/facts-and-stats/Pages/higher-education-data.aspx> [hereinafter *Higher Education in Numbers*].

⁷ Fayard & Rocheron, *supra* note 3, at 75.

⁸ RAINN, *supra* note 3.

⁹ Sonia Elks, *Students at Leading UK University Denounce Sexual Violence in Online Posts*, REUTERS (July 21, 2020), <https://www.reuters.com/article/us-britain-women-rape-trfn/students-at-leading-uk-university-denounce-sexual-violence-in-online-posts-idUSKCN24M2L5>.

¹⁰ R. Shep Melnick, *The Strange Evolution of Title IX*, NAT’L AFF., 2018 [hereinafter *The Strange Evolution of Title IX*]; GROUP OF EXPERTS ON ACTION AGAINST VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE, BASELINE EVALUATION REPORT FRANCE 32–33 (2019) [hereinafter GREVIO]; UNIVERSITIES UK, CHANGING THE CULTURE: REPORT OF THE UNIVERSITIES UK TASKFORCE EXAMINING VIOLENCE AGAINST WOMEN, HARASSMENT AND HATE CRIME AFFECTING UNIVERSITY STUDENTS 4–5, 58–59 (2016) [hereinafter CHANGING THE CULTURE].

¹¹ Christelle Hamel et al., *Rape and Sexual Assault in France: Initial Findings of the Virage Survey*, 538 I.N.E.D. 1, 3–4 (2016); Haley Ott, *Hundreds of Stories of Sexual Assault at Colleges Around the World Shared on Anonymous Instagram Accounts*, CBS NEWS (Sept. 29, 2020, 10:55 AM); Rachel Thompson, *UK Schoolgirls are Campaigning for Public Sexual Harassment to Be on the Curriculum*, MASHABLE (Sept. 2, 2020).

¹² Hamel et al., *supra* note 11, at 3–4; CHANGING THE CULTURE, *supra* note 10, at 19; Ott, *supra* note 11; Thompson, *supra* note 11.

IX of the Education Amendments in 1972.¹³ Since 2013, each French public university has hired “equality specialists responsible for guiding and supporting victims of violence.”¹⁴ In 2011, France signed the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), which has been considered “the most ambitious international treaty to combat violence against women and domestic violence.”¹⁵ The treaty went into force in the country in 2014.¹⁶ The United Kingdom signed the Istanbul Convention in 2012, but it has yet to be ratified.¹⁷

The varied approaches to addressing sexual misconduct among university-aged students may also be influenced by the different environments in which these students live and learn. In the United States, college campuses create highly social, close-knit environments.¹⁸ In the twenty-first century, American higher education “became more intertwined with society beyond the campus,” and today is seen as a “source of culture and status.”¹⁹ In the United Kingdom, students have the option of living in halls of residence, private rented accommodations, or with their parents.²⁰ These halls of residence are typically reserved for first-year students, placing students into private bedrooms, sometimes with an en-suite bathroom, and a shared kitchen.²¹

French universities lack the close-knit environment of American college campuses as most students live at home with family or off-campus.²² Just under one-third of French students live at their parents’ home and one-third live in rented accommodations.²³ Only twelve percent of students live in university

¹³ *The Strange Evolution of Title IX*, *supra* note 10.

¹⁴ GREVIO, *supra* note 10, at 32.

¹⁵ *Id.* at 9.

¹⁶ *Id.*

¹⁷ Jennifer Scott, *Troubling Delay over Domestic Abuse Treaty, Say Lords*, BBC (Feb. 1, 2021), <https://www.bbc.com/news/uk-politics-55887909>.

¹⁸ Chiara Sabina & Lavina Y. Ho, *Campus and College Victim Responses to Sexual Assault and Dating Violence: Disclosure, Service Utilization, and Service Provision*, 15 TRAUMA, VIOLENCE & ABUSE 201, 202 (2014).

¹⁹ ROGER L. GEIGER, AMERICAN HIGHER EDUCATION SINCE WORLD WAR I 313 (2019).

²⁰ Dan Mason, *What You Need to Know About Student Accommodation*, PROSPECTS (Mar. 2020), <https://www.prospects.ac.uk/applying-for-university/university-life/what-you-need-to-know-about-student-accommodation>.

²¹ *Id.*; Mathilde Frot, *10 Frequently Asked Questions About Student Life in the UK*, TOP UNIVERSITIES (Mar. 21, 2021), <https://www.topuniversities.com/where-to-study/europe/united-kingdom/10-frequently-asked-questions-about-student-life-uk>.

²² Lucie Rose, *Lost in Translation: Rape Culture at College in France*, FRENCHLY (July 25, 2016), <https://frenchly.us/rape-culture-french-college-campus>.

²³ OBSERVATOIRE NATIONAL DE LA VIE ÉTUDIANTE, STUDENT LIFE IN FRANCE 22 (2016).

residence halls.²⁴ French students living off-campus often live with other students or their partners, which may hinder an institution's ability to effectively prevent sexual misconduct.²⁵ Only twenty-six percent of French students reported using campus sport facilities and only eighteen percent participate in cultural activities, which highlights how disconnected students seem to be from campus, especially in comparison to the United States.²⁶

Together, the three countries serve as a comparison of different campus cultures and approaches to preventing sexual misconduct among students. France and the United States have similar state oversight policies for their higher education institutions, including their use of funding to maintain influence over their higher education institutions.²⁷ U.K. institutions provide students with a similar campus experience to the United States in the form of halls of residence, which is rarer in France.²⁸ Finally, unlike the United States, France and the United Kingdom are signatories of the Istanbul Convention, but the two countries have taken different approaches to addressing the issues of sexual assault and harassment among university students.²⁹ Despite the differences among the three countries, Title IX in its current form is just as likely to prevent sexual misconduct among university-age students as policies slowly being implemented by the United Kingdom and France.

This Comment will analyze the impact of Title IX reforms under the Obama and Trump administrations and compare the legislation with policies France and the United Kingdom use to address sexual harassment and sexual assault among university students. In Part I, this Comment will detail the inception of Title IX within the United States and how the legislation's support and ambiguity allowed for the major reforms made during the Obama administration, which were ultimately changed by the Trump administration. Then, Parts II through IV will analyze the policies, treaties, and statutes in place that affect France and the United Kingdom. Part V outlines the impact Title IX and similar French and U.K. policies have had on the rates of sexual misconduct among higher education students and students' willingness to report such incidents. Part VI will include recommendations for legislative changes to be made, including the

²⁴ *Id.*

²⁵ Rose, *supra* note 22.

²⁶ OBSERVATOIRE NATIONAL DE LA VIE ÉTUDIANTE, *supra* note 23; GEIGER, *supra* note 19.

²⁷ *Eurydice, France Overview*, https://eacea.ec.europa.eu/national-policies/eurydice/content/france_en; *The Strange Evolution of Title IX*, *supra* note 10.

²⁸ OBSERVATOIRE NATIONAL DE LA VIE ÉTUDIANTE, *supra* note 23, at 14 (2016); Mason, *supra* note 20; Geiger, *supra* note 19.

²⁹ CHANGING THE CULTURE, *supra* note 10, at 19; GREVIO, *supra* note 10.

adoption of a national policy similar to Title IX in France and the United Kingdom. This Comment will conclude with a determination of which country's efforts have done more to protect students from sexual harassment and violence.

I. HISTORY OF TITLE IX IN THE UNITED STATES

Title IX of the Education Amendments of 1972 created a cultural shift in the American education system, yet its scope and enforcement powers have consistently been controversial issues.³⁰ Title IX provides “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”³¹ The succinct legislation has been expanded upon by the Department of Education to justify the government's oversight over personal matters between students.³² The early sponsors of Title IX sought to equate gender and racial discrimination, but adding sex discrimination to the nondiscrimination mandate in Title VI of the Civil Rights Act had little support.³³ Failure to equate gender and racial discrimination has perhaps limited the effectiveness of Title IX and its ability to ensure equality for female students.

Upon its passing, Title IX created exemptions for religious and military schools, beauty pageants, fraternities, sororities, and other organizations, which undermined the argument that sex and racial discrimination were equally important.³⁴ Congress's lack of guidance on how to determine if a school or organization is in violation of Title IX, and what enforcement measures can be taken, has led to confusion and contention. Title IX has shifted from its original purpose of addressing gender inequality in education enrollment and sports to a focus on the conduct of students outside of the classroom and in private spaces.³⁵

The Office for Civil Rights (OCR) within the Department of Education has the responsibility of investigating Title IX complaints and producing rules under the statute.³⁶ OCR created rules holding schools strictly liable for harassment by teachers and staff.³⁷ While Congress intended for all rules established under Title IX to be approved by the President, 1975 was the last year OCR's Title IX

³⁰ *The Strange Evolution of Title IX*, *supra* note 10.

³¹ 20 U.S.C. § 1681 (2020).

³² See R. SHEP MELNICK, *THE TRANSFORMATION OF TITLE IX* 55 (2018).

³³ *Id.* at 40.

³⁴ *Id.* at 41.

³⁵ *The Strange Evolution of Title IX*, *supra* note 10.

³⁶ MELNICK, *supra* note 32, at 55.

³⁷ *The Strange Evolution of Title IX*, *supra* note 10.

regulations were sent to the President for signature.³⁸ This has been an issue as courts have gone back and forth over how much deference should be given to OCR's administrative guidelines.³⁹ Title IX's main enforcement tool has been the threat of terminating federal financial assistance to any school or organization found in violation of Title IX.⁴⁰ However, OCR has never used this tool, which limits the agency's credibility.⁴¹

The *Cannon v. University of Chicago* decision in 1979 strengthened Title IX by holding that a private right of action to enforce the statute was intended by Congress.⁴² The Supreme Court held that Title IX was not intended to impose on an individual "the burden of demonstrating that an institution's practices are so pervasively discriminatory that a complete cutoff of federal funding is appropriate."⁴³ The Court believed Title IX should be interpreted to protect "individuals harmed by particular instances of discrimination, not just [provide] blunt administrative remedies for systematic discrimination."⁴⁴ In *Franklin v. Gwinnett County Public Schools*, the Court held that private parties can seek monetary damages for intentional violations of Title IX.⁴⁵ With *Jackson v. Birmingham*, the Court decided that while a claim of retaliation is not mentioned in Title IX expressly, as it is in Title VII of the Civil Rights Act, the action is implied.⁴⁶ These cases further outlined the rights of actions available to people under Title IX, which was necessary due to the succinct nature of the legislation.⁴⁷ However, the cases also highlight the tenuous strength of Title IX as most of the language on the legislation derives from the courts.⁴⁸

A. Other Relevant Statutes

Sexual harassment is defined in federal law as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature."⁴⁹ Behaviors constitute sexual harassment when "such conduct has the purpose or effect of unreasonably interfering with an individual's work

³⁸ MELNICK, *supra* note 32, at 43.

³⁹ MELNICK, *supra* note 32, at 53.

⁴⁰ *The Strange Evolution of Title IX*, *supra* note 10.

⁴¹ *Id.*

⁴² *Cannon v. University of Chicago*, 441 U.S. 677, 703 (1979); Melnick, *supra* note 32, at 50.

⁴³ *Cannon*, 441 U.S. at 705; MELNICK, *supra* note 32, at 50.

⁴⁴ MELNICK, *supra* note 32, at 50.

⁴⁵ *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60, 76 (1992).

⁴⁶ *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 175 (2005).

⁴⁷ *See Cannon*, 441 U.S. at 717; *Franklin*, 503 U.S. at 76; *Jackson*, 544 U.S. at 175.

⁴⁸ *See Cannon*, 441 U.S. at 688–89; *Franklin*, 503 U.S. at 65–66; *Jackson*, 544 U.S. at 175.

⁴⁹ 29 C.F.R. § 1604.11 (2020).

performance or creating an intimidating, hostile, or offensive working environment.”⁵⁰ The primary purpose of the federal statute is to protect workplace interactions, which makes OCR’s adaptation of the definition for a university setting more important. However, OCR has struggled to define sexual harassment due to universities constituting both a workplace and a source of education.⁵¹

Under 10 U.S.C. § 920, a person who:

commits a sexual act upon another person by using unlawful force against that other person . . . threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping; first rendering that other person unconscious; or administering to that other person by force or threat of force, or without the knowledge or consent of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct; is guilty of rape.⁵²

A person who commits sexual assault has “commit[ted] a sexual act upon another person without the consent of the other person, when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring.”⁵³ A sexual act committed upon a person incapable of consenting due to “impairment by any drug, intoxicant, or otherwise similar substance, and that condition is known or reasonably should be known by the person,” is sexual assault.⁵⁴ Consent “means a freely given agreement to the conduct at issue by a competent person.”⁵⁵ Also, “[a]n expression of lack of consent through words or conduct,” or a “[l]ack of verbal or physical resistance does not constitute consent.”⁵⁶

B. Title IX Changes Under the Obama Administration

There were few administrative guideline reforms made by OCR after 2001, but that changed under the Obama administration as extensive reforms and new regulations were announced in 2011 and 2013.⁵⁷ The 2011 guidelines clarified

⁵⁰ *Id.*

⁵¹ Jeannie Suk Gersen, *How Concerning Are the Trump Administration’s New Title IX Regulations?*, NEW YORKER (May 16, 2020), <https://newyorker.com/news/our-columnists/how-concerning-are-the-trump-administrations-new-title-ix-regulations>.

⁵² 10 U.S.C. § 920 (2020).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ MELNICK, *supra* note 32, at 197.

that Title IX's prohibition on sexual harassment also encompasses sexual violence.⁵⁸ The new OCR regulations had the full support of President Obama, but the trend of Presidents not signing OCR regulations continued.⁵⁹ Reforms made to Title IX by the Obama administration regarding sexual assault were intended to extend violence prevention beyond perpetrators and survivors by "address[ing] the root individual, relational, and societal causes of sexual assault."⁶⁰ The Obama-era OCR guidelines defined sexual violence as "physical sexual acts perpetrated against a person's will or when a person is incapable of giving consent due to the victim's use of drugs or alcohol."⁶¹

By failing to define consent, OCR left schools responsible for the task, resulting in various definitions of consent.⁶² The State of California defined consent for all its institutions as "an affirmative, unambiguous, and conscious decision by each participant to engage in mutually agreed-upon sexual activity."⁶³ Some schools across the country defined consent in ways that rendered most sexual encounters between students as non-consensual.⁶⁴ At Georgia Southern University, consent meant a "voluntary, sober, imaginative, enthusiastic, creative, wanted, informed, mutual, honest, and verbal agreement," while at Brown University, consent was "knowing that my partner wants me just as much as I want them."⁶⁵

The definition of sexual harassment as "unwelcome conduct of a sexual nature," was expanded by the Obama administration to include spreading sexual rumors and making sexual comments or jokes.⁶⁶ The conduct did not need to be directed at a specific person, involve multiple incidents, or be motivated by an intent to harm to be classified as sexual harassment.⁶⁷ The new sexual harassment policies would encourage institutions to intervene before a student's ability to receive all benefits of their institution and education is impacted.⁶⁸

⁵⁸ Heather B. Gonzalez & Jody Feder, *Sexual Violence at Institutions of Higher Education*, Congressional Research Service (Apr. 15, 2016), <https://sgp.fas.org/crs/misc/R43764.pdf>.

⁵⁹ MELNICK, *supra* note 32, at 197.

⁶⁰ *The Strange Evolution of Title IX*, *supra* note 10.

⁶¹ MELNICK, *supra* note 32, at 202.

⁶² *Id.*

⁶³ Jake New, *The 'Yes Means Yes' World*, INSIDE HIGHER ED (Oct. 17, 2014), <https://www.insidehighered.com/news/2014/10/17/colleges-across-country-adopting-affirmative-consent-sexual-assault-policies>.

⁶⁴ MELNICK, *supra* note 32, at 202.

⁶⁵ *Id.*

⁶⁶ U.S. Dep't. of Education, Office for Civil Rights, *Revised Guidance on Sexual Harassment: Harassment of Students by School Employees, Other Students, or Third Parties* (Jan. 19, 2001), <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>; see MELNICK, *supra* note 32, at 200.

⁶⁷ *Id.*

⁶⁸ MELNICK, *supra* note 32, at 201.

Schools also became responsible for addressing any sexual harassment students faced off-campus, as it might impact their on-campus education.⁶⁹ Extending the responsibility of institutions to support and protect students from off-campus sexual harassment highlights the importance of addressing sexual misconduct not only as a problem among college students, but as a pervasive issue within the greater society.

Schools were required to create Title IX compliance offices, costing colleges \$100 million between 2011 and 2015.⁷⁰ The financial burden of Title IX compliance constrained schools and forced unwanted tuition increases or cuts to other resources.⁷¹ Title IX coordinators were responsible for reviewing all complaints and “identifying and addressing any patterns or systematic problems that arise.”⁷² Title IX coordinators investigated misconduct and determined guilt or innocence, which many believed was undue process.⁷³ OCR’s guidelines provided more protections for victims than the accused, spurring accusations of further undue process.⁷⁴ During investigations, schools were encouraged to make accommodations for victims by making the accused student “change classes, dormitories, or activities.”⁷⁵ Protections against retaliatory harassment were granted for victims but not the accused.⁷⁶

A controversial aspect of OCR’s 2011 guidelines was the mandate that schools investigate all Title IX complaints regardless of credibility and handle the claims promptly—within 60 days.⁷⁷ Schools were also unable to suspend their investigations to wait for police to do their own investigation.⁷⁸ Disciplinary proceedings were put in place to utilize the preponderance of the evidence standard, but formal hearings were not required.⁷⁹ Despite the new changes to Title IX, many victims waited years for their cases to be properly adjudicated.⁸⁰ After the 2011 OCR guidelines were released, hundreds of Title IX investigations were opened.⁸¹ By 2015, the average duration of an

⁶⁹ *Id.*

⁷⁰ *The Strange Evolution of Title IX*, *supra* note 10.

⁷¹ MELNICK, *supra* note 32, at 212.

⁷² OFF. OF THE ASSISTANT SEC’Y, DEAR COLLEAGUE LETTER ON SEXUAL VIOLENCE 7 (April 4, 2011).

⁷³ R. Shep Melnick, *Analyzing the Department of Education’s Final Title IX Rules on Sexual Misconduct*, BROOKINGS (June 11, 2020) [hereinafter *Analyzing Final Title IX Rules*].

⁷⁴ MELNICK, *supra* note 32, at 206.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 203.

⁷⁸ *Id.*

⁷⁹ *Id.* at 204.

⁸⁰ *Id.* at 214.

⁸¹ *Id.* at 212.

investigation was 940 days.⁸² The administration began publicizing which schools were under Title IX investigation, hoping the fear of a tainted reputation would encourage institutions to rectify their problems.⁸³

C. Title IX Changes Under the Trump Administration

The challenges in complying with Title IX under the Obama administration, and the costliness of compliance, prompted many higher education administrators to hope a Trump presidency would grant a reprieve.⁸⁴ In 2017, OCR announced investigations would be handled more swiftly by reducing the amount of evidence needed for sexual assault complaints.⁸⁵ The Trump administration ended the publicization of OCR investigations into certain colleges or universities.⁸⁶ The administration then began a three-year process of formal notice and comment rulemaking to comprise new OCR regulations.⁸⁷ During that time, OCR considered more than 120,000 comments.⁸⁸ These regulations were announced in May of 2020.⁸⁹

Major reforms were made to Title IX, including changes to the definition of sexual harassment and the standard of evidence used in investigations.⁹⁰ The definition of sexual harassment was restricted in comparison to the Obama administration's definition.⁹¹ Now sexual harassment includes actions that are "severe, pervasive, and objectively offensive."⁹² Victims will have a difficult time meeting the new standard because sexual harassment is rarely seen as extreme or objectionably offensive.⁹³ The Trump administration's sexual harassment places a heavier burden on students alleging sexual harassment than the federal government places on those in the workforce, who have to show that their perpetrator has "creat[ed] an intimidating, hostile or offensive working

⁸² *Id.*

⁸³ *The Strange Evolution of Title IX*, *supra* note 10.

⁸⁴ *Id.*; Juliet Eilperin & Emma Brown, *Obama Administration Directs Schools to Accommodate Transgender Students*, WASH. POST (May 13, 2016), https://www.washingtonpost.com/politics/obama-administration-to-instruct-schools-to-accommodate-transgender-students/2016/05/12/0ed1c50e-18ab-11e6-aa55-670cabef446e0_story.html.

⁸⁵ MELNICK, *supra* note 32, at 214.

⁸⁶ Nicole Bedera, *Trump's New Rule Governing College Sex Assault Is Nearly Impossible for Survivors to Use. That's the Point*, TIME MAG. (May 14, 2020), <https://time.com/5836774/trump-new-title-ix-rules>.

⁸⁷ *Analyzing Final Title IX Rules*, *supra* note 73.

⁸⁸ Gersen, *supra* note 51.

⁸⁹ Bedera, *supra* note 86.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

environment.”⁹⁴ The new sexual harassment definition will severely limit the amount of sexual harassment cases universities can investigate and give institutions less of an incentive to intervene in student matters.⁹⁵ However, the Department of Education clarified that one instance of sexual assault does constitute sexual harassment,⁹⁶ one holdover from the Obama-era.⁹⁷

OCR’s new guidelines will also impact sexual violence investigations.⁹⁸ Sexual assaults must happen on campus or “in conjunction with an education program or activity.”⁹⁹ This has been expanded to include sorority and fraternity houses, but not to study abroad programs or assaults near campus.¹⁰⁰ These reforms will continue to limit the number of incidents colleges should investigate, as only eight percent of “sexual assaults take place on school property.”¹⁰¹

The Trump-era guidelines require Title IX investigators to view complainants and respondents with the same amount of credibility, restricting investigators from believing the victim or providing leeway for changes made to the victim’s testimony.¹⁰² Title IX coordinators used to serve both as the investigator and decision maker for Title IX complaints, but the Trump administration has divided these roles to separate people to provide more fairness.¹⁰³ At the outset of the investigation, both the complainant and the respondent must be provided with an explanation of the allegations, with details known at the time, and a period to prepare a response for the initial interviews.¹⁰⁴ These changes allow for both parties and witnesses to be cross-examined by advisors at a live hearing.¹⁰⁵ Students may hire lawyers to serve as their advisors in a hearing, which can greatly disadvantage students who cannot afford that expense.¹⁰⁶ Under the Trump administration, Title IX proceedings can be

⁹⁴ 29 C.F.R. § 1604.11 (2020).

⁹⁵ Bedera, *supra* note 86.

⁹⁶ Gersen, *supra* note 51.

⁹⁷ MELNICK, *supra* note 32, at 202.

⁹⁸ Bedera, *supra* note 86.

⁹⁹ *Id.*

¹⁰⁰ Press Release, Dept. of Educ., U.S. Department of Education Launches New Title IX Resources for Students, Institutions as Historic New Rule Takes Effect (August 14, 2020) (on file with author); Bedera, *supra* note 86.

¹⁰¹ Bedera, *supra* note 86.

¹⁰² *Analyzing Final Title IX Rules*, *supra* note 73.

¹⁰³ Gersen, *supra* note 51.

¹⁰⁴ *Analyzing Final Title IX Rules*, *supra* note 73.

¹⁰⁵ Press Release, Dept. of Educ., *supra* note 100.

¹⁰⁶ *Analyzing Final Title IX Rules*, *supra* note 73.

delayed when a party is facing an imminent criminal investigation,¹⁰⁷ which may either provide victims with closure swifter than a Title IX investigation or provide institutions with an excuse to delay their responsibilities.

In-person hearings are only possible if both the victim and the accused agree to the hearing.¹⁰⁸ Both parties can appeal the findings, but only with arguments that are available to both parties.¹⁰⁹ Therefore, a victim cannot appeal a decision for being too lenient.¹¹⁰ OCR stipulated that these changes were just the minimum requirements that institutions must meet for Title IX compliance.¹¹¹ However, it is too soon to determine how many schools will go beyond the new standards, and how differing implementations will impact students nationwide.

Universities now have the opportunity to decide between the preponderance of the evidence standard or the clear and convincing evidence standard, but they must apply the chosen standard evenly to proceedings for all students and employees, including faculty.¹¹² The requirement that the same standard of evidence applies to students and faculty limits the choice between the two standards greatly because tenure rules and other faculty bargaining agreements have established the use of the clear and convincing standard in most employee disciplinary proceedings.¹¹³ If the clear and convincing evidence standard must be applied to faculty and staff allegations, then under the new guidelines, the same standard must be used when the accused is a student.¹¹⁴

Before the Obama administration, Title IX investigations relied on the clear and convincing evidence standard.¹¹⁵ Many criticized the Obama administration for implementing the preponderance of the evidence standard in Title IX investigations, even though the standard is used in other civil rights cases, including discrimination.¹¹⁶ OCR's shift from the preponderance of the evidence standard reduces sex discrimination to a lesser form of discrimination, despite it

¹⁰⁷ Gersen, *supra* note 51.

¹⁰⁸ Bedera, *supra* note 86.

¹⁰⁹ *Id.*; Press Release, Dept. of Educ., *supra* note 100.

¹¹⁰ Press Release, Dept. of Educ., *supra* note 100.

¹¹¹ *Analyzing Final Title IX Rules*, *supra* note 73.

¹¹² Press Release, Dept. of Educ., *supra* note 100.

¹¹³ *Analyzing Final Title IX Rules*, *supra* note 73.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Mark Keierleber, *The Younger Victims of Sexual Violence in School*, ATLANTIC (Aug. 10, 2017), <https://www.theatlantic.com/education/archive/2017/08/the-younger-victims-of-sexual-violence-in-school/536418>.

being considered equal to racial discrimination by those who sponsored Title IX.¹¹⁷

Informal resolutions allow for the victim to have redress without a face-to-face hearing, but OCR's new regulations provide little detail about this form of resolution.¹¹⁸ Informal resolutions require the permission of both parties to move forward, and the accused cannot be punished with expulsion, suspension, class schedule or housing changes, or any mandatory sexual violence trainings.¹¹⁹ During the Obama administration, a heavy burden was placed on the accused prior to any judgments being made regarding their guilt.¹²⁰ Now, victims of sexual assault or harassment must make the changes to their schedule or housing to avoid their assailant.¹²¹ The Obama administration had been silent on the issue of whether accused students were presumed innocent, but the Trump administration has clarified that they are.¹²² Many schools had adopted a principle of believing the victim, but this will no longer be legal.¹²³

While institutions hoped that new OCR guidelines would alleviate some of the financial stress Title IX was placing on them during the Obama administration, the Trump administration has admitted those savings will not be coming.¹²⁴ OCR's new guidelines are expected to cost institutions approximately \$300 million in the next year.¹²⁵ The Department of Education has also stipulated that Title IX cases are to proceed despite COVID-19-related campus closures.¹²⁶ Institutions have since struggled to adjust the Title IX investigations to an online setting; students believe virtual hearings are less effective at discerning a witness' credibility.¹²⁷ Schools are also required to accept new complaints, including those regarding sexual harassment on online platforms.¹²⁸ There have already been promises made by the incoming Biden administration to reform OCR's newest regulations.¹²⁹

¹¹⁷ MELNICK, *supra* note 32, at 40.

¹¹⁸ Bedera, *supra* note 86.

¹¹⁹ *Id.*

¹²⁰ Gersen, *supra* note 51.

¹²¹ Bedera, *supra* note 86.

¹²² Gersen, *supra* note 51.

¹²³ *Id.*

¹²⁴ MELNICK, *supra* note 32, at 212; Gersen, *supra* note 51.

¹²⁵ Gersen, *supra* note 51.

¹²⁶ *Id.*

¹²⁷ Greta Anderson, *Hold Off or Proceed?*, INSIDE HIGHER ED (Mar. 26, 2020), <https://www.insidehighered.com/news/2020/03/26/coronavirus-creates-title-ix-obstacles>.

¹²⁸ Gersen, *supra* note 51.

¹²⁹ *Id.*

II. FRANCE AND THE UNITED KINGDOM UNDER THE ISTANBUL CONVENTION

France and the United Kingdom are signatories of the Istanbul Convention, which works to prevent violence against women and domestic abuse.¹³⁰ The treaty places responsibility not only on state governments to achieve this goal, but also on the men and boys within their countries.¹³¹ After ratifying the Istanbul Convention, France has been obligated to “take steps to include issues such as gender equality and non-violent conflict resolution in interpersonal relationships in teaching material.”¹³² Signatories of the Convention must collaborate with non-governmental organizations and the private sector to combat gender stereotypes and implement measures for victims of gender-based violence.¹³³ The Convention defines forms of violence against women, such as sexual violence and rape, stalking, psychological and physical violence.¹³⁴ Adopting these new definitions into criminal statutes creates uniform definitions among all signatories.¹³⁵

The United Kingdom has implemented legislation that will enable them to ratify the Istanbul Convention.¹³⁶ In 2016, the government disbursed €100 million in funding to tackle the cultural norms perpetuating gender-based violence.¹³⁷ Last year, the United Kingdom increased funding to rape support centers across England and Wales by fifty percent.¹³⁸ However, the United Kingdom remains unable to ratify the Istanbul Convention because they lack legislation that (1) criminalizes psychological violence in Northern Ireland; (2) prosecutes U.K. nationals for conduct committed outside the United Kingdom; and (3) provides support to victims with refugee and migrant status.¹³⁹ While the Istanbul Convention has encouraged France and the United Kingdom to manage gender-based violence by implementing procedures that can be integrated into

¹³⁰ Scott, *supra* note 17; GREVIO, *supra* note 10, at 9.

¹³¹ The Convention in Brief, COUNCIL OF EUR., <https://www.coe.int/en/web/istanbul-convention/the-convention-in-brief> (last visited Aug. 25, 2020).

¹³² *Id.*

¹³³ *Id.*

¹³⁴ Ulla Jurviste & Rosamund Shreeves, *The Istanbul Convention: A Tool to Tackle Violence Against Women and Girls*, (Nov. 2018), [europarl.europa.eu/RegData/etudes/ATAG/2018/630297/EPRS_ATA\(2018\)630297_EN.pdf](http://europarl.europa.eu/RegData/etudes/ATAG/2018/630297/EPRS_ATA(2018)630297_EN.pdf).

¹³⁵ The Convention in Brief, *supra* note 131.

¹³⁶ HOME OFF., RATIFICATION OF THE COUNCIL OF EUROPE CONVENTION ON COMBATING VIOLENCE AGAINST WOMEN AND GIRLS AND DOMESTIC VIOLENCE (ISTANBUL CONVENTION)—2020 REPORT ON PROGRESS, at 6 (2020).

¹³⁷ *Id.* at 9.

¹³⁸ *Id.* at 10.

¹³⁹ Scott, *supra* note 17.

various sectors of life, both countries still lack legislation specifically to prevent sexual misconduct among higher education students.

III. FRANCE'S EDUCATION POLICY

The French State influences education at all levels, including the criteria for admitting teachers, but since the 1980s, the education system has become more decentralized with local governments playing a larger role in the operation and maintenance of schools.¹⁴⁰ Higher education in France is comprised of universities, public institutions with open admissions policies, and non-universities, which include more selective institutions such as Grandes Écoles.¹⁴¹

France has made efforts to promote gender equality among students since signing the Istanbul Convention.¹⁴² The Ministry of Higher Education, Research, and Innovation has committed to setting up “a referral and listening unit in each university to provide victims with support and assistance in the event of violence.”¹⁴³ This also includes the creation of an information guide on sexual harassment in higher education.¹⁴⁴ Since 2018, the government has mandated each public university to have an employee “trained in gender equality and anti-discrimination.”¹⁴⁵ Universities must also provide specific training “on how to prevent and handle sexual and gender-based violence and harassment.”¹⁴⁶ Each public university has been encouraged to adopt a charter of commitment to gender equality that includes a section on violence and harassment; the charter should receive approval from students and the administration.¹⁴⁷

A. *Sexual Violence Laws in France*

The aforementioned policies implemented by French universities regarding sexual harassment and sexual violence awareness have not been incorporated into France's education code,¹⁴⁸ which may allow higher education institutions

¹⁴⁰ *France Overview*, *supra* note 27.

¹⁴¹ *Id.*

¹⁴² GREVIO, *supra* note 10, at 9.

¹⁴³ *Id.* at 32.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 33; *Gender-Based and Sexual Abuse*, MINISTRY OF HIGHER EDUC., RSCH. AND INNOVATION, <https://www.etudiant.gouv.fr/en/gender-based-and-sexual-abuse-2036>.

¹⁴⁶ GREVIO, *supra* note 10, at 33.

¹⁴⁷ *Id.*

¹⁴⁸ See Human Rights Watch, *France Should Act to End Violence, Harassment at Work* (2020) <https://www.hrw.org/news/2020/12/15/france-should-act-end-violence-harassment-work> [hereinafter *Human Rights Watch*].

to feel less responsible for preventing sexual violence among students. Looking at the relevant criminal codes may help determine every option available to student victims in France. In France, “rape and other sexual assaults are constituted when they have been imposed on the victim . . . regardless of the nature of the relationship between the aggressor and his victim, including if they are united by the bonds of marriage.”¹⁴⁹

Throughout France, twelve percent of women victims of rape or attempted rape report the violence.¹⁵⁰ The number of rape convictions represents one percent of the estimated number of rape cases.¹⁵¹ In 2018, the definition of rape was expanded to include “acts of penetration imposed on a victim but committed on the perpetrator . . . [and] sexual assault committed against a victim to whom a substance altering their ability to control their behavior or discernment has been administered without their knowledge.”¹⁵² Sexual harassment in France is “the fact of repeatedly imposing on a person comments or behavior with a sexual or sexist connotation that either undermines their dignity because of their degrading or humiliating nature, or creates against them an intimidating, hostile or offensive situation.”¹⁵³

Since 2018, the definition of sexual harassment has included “verbal and non-verbal conducts of a sexual nature,” along with those of a sexist nature and acts of harassment committed online.¹⁵⁴ Recent French legislation has added a fine for those who commit sexual harassment in public.¹⁵⁵ Given that “France prohibits sexual harassment in both its criminal and its labor code,” adding a prohibition within the education code could help protect those employed by or enrolled in universities.¹⁵⁶ The recent legislative changes to prevent sexual harassment and sexual violence have benefitted French women, but university-age women are most heavily affected by sexual violence and should have legislation specifically created to protect them.¹⁵⁷

¹⁴⁹ Code pénal [C. pén.] [Penal Code] art. 222-22 (Fr.).

¹⁵⁰ GREVIO, *supra* note 10, at 56.

¹⁵¹ *Id.*

¹⁵² *Id.* at 55.

¹⁵³ Code pénal [C. pén.] [Penal Code] art. 222-33 (Fr.).

¹⁵⁴ GREVIO, *supra* note 10, at 58.

¹⁵⁵ Stéphanie Fillion, *2 Years Later, What We Can Learn from France's Anti-Catcalling Law*, FORBES (Jan. 26, 2021), forbes.com/sites/stephaniefillion/2021/01/26/2-years-later-what-we-can-learn-from-frances-anti-catcalling-law/?sh=23af75d75dcd.

¹⁵⁶ *Human Rights Watch*, *supra* note 148.

¹⁵⁷ *See* Fayard & Rocheron, *supra* note 3, at 75.

IV. EDUCATION POLICIES IN THE UNITED KINGDOM

In the United Kingdom, specifically England, the Department for Education holds the most responsibility for education decisions.¹⁵⁸ Higher education institutions have autonomy over their curriculum, and aside from having their quality and standards assessed by the Quality Assurance Agency for Higher Education, higher education institutions have little to worry about in regards to accreditation.¹⁵⁹ Institutions design their own admission policies, graduation requirements, and, in the twenty-first century, direct funding for public education has shifted to tuition fees backed by public loans.¹⁶⁰

With the Equality Act of 2010, universities, as a public authority, have “due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.”¹⁶¹ All schools are required to have a behavior policy that includes measures to prevent bullying.¹⁶² The Public Sector Equality Duty mandates that all institutions incorporate the elimination of sexual violence and sexual harassment into their decision-making.¹⁶³ However, schools decide on their own what data to record and maintain regarding sexual violence and harassment.¹⁶⁴ Several universities have begun addressing sexual assault, instituting policies inspired by Title IX and certain American institutions such as Yale University.¹⁶⁵ A “lad culture” or “pack mentality residing in activities such as sport and heavy alcohol consumption and ‘banter’ which [i]s sexist, misogynistic, or homophobic,” seems to plague youth in the country and attributes to the high levels of sexual misconduct.¹⁶⁶

University U.K. is the collective voice of 140 universities within the United Kingdom, which is over ninety percent of all publicly funded higher education institutions in the United Kingdom.¹⁶⁷ Universities U.K. (UUK) reformed their codes of conduct in 2016 to make more uniform policies that protect students

¹⁵⁸ Eurydice, *United Kingdom-England Overview*, https://eacea.ec.europa.eu/national-policies/eurydice/content/united-kingdom-england_en.

¹⁵⁹ *See id.*

¹⁶⁰ *Id.*

¹⁶¹ Equality Act 2010, c.15, § 149 (Eng.), <https://www.legislation.gov.uk/ukpga/2010/15/section/26>.

¹⁶² DEP'T OF EDUC., *SEXUAL VIOLENCE AND SEXUAL HARASSMENT BETWEEN CHILDREN IN SCHOOLS AND COLLEGES*, at 14 (2020).

¹⁶³ *Id.* at 3.

¹⁶⁴ *Id.* at 14.

¹⁶⁵ CHANGING THE CULTURE, *supra* note 10, at 76.

¹⁶⁶ *See id.* at 19.

¹⁶⁷ Universities UK, *Tackling Gender-Based Violence, Harassment and Hate Crime: Two Years On*, at 24 (2019).

from all forms of harassment.¹⁶⁸ In 2015, UUK established a taskforce to examine rates of harassment and violence against women.¹⁶⁹ The taskforce recommended all higher education institutions create universal and systematic changes.¹⁷⁰ The purpose of implementing institution-wide procedures was to reduce the impact of one staff member's handling of a situation on the overall response to a victim's report.¹⁷¹ As a result, institutions across the United Kingdom created bystander training for students and staff, zero-tolerance policies, and stronger reporting mechanisms.¹⁷² Universities began partnering with "student unions, police authorities . . . rape and sexual abuse centres," to increase training and provide support to survivors.¹⁷³ "81% of institutions reported . . . updat[ing] their discipline procedures," and some universities began sharing their expectations for student conduct before their arrival to campus.¹⁷⁴

A. *Pertinent Criminal Statutes*

The Sexual Offences Act of 2003 states: "A person (A) commits [rape] if— (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis, (b) B does not consent to the penetration, and (c) A does not reasonably believe that B consents."¹⁷⁵ The statute ignores that both men and women can be victims of rape, causing an act of rape by a woman to be reduced to a sexual offense.¹⁷⁶ In England and Wales, only 5.7% of rape cases end in a conviction.¹⁷⁷

The criminal code allows for men and women to be found guilty of sexual assault.¹⁷⁸ A person commits sexual assault if "he intentionally touches another person, the touching is sexual, B does not consent to the touching, and A does not reasonably believe that B consents."¹⁷⁹ A reasonable belief is "determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents."¹⁸⁰ The standard of proof for both criminal

¹⁶⁸ CHANGING THE CULTURE, *supra* note 10, at 1.

¹⁶⁹ *Id.* at 4.

¹⁷⁰ Universities UK, *supra* note 167, at 6.

¹⁷¹ CHANGING THE CULTURE, *supra* note 10, at 32.

¹⁷² Universities UK, *supra* note 167, at 7.

¹⁷³ *Id.* at 10.

¹⁷⁴ *Id.* at 35.

¹⁷⁵ Sexual Offences Act 2003, c. 42 (Eng.), <https://www.legislation.gov.uk/ukpga/2003/42/part1>.

¹⁷⁶ CHANGING THE CULTURE, *supra* note 10, at 7.

¹⁷⁷ *Statistics – Sexual Violence*, RAPE CRISIS ENG. & WALES, <https://rapecrisis.org.uk/get-informed/about-sexual-violence/statistics-sexual-violence>.

¹⁷⁸ CHANGING THE CULTURE, *supra* note 10, at 7.

¹⁷⁹ Sexual Offences Act 2003, c. 42 (Eng.).

¹⁸⁰ *Id.*

offenses, rape, and sexual assault, is beyond reasonable doubt.¹⁸¹ Sexual harassment does not have a corresponding criminal statute and is instead defined within the Equality Act of 2010 as “unwanted conduct of a sexual nature or that is related to gender reassignment or sex,” and “the conduct has the purpose or effect of violating B’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment.”¹⁸² Unlike the United States where the sexual harassment statute focuses on workplace interactions, the United Kingdom’s definition is broader, which can increase the rights of actions U.K. students have.¹⁸³

V. IMPACT OF LEGISLATION ON RATES OF SEXUAL VIOLENCE

A. *Impact of Title IX Legislation*

Before the Obama administration’s reforms, students had a higher burden of proof in cases against their institutions.¹⁸⁴ Courts held that “substantive due process is violated only when a state actor engages in affirmative conduct that enhances the danger to which an individual, or [when a] discrete and clearly identifiable class of individuals is exposed.”¹⁸⁵ Students had to prove someone at their institution had engaged in affirmative conduct specifically placing them in more danger or prove that an individual was deliberately indifferent.¹⁸⁶ Deliberate indifference is “a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his actions.”¹⁸⁷ Successful Title IX claims were made when evidence “support[ed] a plausible inference that a federally-funded college or university discriminated against a person on the basis of sex.”¹⁸⁸ After the Obama-era changes, students could utilize four theories when attacking their university’s disciplinary proceeding on grounds of gender bias.¹⁸⁹ Those theories were: erroneous outcome, selective enforcement, deliberate indifference, and archaic assumptions.¹⁹⁰

¹⁸¹ CHANGING THE CULTURE, *supra* note 10, at 11.

¹⁸² Equality Act 2010, c.15 (Eng.), <https://www.legislation.gov.uk/ukpga/2010/15/section/26>.

¹⁸³ *Id.*; see 29 C.F.R. § 1604.11 (2020).

¹⁸⁴ *J.K. v. Ariz. Bd. of Regents*, No. CV 06-916-PHX-MHM, 2008 WL 4446712, *18, *19 (D. Ariz. Sept. 29, 2008).

¹⁸⁵ *Id.* at *5.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at *13.

¹⁸⁸ *Doe v. Am. Univ.*, No. 19-cv-03097, 2020 Lexis 171086 at *21 (U.S. Dist. Sept. 18, 2020).

¹⁸⁹ *Id.* at *20.

¹⁹⁰ *Id.*

During the Obama era, students accused of sexual misconduct believed they received harsher punishments so that their institutions could appear strict in the eyes of the federal government.¹⁹¹ Students faced expulsion or suspension without being shown the investigative report.¹⁹² Many alleged perpetrators argued there was a lack of due process in university investigations,¹⁹³ and several of them went on to win judgments against their institutions.¹⁹⁴ Courts held that sex discrimination could apply to male students accused of sexual misconduct who were being punished without proper justification because of their gender.¹⁹⁵

However, the Trump administration may have overcorrected these due process issues by allowing alleged perpetrators to view all evidence collected during investigations.¹⁹⁶ A victim's personal information, including "sexual and dating histories, [and] medical records," could be shared with their alleged perpetrator.¹⁹⁷ Critics of the Obama administration's rules believed the legislation was attempting to overreach into matters of sexual behavior in that OCR was "instructing on, advising on, counseling on, defining, monitoring, investigating, and adjudicating questions of sexual desire."¹⁹⁸ The Obama administration's efforts to change social culture among students regarding sex sparked conversation about how much behavior can be controlled by legislation, with the resistance to OCR's rules proving where the line should be drawn.¹⁹⁹

During the Trump administration, sexual violence rates have increased by three percent for undergraduate women and 1.4% for their male peers.²⁰⁰ The Title IX changes made under the Trump administration may limit the amount of litigation surrounding school disciplinary proceedings with new live hearings and limited avenues for appeal.²⁰¹ Students have complained the new changes will silence victims of sexual assault.²⁰² Leaving the implementation of Title IX compliance measures at the discretion of each school creates varied policies

¹⁹¹ *Id.*

¹⁹² Gersen, *supra* note 51.

¹⁹³ Keierleber, *supra* note 116.

¹⁹⁴ Gersen, *supra* note 51.

¹⁹⁵ *Id.*

¹⁹⁶ Michael Dolce, *The Epidemic of Rape on Campus is Getting Worse Under Betsy DeVos*, NBC NEWS (Feb. 27, 2020).

¹⁹⁷ *Id.*

¹⁹⁸ MELNICK, *supra* note 32, at 210.

¹⁹⁹ *The Strange Evolution of Title IX*, *supra* note 10.

²⁰⁰ Dolce, *supra* note 196.

²⁰¹ Bedera, *supra* note 86.

²⁰² *Doe*, 2020 Lexis 171086.

among colleges and simultaneously creates confusion among students as policies may change several times during their tenure.²⁰³

Students within the United States have the option of formal disclosure—which includes reporting to the police, campus authorities, victim crisis centers, or residential life—and informal disclosure.²⁰⁴ Informal disclosure is associated with disclosing victimization to friends, family members, and other sources of support.²⁰⁵ In various studies on formal disclosure to campus services, formal disclosure was as low as zero percent.²⁰⁶ The rate of formal disclosure to crisis centers reached 15.8%.²⁰⁷ Reporting of sexual violence to the police decreased when substances were involved.²⁰⁸ Informal disclosure rates ranged from “41% for victims of unwanted sexual intercourse to 100% of a convenience sample recruited for a study about sexual assault.”²⁰⁹

It is unclear how the Trump administration’s Title IX reforms will impact the level of student reporting. Barriers to disclosure and service utilization include shame, embarrassment, and sexual violence occurring off-campus, which are less likely to be reported by students.²¹⁰ Thus, restricting schools’ investigations to only those occurring on campus or in conjunction with an education program could reduce the already low levels of reporting.²¹¹ More needs to be done to end the normalization of sexual misconduct, including training students of all ages on the types of actions included in the definitions of rape and sexual assault.

B. Effect of French Policies

Despite the obligation of Istanbul Convention signatories to fund training for professionals coming into contact with victims of violence, France has decreased funding for training.²¹² The state has given oversight of professional training over to the departments.²¹³ This decentralization has created fragmented training for professionals, a common occurrence within both France and the United

²⁰³ *Id.*

²⁰⁴ Sabina & Ho, *supra* note 18, at 201.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 203.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 217.

²¹⁰ *Id.* at 219.

²¹¹ Press Release, Dept. of Educ., *supra* note 100.

²¹² The Convention in Brief, *supra* note 131; GREVIO, *supra* note 10, at 33.

²¹³ GREVIO, *supra* note 10, at 33.

States.²¹⁴ Since the beginning of the #MeToo movement, reporting of sexual violence to law enforcement has increased by twenty-three percent.²¹⁵ An online reporting program was created in November 2018 to encourage victims of sexual- and gender-based violence to file a complaint.²¹⁶ “Of the roughly 19,000 people in France who reported a rape to the police in 2018, nearly 90 percent were women, and in about 30 percent of cases the perpetrator was a close family member.”²¹⁷ Also, “sexual assault[s] other than rape or attempted rape are the most common offences in school or university and the workplace.”²¹⁸

In France, one in twenty female students have been raped, and one in ten female students have experienced sexual violence.²¹⁹ The acts of sexual violence are more likely to occur in the evenings or on the weekend off-campus.²²⁰ Instances of sexual misconduct may also occur during class.²²¹ Factors impacting the rate of sexual violence include peer pressure, impunity for those committing sexual assault or violence, alcohol, and lack of sex education for students.²²² Normalizing sexist behavior prevents students from understanding they have been victimized and that there are avenues for them to seek justice. Educating students about sexual misconduct is important because almost one in five “students do not know the distinction between sexual assault and sexual harassment and the distinction between sexual assault and rape.”²²³ Understanding these distinctions is important not only to aid victims as they seek help and justice, but also to educate potential perpetrators on which actions may cross the line into misconduct.

In a survey regarding sexual violence among university students, only eleven percent of respondents informed their institutions of incidents in which they were victimized, believing they would not be taken seriously or that reporting wouldn’t help their situation.²²⁴ More than twenty-five percent of respondents were not aware of established procedures their institutions had in place to help

²¹⁴ *Id.*

²¹⁵ *Id.* at 62.

²¹⁶ *Id.* at 63.

²¹⁷ Aurelien Breeden, *Sex Crimes Are up in France. Officials See a #MeToo Effect*, NY TIMES (Feb. 1, 2019), <https://www.nytimes.com/2019/02/01/world/europe/france-sex-crimes.html>.

²¹⁸ Hamel et al., *supra* note 11, at 3.

²¹⁹ PAROLES ÉTUDIANTS SUR LES VIOLENCES SEXUELLES ET SEXISTES, OBSERVATOIRE ÉTUDIANT DES VIOLENCES SEXUELLES ET SEXISTES DANS L’ENSEIGNEMENT SUPÉRIEUR 4 (2020).

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.* at 3.

²²³ *Id.*

²²⁴ *Id.* at 4.

them.²²⁵ A lack of awareness of existing procedures among students may be due to the newness of such policies, or due to the detached relationship French students have with on-campus facilities.²²⁶

C. *Improvements Made Within the United Kingdom*

Under the Higher Education Act, the Office of the Independent Adjudicator was created to address student complaints made against their institutions, encompassing those related to sexual assault or any other circumstances outside of academic judgment.²²⁷ The legislation led universities to establish disciplinary procedures, but students filing sexual assault complaints still suffer.²²⁸ Students who report experiencing sexual harassment or assault have had to retell their stories when reporting.²²⁹ They subsequently received a non-disclosure agreement (NDA) from their universities.²³⁰ These NDAs force victims to remain silent about their trauma among their friends, family and peers.²³¹ Since 2016, “nearly a third of universities have used NDAs in student grievance disputes,” including in cases involving sexual assault and bullying.²³² Students have been threatened with expulsion or legal action if they break their NDA,²³³ severely limiting a student’s ability to seek help after a trauma. Some U.K. institutions may not coerce students into signing an NDA, but use confidentiality clauses instead.²³⁴ These clauses can be just as restrictive and cause students to be charged with harassment if they speak out against their university’s handling of their case.²³⁵

Institutions and the Department of Education are subject to lawsuits when “schools responding to allegations of sexual assault . . . wait or take no action until the police investigate.”²³⁶ The European Convention on Human Rights

²²⁵ *Id.*

²²⁶ Nina Fink & Mathilde Saliou, *Spotlight on Sexism at French Universities*, L’ÉTUDIANT (Jan. 20, 2017); OBSERVATOIRE NATIONAL DE LA VIE ÉTUDIANTE, *supra* note 23.

²²⁷ *AB v. University of XYZ* [2020] EWHC (QB) 2978 [67]; Higher Education Act 2004, c. 8 § 12.

²²⁸ *AB*, EWHC (QB) 2978 [67]; Danielle Bradford, *I Learned Firsthand How British Universities Are Silencing Abuse Survivors*, GUARDIAN (Feb. 18, 2020).

²²⁹ Bradford, *supra* note 228.

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *New Report Reveals Schools Ignoring Sexual Harassment Can Be Sued by Girls*, END VIOLENCE AGAINST WOMEN, <https://www.endviolenceagainstwomen.org.uk/new-report-reveals-schools-ignoring-sexual-harassment-can-be-sued-by-girls>.

places upon the United Kingdom the responsibility of ensuring female students are free from inhuman and degrading treatment and that their right to education is maintained.²³⁷ Institutions breach these requirements by inadequately protecting female students from sexual misconduct and ignoring any complaints under the guise of allowing the police to investigate instead.²³⁸ Since the United Kingdom has yet to ratify the Istanbul Convention, the European Convention on Human Rights may provide U.K. students with the best right of action to ensure complaints receive adequate attention from institutions.²³⁹

U.K. institutions have created disciplinary proceedings to handle sexual misconduct complaints.²⁴⁰ In *AB v. University of XYZ*, a student was accused of sexually assaulting another student during a study abroad program in Spain.²⁴¹ Following subsequent disciplinary proceedings, the university withdrew the accused student.²⁴² *AB v. University of XYZ* highlights several issues U.K. institutions face in providing disciplinary proceedings without national standards and the similarity between these issues and the ones experienced by U.S. universities.²⁴³

The accused U.K. student in *AB v. University of XYZ* argued that he was disciplined under the wrong regulations, denied legal representation before the disciplinary committee, and unfairly could not question his accuser directly.²⁴⁴ The court held the student's institution was within its right to update the sexual misconduct policies and that despite the incident occurring in 2018, the 2019 provisions could apply, as that was the year the disciplinary proceedings took place.²⁴⁵ The court believed there is no right to legal representation in disciplinary hearings.²⁴⁶ However, legal representation may be necessary to promote fairness, despite the limited risk that less students will report misconduct if lawyers are drawn into the disciplinary process.²⁴⁷ The court held the student was entitled to legal representation during the disciplinary

²³⁷ Human Rights Act 1998, c. 42 (UK).

²³⁸ *New Report Reveals Schools Ignoring Sexual Harassment Can Be Sued by Girls*, *supra* note 236.

²³⁹ Human Rights Act 1998, c. 42 (UK).

²⁴⁰ *AB*, EWHC (QB) 2978; Human Rights Act 1998, c. 42.

²⁴¹ *AB*, EWHC (QB) 2978 [8–10].

²⁴² *Id.* at [35].

²⁴³ *Id.*

²⁴⁴ *Id.* at [47].

²⁴⁵ *Id.* at [73, 77–79].

²⁴⁶ *Id.* at [85].

²⁴⁷ *Id.* at [87, 90].

proceeding, but future determinations must be based on the circumstances of the case.²⁴⁸ The court mandated a new disciplinary hearing take place.²⁴⁹

AB v. University of XYZ also determined that accused students should be able to ask their accusers questions either directly or by proxy.²⁵⁰ The efficacy of the disciplinary proceeding relied upon oral questions and whether the oral questions could support the accused students' case, without the questions being "unfair, oppressive, or irrelevant."²⁵¹ The court acknowledged the stress this questioning could place on accusers as they face their alleged perpetrators, but believed filtering certain questions would be an adequate tool in alleviating that stress.²⁵² *AB v. University of XYZ* highlights the need for national legislation on how disciplinary proceedings at higher education institutions should be handled to provide fair treatment to both victims and their alleged perpetrators.²⁵³

UUK cited several barriers to reducing rates of sexual misconduct among their students, one of them being the cultural acceptance of sexual harassment towards women "as a part of daily life, with . . . teachers accepting sexual harassment as banter."²⁵⁴ In 2015, "85% of women aged 18-24 said they had experienced unwanted sexual attention in public places."²⁵⁵ Annually, about "50,000 incidents of sexual abuse take place in universities in England and Wales."²⁵⁶ These figures highlight the need to implement changes not only at the university level, but from an early age to prevent the continued societal acceptance of sexual harassment.

An increase in public awareness of sexual harassment has been a benefit of the UUK's efforts, but there have been no legislative changes to place requirements on universities.²⁵⁷ Clear and specific guidelines are needed to clarify an institution's duty under the Equality Act to provide a safe environment for all students.²⁵⁸ While UUK universities are currently building sexual misconduct prevention initiatives, it is unclear whether they will have the motivation to continue, considering the funding concerns and a lack of

²⁴⁸ *Id.* at [92].

²⁴⁹ *Id.* at [105].

²⁵⁰ *Id.* at [104].

²⁵¹ *Id.* at [102].

²⁵² *Id.* at [97].

²⁵³ *Id.*

²⁵⁴ CHANGING THE CULTURE, *supra* note 10, at 15.

²⁵⁵ *Id.* at 18.

²⁵⁶ Sally Weale, *Sexual Abuse at English and Welsh Universities 'A Public Scandal' – Study*, GUARDIAN, Nov. 18, 2020.

²⁵⁷ Universities UK, *supra* note 167, at 19.

²⁵⁸ *Id.*

obligation from the State.²⁵⁹ A national legislative response to sexual misconduct among students may end the normalization of such practices and encourage students to report misconduct.

Most students report misconduct in person, followed in frequency by reporting over the phone.²⁶⁰ Several U.K. institutions implemented anonymous reporting which gave comfort to students who feared retaliation.²⁶¹ Even with an increase in reporting, many schools lack a central data collection mechanism to indicate annual rates of harassment and violence or reporting outcomes.²⁶² A 2018 survey found that sixty-two percent of students have experienced sexual violence at British universities, but only six percent reported the incidents to their schools.²⁶³

VI. SUGGESTED LEGISLATIVE AND POLICY CHANGES

All three countries can benefit from educating their children about sex and consent. Ensuring the safety of younger students from sexual misconduct will alleviate some of higher education's future burden to combat dangerous behaviors that are socially accepted. Title IX also supplies an avenue to kindergarten through twelfth grade students to file complaints against their school districts.²⁶⁴ Schools will spend less money on Title IX complaints by educating students on proper conduct while also creating a safe environment for students.²⁶⁵ Students at a young age pick up negative beliefs about gender.²⁶⁶ "Nearly half of all students between grades 7 and 12 report experiencing sexual harassment," typically from their peers.²⁶⁷ Similar to universities, some school districts across the United States have robust Title IX support for students, while other districts have failed to comply with Title IX.²⁶⁸

²⁵⁹ Emily Reynolds, *Breaking Silence: Changing the Culture Around Sexual Harassment at UK Universities*, I-D (Apr. 19, 2019, 7:06 AM), https://i-d.vice.com/en_uk/article/pannzg/sexual-harassment-at-uk-universities.

²⁶⁰ Universities UK, *supra* note 167, at 45.

²⁶¹ Universities UK, *supra* note 167, at 46.

²⁶² Universities UK, *supra* note 167, at 51.

²⁶³ Elks, *supra* note 9.

²⁶⁴ Keierleber, *supra* note 116.

²⁶⁵ Jill Anderson, *What to Do About Title IX*, HARV. GRADUATE SCH. OF EDUC. (Dec. 14, 2018), <https://www.gse.harvard.edu/news/uk/18/12/what-to-do-about-title-ix>.

²⁶⁶ Jill Anderson, *Preventing Sexual Harassment at School*, HARVARD GRADUATE SCHOOL OF EDUCATION (last visited July 16, 2021), <https://gse.harvard.edu/uk/preventing-sexual-harassment-school>.

²⁶⁷ *Id.*

²⁶⁸ *See* Keierleber, *supra* note 116.

The French Ministry of National Education has made efforts since 2011 to limit harassment between children in schools by focusing on informing, preventing, training, and taking charge.²⁶⁹ A national “no to harassment” website was created to provide educators with resources to educate students about harassment, bullying, and cybersexism.²⁷⁰ France’s education code provides for the establishment of a violence prevention plan, including an action program against all forms of harassment, but harassment and sexual violence persist.²⁷¹ French schools have a “legal obligation to provide information to students on respect for equality between men and women, the prevention of gender-based prejudices and violence against women.”²⁷² Gender equality is embedded in the French common core education system, touching all subjects such as literature and life and earth sciences.²⁷³ However, many primary and secondary school teachers use this mandate to teach more about biological differences and not social interactions.²⁷⁴

In French high schools, rape culture is perpetuated as female students are shamed for their attire and blamed for any instances of sexual harassment or sexual violence.²⁷⁵ France has begun discussing the overall pervasiveness of sexual harassment or sexual assault but fails to properly acknowledge the impact of such crimes on its higher education students. The French Ministry of National Education, Youth and Sports has made efforts to educate minors about gender equality and prevent sexual misconduct among students.²⁷⁶ In comparison, the Ministry of Higher Education, Research and Innovation has failed to create a public campaign similar to the ‘no to harassment’ website, instead urging universities to develop a zero-tolerance policy for sexual harassment.²⁷⁷

Educating students earlier about gender equality and proper conduct between students has been used as an avenue of change as well. Universities have begun “integrating student wellbeing and safety into communications for

²⁶⁹ MINISTRY OF NAT’L EDUC., YOUTH AND SPORTS, SEXUALITY EDUCATION, <https://www.education.gouv.fr/education-la-sexualite-1814>.

²⁷⁰ *Harassment Between Students*, ÉDUSCOL, <https://eduscol.education.fr/974/le-harcelement-entre-eleves>.

²⁷¹ See GREVIO, *supra* note 10, at 31.

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ Pauline Rouquette, *French High-School Students Mobilise Against Rules on ‘Indecent’ Dress*, FRANCE 24 (Sept. 9, 2020), <https://www.france24.com/en/20200915-french-high-school-students-mobilise-against-rules-on-indecnt-dress>.

²⁷⁶ MINISTRY OF NAT’L EDUC., YOUTH AND SPORTS, *supra* note 269.

²⁷⁷ Fink & Saliou, *supra* note 226.

prospective students.”²⁷⁸ This early intervention is important because “children who are victims of sexual violence and sexual harassment will likely find the experience stressful . . . adversely affect[ing] their educational attainment,” and sexual misconduct is disproportionately committed by boys.²⁷⁹ Only schools maintained by local authorities in England are obliged to teach sex and relationships education (SRE) from age 11 upwards, with most secondary schools not falling under this obligation and giving parents the choice to remove students from certain parts of the curriculum.²⁸⁰ Girls are also more likely to experience sexual harassment online, receiving “unwanted sexual messages and images from their peers . . . thirty-one percent of female respondents aged 13-17 years saying they had experienced this in the last year.”²⁸¹ In a report by “Our Schools Now,” 72% of students who reported public sexual harassment said they’d received a negative response from their school.”²⁸²

A. *The United States*

Title IX has struggled to provide students with justice due to unequal deference being granted to Title IX legislation and OCR’s rules.²⁸³ Congress intended for rules under Title IX to be approved by the President, which used to lead to OCR regulations being signed by the sitting President, but today the rules are typically introduced by the President’s Education Secretary with the public assumption that the rules reflect the President’s wishes.²⁸⁴ The Obama administration’s Title IX regulations had the support of the President, while the Trump administration took the time to engage in formal notice and comment rulemaking before revealing their Title IX regulations.²⁸⁵ Both the Obama and Trump administrations released their new guidelines about three years into their term, but requiring notice and comment rulemaking may generate more support for the new regulations.²⁸⁶

²⁷⁸ Universities UK, *supra* note 167, at 7.

²⁷⁹ DEP’T OF EDUC., *supra* note 162, at 6.

²⁸⁰ Robert Long & Sue Hubble, *Sexual Harassment in Education* 9, (HC, Briefing Paper No. 08117) (Jan. 31, 2020) (UK).

²⁸¹ *One-Third of Teenage Girls Sexually Harassed Online*, BBC (Dec. 6, 2017), <https://www.bbc.com/news/technology-42238118>.

²⁸² Rachel Thompson, *supra* note 11.

²⁸³ MELNICK, *supra* note 32, at 53.

²⁸⁴ *See id.* at 43; Bedera, *supra* note 86; Gersen, *supra* note 51.

²⁸⁵ Greta Anderson, *U.S. Publishes New Regulations on Campus Sexual Assault*, INSIDE HIGHER ED 14 (May 7, 2020), <https://www.insidehighered.com/news/2020/05/07/education-department-releases-final-title-ix-regulations#:~:text=The%20U.S.%20Department%20of%20Education,discrimination%20at%20federally%20funded%20institutions.&text=Colleges%20and%20universities%20will%20be>.

²⁸⁶ Bedera, *supra* note 86; MELNICK, *supra* note 32, at 202.

OCR's Title IX guidelines frequently shift due to changes in administrations, and the incoming administration has already announced plans to reform the OCR guidelines that were revealed in 2020.²⁸⁷ Students suffer as policies that may have been in place at the time of their incident can change or schools may be unable to properly educate students on sexual misconduct when definitions for acts such as sexual harassment are constantly under revision.²⁸⁸ Introducing Title IX-related legislation that addresses certain definitions, such as sexual harassment, may give both political parties the opportunity to compromise on certain things, and new administrations less work when they reform OCR regulations to fit their agenda.²⁸⁹

Students during the Obama administration felt Title IX regulations imposed an unfair burden on students labelled as the perpetrator, while the Trump administration has received criticism for silencing victims and preventing them from attaining justice.²⁹⁰ Perhaps schools can maintain a level of impartiality by having both the accused and the accuser make adjustments to their living accommodations or class schedules. Institutions under the Obama administration also struggled to fund Title IX offices and handle all complaints in a timely manner.²⁹¹ The federal government will need to provide more funding to colleges and universities to ensure each institution has adequate resources to prevent sexual misconduct among students and handle investigations.²⁹² Universities struggled to adequately investigate all complaints despite the small percentage of misconduct that is reported.²⁹³ Preventing sexual misconduct among university students requires both sweeping legislative and societal reforms. Educating younger students on sexual harassment and sexual assault may reduce the prevalence of sexual misconduct once these students are away from home and in a collegiate setting.²⁹⁴

B. France

France has invested time and money to teach minors about gender equality and has provided educators with ample resources on teaching their students healthy behavior.²⁹⁵ However, these same resources have not been utilized when

²⁸⁷ Bedera, *supra* note 86; Gersen, *supra* note 51.

²⁸⁸ *See* Doe v. Am. Univ., No. 19-cv-03097, 2020 Lexis 171086, (D.D.C. Sept. 18, 2020).

²⁸⁹ *Id.*

²⁹⁰ Bedera, *supra* note 86; Doe, 2020 Lexis 171086.

²⁹¹ MELNICK, *supra* note 32, at 215; *The Strange Evolution of Title IX*, *supra* note 10.

²⁹² MELNICK, *supra* note 32, at 212.

²⁹³ *Id.*

²⁹⁴ Sabina & Ho, *supra* note 18, at 201.

²⁹⁵ MINISTRY OF NAT'L EDUC., YOUTH AND SPORTS, *supra* note 269.

addressing the same concerns among students in higher education.²⁹⁶ France has seen an increase in the reporting of sexual harassment and sexual violence in the greater population since the #MeToo Movement, likely because of the implementation of anonymous hotlines.²⁹⁷ Developing a national anonymous reporting system specifically for students may encourage more reporting, and also highlight the prevalence of sexual misconduct among students within higher education.²⁹⁸

Adding legislation to the Education Code which mandates universities implement certain procedures to help victims of sexual misconduct will increase awareness of resources available to survivors, and provide educators with resources to incorporate gender equality lessons at the university level.²⁹⁹ Students in France may be considered more independent than students in the United States because they increasingly live alone, but their institutions can still be a common source of education on proper conduct between peers.³⁰⁰ The Istanbul Convention encourages all members of society and the private sector to collaborate to prevent gender-based violence.³⁰¹ Creating a public campaign, similar to the one created for minors by the Minister of National Education, may affect positive change across all age groups.³⁰²

C. *The United Kingdom*

Through the UUK taskforce, almost five million euros were used to fund several projects at higher education institutions across the United Kingdom.³⁰³ However, forty-five percent of participating institutions identified a lack of resources as a key barrier.³⁰⁴ Financial resources serve as a major barrier to reducing violence against women and harassment on university campuses, but even if the U.K. government were to step in and provide funding, it may cause a varied response similar to the United States and Title IX.³⁰⁵ Funding for Title IX offices was another reason for increased tuition rates in the United States,

²⁹⁶ Fink & Saliou, *supra* note 226.

²⁹⁷ GREVIO, *supra* note 10, at 61.

²⁹⁸ *Id.*

²⁹⁹ MINISTRY OF NAT'L EDUC., YOUTH AND SPORTS, *supra* note 269; Paroles Étudiants sur les Violences Sexuelles et Sexistes, *supra* note 219.

³⁰⁰ OBSERVATOIRE NATIONAL DE LA VIE ÉTUDIANTE, *supra* note 23.

³⁰¹ The Convention in Brief, *supra* note 131.

³⁰² MINISTRY OF NAT'L EDUC., YOUTH AND SPORTS, *supra* note 269.

³⁰³ Universities UK, *supra* note 167, at 18.

³⁰⁴ *Id.* at 27.

³⁰⁵ Keierleber, *supra* note 116.

which burdened students.³⁰⁶ Students in the United Kingdom pay less in tuition than American students.³⁰⁷ If universities within the United Kingdom need more funding for sexual misconduct prevention programs, U.K. students may end up footing the bill just like students in the United States.³⁰⁸

Therefore, it is unclear whether more State intervention on the issue would help or hinder the progress being made by higher education institutions in the United Kingdom, as funding these new reforms will likely place an economic burden on someone. But many have called for national legislation similar to Title IX, specifically addressing gender equality in education.³⁰⁹ The United Kingdom's use of tuition fees backed by public loans to supplement higher education funding may lessen the financial burden of implementing such national legislation.³¹⁰ For institutional changes to occur, pressure needs to continuously be applied on legislators.

Despite the importance of the topic, the Office for Students' consultation on addressing harassment and sexual misconduct in higher education was paused due to COVID-19.³¹¹ Sexual harassment remains an issue as students transition to online learning, but staff are unequipped to handle complaints regarding online platforms.³¹² Institutions that created an anonymous reporting system saw positive results.³¹³ But reporting levels remain low and schools lack the necessary resources to fully support this reporting mechanism.³¹⁴ It will be important for universities to have both a method for intaking reports and a method for compiling data to determine whether these new policies are changing any of the culture surrounding sexual misconduct. Recommendations posted by UUK, while helpful, bear little result because they are mere suggestions.³¹⁵

Students need the force of national legislation to require their institutions to work harder and address sexual misconduct within higher education. The United Kingdom has the Equality Act, which mandates that institutions work on

³⁰⁶ MELNICK, *supra* note 32, at 212.

³⁰⁷ Christine Kopaczewski, *6 Ways College is Different in the US and the UK*, BUSINESS INSIDER (June 12, 2018), <https://www.businessinsider.com/how-college-is-different-in-the-us-and-the-uk-2018-6>.

³⁰⁸ MELNICK, *supra* note 32, at 212.

³⁰⁹ Reynolds, *supra* note 259.

³¹⁰ United Kingdom-England Overview, *supra* note 161.

³¹¹ Weale, *supra* note 256.

³¹² David Batty, *Harassment Fears as Students Post Extreme Pornography in Online Lectures*, GUARDIAN (Apr. 22, 2020); Natasha Jokic, *I Told My University I Was Harassed Online. They Asked Me What a Hashtag Was*, GUARDIAN (Apr. 20, 2020).

³¹³ Universities UK, *supra* note 167, at 45.

³¹⁴ *Id.* at 27, 45.

³¹⁵ Jokic, *supra* note 312.

combatting gender-based violence.³¹⁶ The legislation allows individual schools to decide what data to compile, limiting the opportunity for proper oversight.³¹⁷ The Higher Education Act requires institutions to have procedures in place for when students make complaints regarding sexual assault and other matters.³¹⁸ However, institutions have used this law to coerce students into signing NDAs or have disciplinary proceedings that spur litigation.³¹⁹ The United Kingdom can benefit from national legislation combining the Higher Education Act and Equality Act to sufficiently handle sexual misconduct complaints and outline clear procedures schools can follow to prevent such misconduct among students.

CONCLUSION

France and the United Kingdom have been forced to address sexual misconduct among students through France's ratification of the Istanbul Convention and the United Kingdom's plans to ratify the convention.³²⁰ French universities have made efforts to curtail sexual violence and promote gender equality with limited success considering the social stigma that prevents many victims from reporting.³²¹ France will need national legislation incorporated into its education code to sufficiently protect higher education students from sexual misconduct because the Ministry of Higher Education, Research and Innovation's most recent efforts fail to protect students.³²² Within the United Kingdom, measures addressing student sexual misconduct are beneficial, but the lack of a national law and ensured funding jeopardizes progress.³²³ Many have called upon the United Kingdom to adopt its own version of Title IX, and with a much smaller student population than the United States, the U.K.'s legislation may not lead to such varied results as Title IX does in the United States.³²⁴

The effectiveness of Title IX in the United States is limited as universities across the nation implement varied plans to comply with Title IX.³²⁵ Considering the differences among universities and colleges in the United States, requiring a more uniform application of Title IX may not be possible, especially when the

³¹⁶ Equality Act 2010, c.15, § 149 (Eng.), <https://www.legislation.gov.uk/ukpga/2010/15/section/149>.

³¹⁷ DEP'T OF EDUC., *supra* note 162, at 14.

³¹⁸ Higher Education Act 2004, c. 8 § 12 (UK), <https://www.legislation.gov.uk/ukpga/2004/8/section/12>.

³¹⁹ Bradford, *supra* note 228; AB v. University of XYZ [2020] EWHC (QB) 2978 [67] (Eng.).

³²⁰ GREVIO, *supra* note 10, at 9.

³²¹ *Id.*

³²² Fink & Saliou, *supra* note 226.

³²³ Universities UK, *supra* note 167, at 27.

³²⁴ *Higher Education in Numbers*, *supra* note 6; Keierleber, *supra* note 116; CHANGING THE CULTURE, *supra* note 10, at 4–5.

³²⁵ Keierleber, *supra* note 116.

legislation's standards and major requirements shift with every administration.³²⁶ Title IX compliance is a financial burden on institutions, and it will be unclear how the COVID-19 pandemic will influence institutions' abilities to effectively handle student complaints.³²⁷ The United States needs to reform Title IX's legislation to properly address the rights of victims and the accused, while also defining key terms such as sexual harassment and consent, to limit the amount of student complaints that need to be litigated and allow for bipartisan collaboration.³²⁸

Both the United Kingdom and United States have legislation requiring higher education institutions to have disciplinary proceedings to address student complaints.³²⁹ However, with current OCR regulations, U.S. institutions are better equipped to handle sexual assault allegations because they receive clearer instructions from the federal government.³³⁰ The United States may have more detailed standards for disciplinary proceedings, but courts are often left to evaluate the fairness of these proceedings just like in the United Kingdom.³³¹ The United Kingdom could benefit from national legislation that outlines the rights of the accused and victims, while preventing institutions from using NDAs to silence victims or using the police as a scapegoat to delay disciplinary hearings.³³²

France has relied less on national legislation to prevent sexual misconduct among students compared to the United States and United Kingdom, instead choosing to rely on international treaties.³³³ Both the United States and United Kingdom have national laws related to sexual misconduct among students, but the United States has specific, detailed procedures for handling sexual misconduct investigations.³³⁴ However, compared to the United Kingdom, the United States is far less consistent with its procedures as Title IX regulations change with each administration.³³⁵ All three countries have the opportunity to educate students about consent and sexual misconduct at a younger age, and

³²⁶ Gersen, *supra* note 51.

³²⁷ *Id.*

³²⁸ Bedera, *supra* note 86.

³²⁹ Higher Education Act 2004, c. 8 § 12 (UK), <https://www.legislation.gov.uk/ukpga/2004/8/section/12>; Bedera, *supra* note 86.

³³⁰ Bedera, *supra* note 86.

³³¹ *Id.*; see *AB v. University of XYZ* [2020] EWHC (QB) 2978 [67] (Eng.); *Doe v. Am. Univ.*, No. 19-cv-03097, 2020 Lexis 171086, (D.D.C. Sept. 18, 2020).

³³² Bradford, *supra* note 228; *New Report Reveals Schools Ignoring Sexual Harassment Can Be Sued by Girls*, *supra* note 236.

³³³ GREVIO, *supra* note 10, at 9.

³³⁴ Bedera, *supra* note 86.

³³⁵ *Id.*; Gersen, *supra* note 51.

utilize their educational environment and authority to increase awareness of resources available to victims of sexual misconduct.³³⁶ With similar rates of sexual misconduct and cultural norms that perpetuate such misconduct,³³⁷ neither the United States, United Kingdom, nor France stands out as an example to the others when it comes to preventing sexual assault and harassment among university-age students.

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³³⁶ Anderson, *supra* note 265; MINISTRY OF NAT'L EDUC., YOUTH AND SPORTS, *supra* note 269; DEP'T OF EDUC., *supra* note 162, at 6.

³³⁷ Fayard & Rocheron, *supra* note 3, at 68; Elks, *supra* note 9.

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