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**A RESOLUTION IN SUPPORT OF UPHOLDING THE PREPONDERANCE OF EVIDENCE
STANDARD IN TITLE IX AND OTHER SEX-BASED MISCONDUCT CASES**

Whereas, the preponderance of evidence standard means that a claim presented for Administrative Review must be more likely true than not, or [greater than 50% likelihood](#) of being true, for the outcome to end in sanctions against a respondent,

Whereas, the clear and convincing standard means that a claim presented for Administrative Review must be [highly and substantially](#) more likely to be true than untrue; the fact finder must be convinced that the contention is highly probable for the outcome to end in sanctions against a respondent,

Whereas, a [resolution agreement](#) between the University of Notre Dame and the Office of Civil Rights in 2011 called “on Notre Dame to document in writing already existing policies, including the use of a ‘preponderance of evidence,’”

Whereas, at Notre Dame, only appeals of Title IX cases with severe sanctions for faculty respondents have previously used a clear and convincing standard, while hearings with student respondents have consistently used preponderance of evidence,

Whereas, [new national guidelines](#) from the Department of Education “requires schools to select one of two standards of evidence, the preponderance of the evidence standard or the clear and convincing evidence standard, and to apply the selected standard evenly to proceedings for all students and employees, including faculty,”

Whereas, the preponderance of evidence standard has been used for 657 student cases, 153 staff cases, and 20 faculty cases in the past five years at Notre Dame according to the Office of Institutional Equity and Notre Dame General Counsel,

Whereas, the severe sanctions process and clear and convincing standard were used for 0 faculty cases in the past five years at Notre Dame according to the Office of Institutional

Resolution SS 2021-18

October 1, 2020

Equity and Notre Dame General Counsel,

Whereas, these numbers indicate that a universal shift to the clear and convincing standard would have a more pervasive impact on students than it would on faculty, for more student cases would experience a change in evidentiary standard than faculty cases,

Whereas, a [student petition](#) created in response to the new national guidelines calling for the establishment of “the preponderance of the evidence as the standard of evidence in all campus sexual misconduct, harassment, and discrimination cases,” among other provisions, garnered over 500 signatures,

Whereas, 86% of those students who “indicated they had experienced non-consensual sexual intercourse” on Notre Dame’s 2018 Sexual Conduct and Campus Climate Questionnaire Report did not report the assault to the University, and of those who chose not to report, 60% listed “[I] think that reporting wouldn’t solve anything” as a barrier to reporting,

Whereas, 57% of those students who “indicated they had experienced non-consensual sexual intercourse” on Notre Dame’s 2018 Sexual Conduct and Campus Climate Questionnaire Report noted their “not want[ing] to go through the University’s process” and 42% admitted that they “[d]id not trust the University’s process” as a reason for not reporting,

Whereas, a change to a more stringent standard of evidence raises the concern that potential complainants, feeling doubtful that cases would be ruled in their favor, will not report instances of assault and harassment to the University, thus exacerbating the above figures,

Whereas, a [report from the Association for Student Conduct Administration](#) explains that standards other than preponderance imply “that the institution prefers that the accused student remain a member of the community over the complainant” and “[s]uch messages do not contribute to a culture that encourages victims to report sexual assault,”

Whereas, the [Title IX University Policies statement](#) that “[o]ur culture of respect means that no type of sexual or discriminatory harassment is tolerated” encompasses those cases where a lack of tangible evidence may result in *some* shadow of a doubt,

Whereas, the [Dear Colleague Letter](#) —a document offering guidance on Title IX procedures that was issued by the Department of Education in 2011 and in effect until it was rescinded in 2017—provides that “[g]rievance procedures that use this higher standard are inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence,”



Whereas, the American Civil Liberties Union (ACLU) [filed a lawsuit](#) that sought to block the new national Title IX regulations from going into effect, in part due to their provisions that schools may choose a clear and convincing standard and further discourage survivors from reporting,

Whereas, the University has implemented an interim measure that universally applies the preponderance of evidence standard to Title IX cases with both student and faculty respondents until November 20, 2020, and must decide on the permanent change by that date,

Whereas, it will be more challenging for survivors of sexual violence to reach a ruling in their favor, and thus begin to achieve justice and healing, if Notre Dame chooses to enact a higher evidentiary standard,

***Resolved*, by the Student Senate of the University of Notre Dame du Lac that the Faculty Senate and the Academic Council should support student concerns and recommend upholding the Preponderance of Evidence Standard across all Title IX Cases.**

Rachel Ingal
Student Body President