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## Examining Incidents of Sexual Misconduct Reported to Title IX Coordinators: Results from New York's Institutions of Higher Education

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# Examining Incidents of Sexual Misconduct Reported to Title IX Coordinators: Results from New York's Institutions of Higher Education

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A paucity of studies has examined incidents of sexual misconduct reported to Title IX coordinators at institutions of higher education (IHEs) or examined differences across types of IHEs. We used 2018 data from incidents of sexual misconduct ( $N = 3,829$ ) reported to Title IX coordinators at IHEs in New York ( $N = 209$ ) to examine the context, processes, and outcomes of reported incidents. Findings show that most incidents reported to Title IX coordinators did not prompt the IHE's conduct process; "other" disciplinary sanctions were the favored response for responsible students, while suspensions and/or expulsions were rarely used. Further data collection and analysis is needed to understand victim and IHE decision-making regarding reported incidents of sexual misconduct and specific processes at community colleges and independent IHEs.

**Data:** The data used here are publicly available from the New York State Education Department <http://www.nysed.gov/information-reporting-services/chapter-76-laws-2015-enough-enough-an-annual-aggregate-data-report>

**Keywords:** Gender-based violence, Clery Act, Title IX, College student reporting

In 2011, the Department of Education's Office for Civil Rights (OCR) published a Dear Colleague Letter (DCL) reaffirming schools' (including institutions of higher education or IHEs) obligations to address sexual harassment including *sexual violence* as a form of sex-based discrimination. This DCL is often credited by legal scholars for helping to usher in newfound attention to the longstanding problem of sexual violence on college campuses, with some arguing that under the DCL's guidance "campuses have begun to tackle these issues in earnest" (Anderson, 2016, p. 125). At the

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same time, there has been considerable backlash against IHEs' regulation of sexual misconduct, as it is termed in higher education. For example, in 2014 and 2015, respectively, dozens of law professors from Harvard and the University of Pennsylvania signed on to open letters decrying their institutions' policies and procedures for investigating and adjudicating sexual misconduct as lacking due process protections (Bartholet, et al., 2014; Rudovsky et al., 2015). Likewise, from 2011 to 2019, more than 500 students accused of sexual misconduct filed lawsuits against their IHEs alleging they were denied fair process (Harris, 2019). In 2017, the Department of Education (ED) withdrew previous administrations' 2001 guidance and 2011 DCL and issued interim guidance, and in 2020, released A New Final Rule on Title IX guidance with substantial changes aimed at strengthening due process for accused students (U.S. ED, OCR, 2017; 2020).

As this debate has unfolded, a critical issue has gone unnoticed or ignored: there is virtually no data-driven research regarding what happens when someone *actually reports an incident of sexual misconduct*

to a Title IX coordinator (for an exception see Richards, 2019). Indeed, most of the data motivating media and legal commentary regarding Title IX policies and procedures stems from civil suits brought by complainants or respondents who allege that their IHE failed to provide them with protections. While important, these cases cannot and should not be used to represent the universe of incidents reported to Title IX coordinators.

Given the dearth of systematic information on reported incidents of sexual misconduct, campus investigation and adjudication processes, and outcomes of reported incidents, policy-making has largely occurred in a data vacuum. To fill this critical gap in current knowledge, this study uses unique aggregate data collected at all public 4-year IHEs, community colleges, and independent IHEs (e.g., religiously affiliated schools, research intensive universities, etc.) in New York to examine the context, processes, and outcomes of incidents reported to Title IX coordinators. Further, differences within and between institutional types are evaluated. While exploratory in nature, findings provide important foundational information regarding campus sexual misconduct that is essential for data-driven decision-making and future research prioritization.

### **Laws and Policies on Sexual Violence among College Students**

*Title IX of the Educational Amendments of 1972* (Title IX) amended the 1964 Civil Rights Act to prohibit sex-based discrimination, including sexual harassment, in any educational program receiving federal financial assistance. Title IX is enforced by the U.S. ED's Office for Civil Rights (OCR), which offered initial guidance on sexual harassment in 1997 and revised (but largely similar) guidance in 2001, emphasizing that school personnel need to understand their obligations under Title IX in order to facilitate prevention and respond appropriately when discrimination occurs (U.S. ED, OCR, 1997; 2001). Title IX guidance requires that all IHEs receiving federal funds must have an identified employee (i.e., a Title IX coordinator) who is responsible for coordinating compliance, and investigating complaints of noncompliance (U.S. ED, OCR, 1997; 2001). IHEs must also adopt and make available grievance procedures (i.e., a conduct process) that provide for "prompt and equitable" resolutions of complaints. In 2011, OCR's DCL clarified in explicit terms that the requirements of Title IX

governing sexual harassment also extend to cover sexual violence (U.S. ED, OCR, 2011), and a corresponding Frequently Asked Questions (FAQ) document (2014) provided details regarding IHE's obligations (U.S. ED, OCR, 2014). On September 22, 2017, the U.S. ED, under a new administration, withdrew the 2001 guidance and the 2011 DCL and issued "interim guidance". A New Final Rule on Title IX guidance was released in 2020 bringing major changes to the investigation and adjudication process for Title IX allegations, including mandating live hearings and live cross-examination of complainants, respondents, and witnesses (U.S. ED, OCR, 2020). These changes have been lauded by some suggesting that they will result in a fairer process for accused students, and criticized by others who predict a chilling effect on victim reporting (for a review of this debate see Brown, 2020).

Intersecting with Title IX, the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990* ("Clery Act") stipulates that institutions receiving Title IV federal financial aid must collect and disseminate crime statistics for incidents reported to campus security authorities and develop and share information on campus crime prevention strategies (20 U.S.C. § 1092(f)). Finally, the Campus SaVE Act requires the adoption of specific discipline procedures (including notifying complainants of their rights) and institutional policies (e.g., school personnel and student training) to address and prevent sexual violence (Violence Against Women Reauthorization Act of 2013).

States have also passed legislation that levy requirements beyond those of federal mandates (Richards & Kafonek, 2016). In 2015 New York passed the "Enough is Enough" law (EIE; Education Law Article 129-B) comprising the most stringent set of state standards regarding sexual misconduct in IHEs. For example, under EIE, New York IHEs must provide a link to directions on how to file a Title IX complaint on their website, have an option for confidential reporting, and have an amnesty policy regarding drug and/or alcohol code of conduct violations for students making good faith reports. Further, New York IHEs must publish a policy regarding the circumstances when an investigation is required in association with a Title IX complaint and seek victim consent prior to starting an investigation. EIE mandates that IHEs have an affirmative consent policy, that all reporting students be afforded the right to request student conduct charges be filed against an accused student, and that a conduct board hearing be convened with a preponder-

ance of the evidence standard used to determine responsibility. EIE also requires that all New York IHEs report aggregate data regarding sexual misconduct annually to the State Higher Education Department.

### **IHEs' Responses to Sexual Misconduct**

Existing legislation has primarily focused on mandating policies aimed at increasing reporting, refining the remediation process, and providing services for sexual misconduct victims. Few studies have examined incidents of sexual misconduct reported to Title IX coordinators and IHEs' responses to those reports. The limited existing research suggests that investigation and adjudication of sexual misconduct reports are not commonplace. For example, survey findings from voting delegates of the National Association of Student Personnel Administrators found that 60% of campuses had not utilized adjudication processes related to sexual misconduct reports in the prior three years (1997-1999); and that of those institutions that had used their disciplinary processes, no more than 1-2 cases had been heard each year (Penney, Tucker, & Lowry, 2000 as cited in Dupree, McEwen, Spence, & Wolff, 2003). In addition, at the direction of (then) Senator McCaskill (2014), a report assessing how IHEs respond to sexual violence on campus found that more than 40% of institutions had not conducted any investigations in the prior five years. Furthermore, 9% of schools were found to have conducted fewer investigations than the number of sexual offenses they reported to the Department of Education during that time (this percentage rose to 21% among private institutions).

Richards (2019) examined data from all incidents of sexual misconduct reported to Title IX coordinators ( $N = 1,054$ ) at IHEs in a Mid-Atlantic state ( $N = 42$ ). Findings showed the overwhelming majority of reported incidents – nearly 76% – were not adjudicated through the formal Title IX process. Among incidents that were adjudicated, less than half resulted in a student being found responsible for sexual misconduct, and less than half of cases with a “responsible student” were associated with either an expulsion (18.49%) or suspension (28.57%) of the responsible student. Similar suspension and expulsion rates (26% and 17% of founded cases respectively) were identified by a *Huffington Post* investigative report using data from 32 public and private IHEs (Kingkade, 2014). Finally, Richards (2019) found victim accommodations to be the most common result from a sex-

ual misconduct report: 71.63% of cases were associated with a referral to counseling, 29.13% with a no-contact order.

The limited research on reported incidents of sexual misconduct suggests that there are differences across institutional types, and that focus on community colleges and independent IHEs is needed. For example, of all sexual misconduct incidents reported to Title IX coordinators in a Mid-Atlantic state in 2015, 40% of incidents were reported at community colleges or independent IHEs. Community colleges had the greatest concentration of on-campus incidents, followed by independent IHEs and then public 4-year schools. Community colleges also had the highest rate of incidents resulting in a formal Title IX complaint, while public 4-year IHEs had the highest rate of reporting incidents to law enforcement, a rate nearly 3 times that of independent IHEs (Richards, 2019). Although studies evince variation across IHE type, the reasons for these variations have not been thoroughly researched. It is possible that differences in IHE type's structure, policies, resources, and student body demographics contribute to these variations (Brown, 2016; Richards, 2019).

### **Current Study**

Since the 2011 DCL, legal scholars and victim advocates have looked to Title IX as an avenue for sexual misconduct victims to seek accountability and safety. Conversely, others have argued IHEs are engaged in regulatory overreach that harms a substantial number of students, underserving victims and denying alleged perpetrators protections. In truth, little is known about the incidents of sexual misconduct that are reported to Title IX coordinators, or the adjudication process and outcomes of these incidents. The present research uses novel aggregate data collected by Title IX coordinators from public 4-year IHEs, community colleges, and independent IHEs in New York to examine reported incidents. Further, differences within and between institutional types are assessed. Based on the previously reviewed literature, in particular Richards (2019), the following research questions guide the present study:

**Research Question 1:** For incidents of sexual misconduct reported to Title IX coordinators, what is the prevalence of reporting to law enforcement, use of no-contact orders, and requests for supportive services?

**Research Question 2:** For incidents of sexual misconduct reported to Title IX coordinators, what is

the prevalence of seeking out the formal Title IX conduct process, and continuing in the formal Title IX conduct process to case resolution versus withdrawing from the formal Title IX conduct process or using an informal resolution process?

**Research Question 3:** For incidents of sexual misconduct which are processed through the formal Title IX conduct process, what is the prevalence of “findings of responsible” versus “findings of not responsible”?

**Research Question 4:** For incidents of sexual misconduct with a “responsible student”, what is the prevalence of sanctions: expulsions, suspensions, “other” sanctions, and transcript notations?

**Research Question 5:** Are there significant incident-level differences across public 4-year IHEs, independent IHEs, or community colleges regarding the context, processes, and outcomes of incidents of sexual misconduct reported to Title IX coordinators?

**Research Question 6:** Are there significant institutional-level differences in public 4-Year IHEs, independent IHEs, or community colleges regarding the context, processes, and outcomes of incidents of sexual misconduct reported to Title IX coordinators?

## Methods

### Data and Procedure

In accordance with the EIE law, beginning in 2018 Title IX coordinators at each New York IHE must submit annual aggregate data on reported incidents of sexual misconduct to the New York State Education Department (NYSED). Incidents of sexual misconduct include “domestic violence, dating violence, stalking and/or sexual assault defined by each institution in its code of conduct in a manner consistent with applicable Federal definitions” (EIE, 8 CRR-NY 48.1) involving a student at the institution, as either the reporting individual (i.e., complainant) and/or as the accused student (i.e., respondent) (New York State Education Department, 2019). The NYSED developed a standardized data collection form for Title IX coordinators to use in reporting these data through the state’s electronic Data Exchange (IDEx). A detailed “Q&A document” was also developed to assist Title IX coordinators in data reporting and additional support is available through the NYSED Office of Higher Education Help Center. These aggregate data are publicly available for download from the NYSED.

We created a dataset that includes the sexual misconduct data for each IHE during the reporting period January 31, 2018 to December 31, 2019. The University of Nebraska Omaha’s Institutional Review Board reviewed this study design and categorized it as non-human subjects research.

### Sample

Our sample is drawn from public 4-year IHEs ( $n = 42$ ), community colleges ( $n = 37$ ), and independent IHEs ( $n = 139$ ) operating in the state of New York in 2018. Ten IHEs (nine independent IHEs and one community college) did not submit their sexual misconduct data to the NYSED and were considered missing cases in this analysis. In addition, one institution was counted twice in the data released by the NYSED Office of Higher Education: the IHE’s information was reported in association with both a main campus and a satellite campus; the satellite campus was omitted from the dataset created for this research. This left a working sample of 209 IHEs for the present analysis: public 4-year IHEs ( $n = 42$ ), community colleges ( $n = 36$ ), and independent IHEs ( $n = 131$ ).

According to the NYSED, during 2018 the sampled IHEs ( $N = 209$ ) had a total enrollment of nearly 1.2 million students ( $M = 5,817$ ,  $SD = 7,551$ ). The majority of students were enrolled at independent institutions (41%;  $M = 3,800$ ,  $SD = 7,075$ ) or public 4-year IHEs (34%;  $M = 9,774$ ,  $SD = 7,878$ ) compared to community colleges (25%;  $M = 8,224$ ,  $SD = 6,400$ ). According to National Center for Education Statistics Integrated Post-Secondary Education Data System (IPEDS) data, female students represented the majority of all students attending these IHEs (59%); the greatest rates of female student enrollment were at independent IHEs (61%) compared to community colleges (57%) and public 4-year IHEs (55%). Approximately 47% of students identified as non-White. Public 4-year IHEs reported the greatest racial/ethnic diversity with an average of 51% of students identifying as non-White compared to an average of 46% at independent IHEs and 47% at community colleges.

### Measures

**Incident-related variables.** We examined data on reported incidents including the number of incidents that took place *on campus* and *off campus*; the number of incidents that, to Title IX coordinator’s knowledge, were *reported to law enforcement* (not affiliated with the school such as local or state police); the number of

incidents that, to the Title IX coordinator's knowledge, were *reported to campus police, campus security, or safety officers*; the number of incidents where the reporting individual was *referred to services* such as counseling, mental health, medical or legal service; and the number of incidents where reporting individual *sought out a no-contact order* from the IHE. Per 8 CRR-NY 48.1NY-CRR *reporting individual* is used here to encompass the terms "victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to reference an individual who brings forth a report of a violation".

**Process-related variables.** We considered the number of incidents where the reporting individual or IHE *sought out the IHE's conduct process*, the number of formally processed incidents with a *finding of "not responsible"*, and the number of formally processed incidents that were associated with a *finding of "responsible"*. Also, the number of incidents that were formally processed but were *withdrawn or resolved through an informal resolution* were identified. An informal resolution is an alternative to the formal grievance procedure. It must be voluntary and equitable for both parties and should take the form of mediation or arbitration before a neutral third party.

**Outcome-related variables.** For incidents with a finding of responsibility, we captured the number of incidents resulting in *expulsion, suspension, or other disciplinary action*; or *transcript notation of "code of conduct violation"* or *"withdrawal with a code of conduct charges pending"* indicating that the respondent withdrew from the IHE during the conduct process.

### Analytic Plan

We began our analyses with descriptive statistics for incident-related variables (see Table 1). Next, a series of bivariate tests were used to estimate differences for each study variable between each IHE type: public 4-year IHEs, community colleges, and independent IHEs (see Table 2). Given the categorical nature of our dependent variable, we used chi-square analysis to test for significant mean differences. Effect sizes were determined using Cramer's *V* with larger values indicating a more robust relationship. Standardized residuals (Haberman, 1973) were calculated to determine which values contributed to a significant chi-square. Standardized residuals measure the difference between observed and expected frequencies as a function of the expected frequency value. An absolute value greater than 2 indicates that the corresponding

frequency is a contributor to the significant chi-square (Hinkle, Wiersma, & Jurs, 2003); standardized residuals can be interpreted as a *z* score.

A final set of analyses examined mean differences nested within IHE types. First, we estimated the average number of incidents, standard deviations, and ranges per IHE type for all study variables. Then, we completed one-way Analysis of Variance (ANOVA) tests to assess significant mean differences across IHE types (see Table 3); ANOVA was appropriate given the number of IHE types (e.g., more than two). Post-hoc means tests were used to show which mean pairs were significantly different (see Table 4). Given the differences in sample sizes across IHE types, Hedge's *g* was used to measure the effect size for significant mean differences. Alpha was set at  $p < .05$  for all analyses.

### Results

We examined data on the context, case processes, and outcomes of sexual misconduct incidents reported to Title IX coordinators at public 4-year IHEs, community colleges, and independent IHEs (see Table 1). Findings show that of the 3,829 reported incidents nearly 53% took place on campus. To the Title IX coordinator's knowledge, 18.62% of incidents were reported to non-campus law enforcement and 48.66% were reported to campus police, security, or safety; however, these figures were not mutually exclusive such that, for example, an incident may have been reported to both municipal police and campus safety. In about one-quarter of incidents (24.39%) reporting individuals sought out a no-contact order; in nearly two-thirds of reported incidents (74.12%), reporting individuals were referred to services such as mental health counseling, medical, or legal services.

Results also show that the IHE's conduct process was *not* sought out by either the reporting individual or the institution in the majority of incidents reported to Title IX coordinators (77.28%). Of those incidents where the reporting individual or institution *did* seek out the IHE's conduct process ( $n = 870$ ; 22.72%) the majority of cases moved forward with the process ( $n = 769$ ; 88.39%); and about one-third of cases that moved forward were withdrawn or resolved through an informal resolution ( $n = 237$ ; 30.82%). For incidents with a "finding" regarding responsibility from the conduct process ( $n = 691$ ), 59.62% resulted in a finding of "responsible" for sexual misconduct versus a finding of "not responsible" (40.37%).

Regarding disciplinary actions, slightly more than half of incidents with a finding of responsibility were

sanctioned with either suspension (38.83%) or expulsion (18.69%) of the responsible student, versus “other” sanctions such as drug and/or alcohol treatment or education/training (47.33%). However, more than one disciplinary action could be used for an incident such that, for example, a student may have been both mandated to drug treatment and suspended as a result of the same incident. We found a transcript notation indicating “a code of conduct violation” in 196 founded cases (47.57%), and a “withdrawal with code of conduct charges pending” notation in 41 founded cases (9.95%) – in these 41 cases the student had withdrawn from the IHE during the Title IX disciplinary process.

Next, we disaggregated incidents by IHE type. The first set of analyses examines potential differ-

ences in incidents across public 4-year IHEs, community colleges, and independent IHEs (see Table 2). The majority of sexual misconduct incidents reported to Title IX coordinators at New York IHEs in calendar year 2018-2019 were reported at independent IHEs (54.11%), followed by public 4-year IHEs (35.63%), and community colleges (9.50%). We identify differences across incident location with public 4-year IHEs yielding fewer on-campus incidents than expected by chance ( $z = -2.2$ ). In regard to reporting to law enforcement, significant differences are found in the observed versus expected rate of incidents reported to law enforcement across IHE type. Post-hoc tests further demonstrate that incidents at community colleges are reported to law enforcement at significantly greater rates than expected by chance ( $z = 6.7$ ).

Table 1  
*Sexual Misconduct Incident Information*

Incident Information	Number of Incidents	Percent of Incidents	Mean (SD) per Institution
Total Incidents	3,829	100%	17.40 (32.02)
Incident Location <sup>a</sup>			
On campus	2,024	52.86%	9.68 (13.87)
Off campus	1,465	38.26%	7.01 (13.31)
Reports to law enforcement	713	18.62%	3.41 (6.13)
Reports to campus police/security/safety	1,863	48.66%	8.91 (14.11)
Reporter referred to services	2,838	74.12%	13.58 (28.39)
Reporter sought out no contact order	934	24.39%	4.47 (6.65)
Reporter/institution sought out IHE’s conduct process	870	22.72%	4.16 (6.38)
Cases processed through IHE’s conduct process	769	88.39%	3.53 (5.95)
Cases withdrawn from IHE’s conduct process or resolved through informal resolution	237	30.82%	1.13 (3.13)
Cases with a final finding	691	89.86%	3.31 (5.19)
Final finding of “not-responsible”	279	40.37%	1.33 (2.36)
Final finding of “responsible”	412	59.62%	1.97 (3.38)
Expulsion	77	18.69%	0.37 (1.26)
Suspension	160	38.83%	0.77 (1.74)
Other	195	47.33%	0.93 (1.76)
Transcript notation: Code of Conduct Violation	196	47.57%	0.94 (2.20)
Transcript notation: Withdrawal with Code of Conduct Charges Pending	41	9.95%	0.19 (0.65)

<sup>a</sup> IHEs did not report location for some incidents and/or the location was unknown ( $n = 340$ , 11.26%).

We also find significant differences by IHE type in reporting to campus police, security, and/or safety: post-hoc tests show that incidents were reported to campus police, security, and/or safety at significantly greater rates than expected by chance at community colleges ( $z = 5.0$ ) and significantly lower than expected at independent IHEs ( $z = -3.1$ ).

In addition, differences in the institutional response to those reporting sexual misconduct to Title IX coordinators were assessed across IHE type. To begin, significant differences are uncovered regarding referrals to services. Post-hoc tests demonstrate that reporting individuals at public 4-year IHEs were referred to services at rates that were higher than expected by chance ( $z = 2.8$ ) while reporting individuals at community colleges and independent IHEs were referred to services at rates that were lower than expected ( $z = -2.7$ , respectively). The rate of no contact orders differed by IHE type with reporting individuals at community colleges seeking no contact orders at greater rates than expected by chance ( $z = 2.3$ ).

Regarding case processing, we find significant differences across IHE type for whether the reporting individuals or institution sought out the IHE's conduct process, with greater numbers of reporting individuals/institutions seeking the IHE's conduct process at community colleges than expected by chance ( $z = 3.4$ ). Additionally, fewer incidents were processed at public 4-year IHEs than expected by chance ( $z = -2.3$ ) and complaints were withdrawn or resolved informally at significantly lower than expected rates at public 4-year IHEs ( $z = -3.7$ ) and greater than expected rates at independent IHEs ( $z = 3.2$ ).

Finally, we examine differences regarding findings and disciplinary sanctions across IHE type. We identify a greater number of "not responsible" findings than expected at independent IHEs ( $z = 2.1$ ). Although disciplinary actions were not mutually exclusive and thus not subject to significance tests, some patterns did appear across IHE type. We observe the highest rate of expulsions, suspensions, and transcript notations for "code of conduct violations" at public 4-year IHEs (24.66%, 50.68%, and 59.59%, respectively) compared to community colleges (11.69%, 23.38%, and 31.17%, respectively) and independent IHEs (16.93%, 23.38%, and 44.97%, respectively). Incidents were associated with "other" sanctions and transcript notations for "withdrawal with code of conduct charges pending" at similar rates across IHE type.

The second set of analyses examined mean differences nested within institutional types (i.e., public 4-year IHEs, community colleges, and independent IHEs) (see Tables 3 and 4). To begin, we uncovered wide ranges in the number of reported incidents and large standard deviations in the average numbers of reported incidents within IHE types across most study variables. For example, anywhere from 0 to 155 incidents of sexual misconduct were reported to Title IX coordinators at public 4-year IHEs, 0 to 70 at community colleges, and 0 to 282 at independent IHEs. We also found institutional-level differences in the average number of incidents across IHE types with post-hoc tests indicating greater average rates of incidents reported at 4-year public IHEs compared to community colleges  $t(53.28) = 3.53, p = .001, g = 0.76$  and independent IHEs  $t(171) = 2.73, p = .007, g = 0.48$ , respectively. Further, institutional-level differences were uncovered for the average rates of both on-campus and off-campus incidents across IHE types. Post-hoc tests showed that public 4-year IHEs experienced greater average rates of both on-campus and off-campus incidents compared to community colleges  $t(58.59) = 3.40, p = .001, g = 0.73$  and  $t(54.46) = 3.25, p = .002, g = 0.70$  as well as compared to independent IHEs  $t(171) = 3.06, p = .003, g = 0.54$  and  $t(56.18) = 2.89, p = .005, g = 0.60$ . Institutional-level differences in reporting to law enforcement and campus police, security, and/or safety were uncovered; post-hoc tests showed that public 4-year IHEs had higher mean rates of reporting to law enforcement compared to independent IHEs  $t(63.82) = 2.37, p = .02, g = 0.44$  and higher mean rates of reporting to campus police, security, and/or safety compared to community colleges and independent IHEs, respectively  $t(54.29) = 2.93, p = .005, g = 0.63$  and  $t(55.67) = 3.06, p = .003, g = 0.64$ .

We also found institutional-level differences regarding IHEs' responses to those reporting sexual misconduct to Title IX coordinators. To begin, institutional-level differences were observed regarding referrals to services with higher average referral rates at public 4-year IHEs compared to community colleges  $t(45.83) = 3.46, p = .001, g = 0.73$  and independent IHEs  $t(171) = 2.75, p = .007, g = 0.49$ , respectively. Differences were also uncovered regarding no-contact orders and whether the reporting individual/institution sought out the IHE's conduct process; post-hoc tests showed that significantly greater average rates of



Table 2  
*Comparison of Sexual Misconduct Incidents: Incident-Level Analysis (N = 3,829)*

Incident information	Public 4-Year IHEs		Community Colleges		Independent IHEs		$\chi^2$	df	n	p	V
	n = 1,354	35.63%	n = 403	9.50%	n = 2,072	54.11%					
Incident Location <sup>a</sup>							12.80	2	3481	.002	.06
On campus	683	54.07%	236	59.59%	1101	60.04%					
Off campus	580	45.93%	160	40.41%	721	39.96%					
Reports to law enforcement	227	16.78%	<b>133</b>	<b>33.00%</b>	351	16.93%	62.07	2	3829	<.001	.13
Reports to campus police/security/safety	685	50.63%	<b>265</b>	<b>65.76%</b>	<b>909</b>	<b>43.85%</b>	68.44	2	3829	<.001	.13
Reporter referred to services	<b>1093</b>	<b>80.78%</b>	<b>271</b>	<b>67.25%</b>	<b>1474</b>	<b>71.10%</b>	51.07	2	3829	<.001	.12
Reporter sought out no contact order	312	23.06%	121	30.02%	501	24.17%	8.29	2	3829	.02	.05
Reporter/institution sought out IHE's conduct process	289	21.36%	<b>124</b>	<b>30.77%</b>	457	22.05%	16.83	2	3829	<.001	.07
Cases processed through IHE's conduct process	242	89.74%	109	87.90%	418	91.47%	10.34	2	870	.006	.11
Case withdrawn/resolved with informal resolution	<b>43</b>	<b>17.77%</b>	29	26.61%	<b>165</b>	<b>39.47%</b>	41.33	2	870	<.001	.22
Cases with a final finding							15.98	2	691	<.001	.15
Final finding of "not-responsible"	73	33.33%	35	45.31%	171	<b>47.50%</b>					
Final finding of "responsible"	146	66.67%	77	54.69%	189	52.50%					
Expulsion	36	24.66%	9	11.69%	32	16.93%					
Suspension	74	50.68%	18	23.38%	68	35.98%					
Other	62	42.47%	40	51.95%	93	49.21%					
Transcript notation: Code of Conduct Violation	87	59.59%	24	31.17%	85	44.97%					
Transcript notation: Withdrawal with Code of Conduct Charges Pending	13	8.90%	8	10.39%	20	10.58%					

Note: Values with bolded text denote observed frequencies that are significantly different than expected as determined by standardized residuals +/- 2. <sup>a</sup> IHEs did not report location for some incidents and/or the location was unknown (n = 340, 11.26%)

reporting individuals sought no contact orders at public 4-year IHEs compared to community colleges  $t(61.22) = 3.07, p = .003, g = 0.67$  and independent IHEs  $t(171) = 2.93, p = .004, g = 0.52$  and higher mean rates of reporting individuals/institutions sought the conduct process at public 4-year IHEs compared to community colleges  $t(62.52) = 2.68, p = .009, g = 0.58$  and independent IHEs  $t(171) = 2.87, p = .005, g = 0.51$ . Regarding IHEs' processes, institutional level differences were identified regarding whether incidents were actually processed through the IHE's formal conduct process; post-hoc tests showed that public 4-year IHEs had greater average rates of incidents processed through the formal conduct process compared to community colleges  $t(59.74) = 2.27, p = .03, g = 0.49$  and independent IHEs  $t(171) = 2.30, p = .02, g = 0.41$ . Additionally, institutional-level differences were uncovered in regard to the average rate of incidents with a finding of responsibility; post-hoc tests demonstrated that public 4-year IHEs had higher mean rates of incidents with a finding of responsibility compared to independent IHEs  $t(47.60) = 3.30, p = .02, g = 0.59$ .

While no significance tests were conducted regarding average rates of sanctions, we found that the mean rates of expulsions, suspensions, and/or transcript notations for "code of conduct violations" were more than three times greater at public 4-year IHEs (0.86, 1.76, and 2.07) compared to community colleges (0.25, 0.50, and 0.67) and independent IHEs (0.24, 0.52, and 0.65). And, the average rates of "other" sanctions at public 4-year IHEs were more than double the average rates at independent IHEs, 1.48 versus 0.71. Conversely, the mean rates of each sanction type were quite similar at community colleges and independent IHEs.

## Discussion

To our knowledge, this research is only the second empirical study (see also Richards, 2019) to assess state-level data on reported incidents of sexual misconduct, and thus provides an important contribution in building this nascent body of knowledge. Further, given the evolving nature of the Title IX landscape, the development of baseline information will allow for rigorous evaluation of changes in Title IX guidance over time (e.g., on reporting, formal complaints, etc.).

Findings from the present analysis of reported sexual misconduct incidents in New York show many consistencies with Richards' (2019) examination of

reported incidents in a Mid-Atlantic state. Similar to Richards, we found the formal Title IX process was sought out in less than one-quarter of incidents reported to Title IX coordinators in New York, and more incidents were reported to law enforcement and/or campus police, security, or safety than were processed through the IHE's conduct process. And, both here and in Richards' research, few students found responsible for sexual misconduct were expelled as a result of the violation (approximately 19% here and in Richards). Likewise, in both studies, the majority of incidents took place on campus, about a quarter of victims sought out no-contact orders from their IHE, and more than 70% of victims were referred to services such as mental health counseling. These findings prompt questions regarding when and why students (and institutions) decide to seek out the formal Title IX process or continue with the process to a formal resolution. Our findings suggest there may be important differences regarding when a complainant chooses to engage in the conduct process versus only access accommodations. These findings compel us to also consider the function and efficacy of IHEs' reporting and investigatory procedures and ask whether they are truly meeting students' needs. Addressing such questions are key to consistent Title IX implementation and to ensure that IHEs are not creating barriers for students who attempt to seek out the formal process. Further, such information is likely critical to better tailoring information and awareness campaigns as well as victim services.

At the same time, our data do show that in the vast majority of cases where the reporting individual sought out the conduct process (nearly 90%), the IHE pursued the conduct process. Furthermore, given that about 40% of these processed cases resulted in a finding of "not responsible", results also suggest that IHEs were not just pursuing "good" or "easy" cases in regard to investigation and adjudication. Taken together, findings provide some evidence that New York IHEs are heeding victims' decision-making regarding advancing reported cases of sexual misconduct to the investigation and adjudication process – as they should per EIE's mandate.

In contrast to Richards (2019), the majority of New York incidents with an official finding were found "responsible" for sexual misconduct versus "not responsible," and in New York, suspensions were used about 10% more often, while other sanctions were used about 10% less often, than in Richards' study.

Table 3  
*Comparison of Sexual Misconduct Incidents: Institutional-Level Analysis (N = 209)*

Incident information	Public 4-Year IHEs (N = 42)		Community Colleges (N = 36)		Independent IHEs (N = 131)		<i>F</i>	<i>df</i>	<i>p</i>	$\eta^2$
	<i>M</i> ( <i>SD</i> )	<i>Range</i>	<i>M</i> ( <i>SD</i> )	<i>Range</i>	<i>M</i> ( <i>SD</i> )	<i>Range</i>				
Number of reported incidents	32.25 (35.96)	0-155	11.19 (13.15)	0-70	15.82 (33.22)	0-282	5.49	2, 206	.01	.05
On campus	16.26 (16.68)	0-77	6.56 (7.45)	0-37	8.44 (13.67)	0-91	6.50	2, 206	.002	.06
Off campus	13.81 (17.10)	0-74	4.44 (6.58)	0-33	5.53 (12.68)	0-113	7.38	2, 206	.001	.07
Reports to law enforcement	5.40 (6.68)	0-30	3.69 (5.38)	0-27	2.69 (6.03)	0-51	3.23	2, 206	.04	.03
Reports to campus police/security/safety	16.31 (18.29)	0-71	7.36 (6.98)	0-28	6.97 (13.34)	0-66	7.69	2, 206	.001	.07
Reporter referred to services	26.02 (33.66)	0-150	7.53 (7.60)	0-29	11.25 (29.18)	0-231	5.52	2, 206	.01	.05
Reporter sought out no contact order	7.43 (7.60)	0-35	3.36 (3.69)	0-18	3.82 (6.73)	0-43	5.50	2, 206	.01	.05
Reporter/institution sought out Title IX judicial conduct process	6.88 (7.30)	0-36	3.44 (3.68)	0-15	3.49 (6.46)	0-45	4.95	2, 206	.01	.05
Cases processed through Title IX judicial conduct process	5.76 (6.97)	0-37	3.03 (3.23)	0-13	3.19 (6.07)	0-43	3.29	2, 206	.04	.03
Case withdrawn/resolved with informal resolution	1.02 (2.72)	0-15	0.81 (2.53)	0-15	1.26 (3.40)	0-19	0.33	2, 206	.72	.00
Cases with a finding of “not responsible”	1.74 (2.39)	0-12	0.97 (1.40)	0-5	1.31 (2.55)	0-17	1.05	2, 206	.35	.06
Cases with a finding of “responsible”	3.48 (5.33)	0-25	2.14 (2.26)	0-7	1.44 (2.64)	0-18	6.10	2, 206	.003	.04
Expulsion	0.86 (2.51)	0-5	0.25 (0.44)	0-1	0.24 (0.63)	0-3				
Suspension	1.76 (2.74)	0-14	0.50 (1.11)	0-5	0.52 (1.31)	0-7				
Other	1.48 (2.51)	0-12	1.11 (1.55)	0-6	0.71 (1.47)	0-9				
Transcript notation: Code of conduct violation	2.07 (3.70)	0-19	0.67 (1.07)	0-4	0.65 (1.61)	0-9				
Transcript notation: Withdrawal with code of conduct charges pending	0.31 (0.88)	0-2	0.22 (0.83)	0-4	0.15 (0.50)	0-3				

Table 4  
*Post Hoc T-Test Comparisons for Sexual Misconduct Incidents: Institutional-Level Analysis (N = 209)*

	Public 4-Year vs. Community Colleges				Public 4-Year vs. Independent IHEs				Community Colleges vs. Independent IHEs			
	<i>t</i>	<i>df</i>	<i>p</i>	Hedges <i>g</i>	<i>t</i>	<i>df</i>	<i>p</i>	Hedges <i>g</i>	<i>t</i>	<i>df</i>	<i>p</i>	Hedges <i>g</i>
Number of reported incidents	3.53	53.28	.001	.76	2.73	171	.007	.48	-0.82	165	.42	-0.15
On campus	3.40	58.59	.001	.73	3.06	171	.003	.54	-1.09	105.40	.28	-0.15
Off campus	3.25	54.46	.002	.70	2.89	56.18	.005	.60	-0.50	165	.62	-0.10
Reports to law enforcement including state police	1.23	76	.22	.28	2.47	63.82	.02	.44	0.90	165	.37	.17
Reports to campus police or campus security/safety	2.93	54.29	.005	.63	3.06	55.67	.003	.64	0.17	165	.87	.03
Reporter referred to services	3.46	45.83	.001	.73	2.75	171	.007	.49	-1.31	164.80	.19	-0.14
Reporter sought out no contact order	3.07	61.22	.003	.67	2.93	171	.004	.52	-0.55	165	.69	-0.07
Reporter/institution sought out Title IX judicial conduct process	2.68	62.52	.009	.58	2.87	171	.005	.51	-0.04	165	.97	-0.01
Cases processed through Title IX judicial conduct process	2.27	59.74	.03	.49	2.30	171	.02	.41	-0.16	165	.88	-0.03
Cases with a finding of “responsible”	1.40	76	.17	.32	3.30	47.60	.02	.59	1.45	165	.15	.27

Transcript notations aim to assist IHEs in making an informed decision regarding admitting a transfer student who has been found in violation of a previous institution's code of conduct for sexual misconduct. While some states (e.g., New York, Virginia) have passed legislation mandating the use of transcript notations (Simons, Tirella, & Wold-McCormick, 2020), some argue that transcript notations may be seen as too punitive and inadvertently discourage victims from reporting or administrators from opening investigations (Know Your IX, nd). As such, the impact of transcript notations is an area of much needed research.

The institution type-specific findings presented here support prior calls to prioritize understanding sexual misconduct at community colleges and independent IHEs (Richards, 2019; Voth Schrag, 2017). For example, questions remain as to whether there are fewer sexual misconduct incidents or lower rates of reporting among community college students. Future research must also examine the resource needs of community college students who experience sexual misconduct and assess whether differences uncovered here are a result of student decision-making or institutional resources and/or partnerships. Further research should also focus specifically on examining partnerships between independent IHEs and law enforcement and similar safety and security personnel, and should assess the decision-making processes regarding withdrawing complaints of sexual misconduct as well as the use of informal resolutions at independent IHEs.

Given that incidents are fundamentally nested in IHEs, institutional-level analyses (presented in Tables 3 and 4) provided valuable information regarding the variability within and across IHE types in terms of reporting, processes, and outcomes. Findings show wide variation between similar institutions and across institutional types. These findings are consistent with the institutional-level analyses presented by Richards (2019), and as noted by Richards, such variation is likely associated with both individual case-level factors (e.g., strength of evidence) as well as IHE-level factors (e.g., policy dissemination, individual staff). As such, we recommend using caution in concluding that any IHE is performing better or worse than another based on its type alone and/or that any IHE type as a whole is performing better or worse than another. Future research should continue to assess institutional-level differences and examine what institutional-level factors predict reporting sexual misconduct, engagement in the Title IX process, and victim service referrals.

The gap in knowledge regarding reported incidents of sexual misconduct largely stems from a lack of available data. Several states (e.g., New York, Maryland) and individual IHEs (e.g., Tulane, Harvard) now report aggregate data on sexual misconduct and make that data or reports on that data publicly available. Efforts must be made to scale-up innovative strategies and make every IHEs transparent, but such data will be most useful if the same information is collected across states so that it is readily comparable. Long-term policy goals regarding campus sexual misconduct must include federal legislation mandating that all IHEs make data, including a unified set of variables operationalized the same way, publicly available.

While our research provides novel information on incidents of sexual misconduct reported to Title IX coordinators, several limitations must be acknowledged. To begin, we note the differences in sample sizes across IHE types which impact our statistical power and the robustness of the equal variance assumption in the ANOVAs. In addition, given that these data are drawn from a single state with a state law mandating uniform processes regarding sexual misconduct, we could not assess the potential impact of different standards of proof (e.g., preponderance of the evidence, clear and convincing) or different standards of consent (e.g., consent, affirmative consent) on adjudication and/or sanctioning. We leave questions regarding the impact of these factors for future research, and note that large-scale, multi-state data collection would be necessary for such studies.

Further, aggregate IHE-level data like what is used here (i.e., counts of incidents) does not allow for analysis of individual incidents or individual incident characteristics. In other words, these data do not track individual cases as to whether there was an official conduct process (or not), finding of responsibility (or not), and disciplinary action (or not). Incident-level data and analysis are needed to answer questions about the relationship between case characteristics (e.g., on campus) and case outcomes (e.g., reported to law enforcement). In addition, the NYSED's operationalization of some variables limited the analysis. For example, the number of incidents that were withdrawn by the victim *or* resolved through an informal resolution were collapsed into one variable making it impossible to identify the number of incidents in each category independently. Further, NYSED's use of the term "reporting individual" to encompass "victims, survivors, complainants, claimants, witnesses with

victim status, and any other term used by an institution to reference an individual who brings forth a report of a violation” (8 CRR-NY 48.1NY-CRR) seems overly broad as faculty, staff, and others with knowledge of an incident may report the incident to Title IX Coordinators. Relatedly, the data’s accuracy is reliant on individual Title IX coordinators who input the data; however, as previously noted, the use of a standardized form and the availability of both a “Question & Answers” document as well as a help center likely increased the reliability. Also, ten IHEs did not submit data to the NYSED Office of Higher Education and were considered missing for these analyses.

Finally, while legal cases and anecdotes cannot speak to the population of reported incidents of sexual misconduct at IHEs, the data reported here cannot and should not detract from individual failures by IHEs to comply with Title IX regulations. A critical next step in this line of inquiry is to gather systematic information from students about their experiences reporting sexual misconduct to Title IX coordinators and engaging in the conduct process (as complainants and respondents), and from Title IX coordinators about their decision-making processes associated with individual cases and/or case characteristics. Further, these data do not capture the universe of unreported incidents, and it should be noted that multiple New York IHEs indicated zero reported incidents of sexual misconduct during the study period. Addressing these questions, among others, are paramount to advancing the response to campus sexual misconduct in real and meaningful ways and ensuring that the promise of Title IX is achieved.

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