

HB18-1391 FAQ'S

Why does the bill prohibit active counsel?

1. Right to counsel **privileges wealthy students—legal fees can total over \$50,000**
2. Active counsel will result in survivors declining report their abuse or seek help from their school, intimidated by the tactics (real or believed) of professional defense lawyers who **fear survivors down** by attempting to smear their credibility in criminal proceedings.
3. Student conduct hearings are **not courts of law**, they are administrative hearings bases on a code of conduct applicable to the campus, not the broader society
4. If the State of Colorado decides to provide a right to active counsel in sexual assault proceedings where expulsion is a possibility, it should do so for all student disciplinary proceedings when expulsion is a possibility. Otherwise, singling out sexual assault proceedings would exacerbate the common misconception that schools should not investigate sexual assault, or that alleged perpetrators face greater risks in sexual assault proceedings than in other types of disciplinary hearings.
5. It will become the battle of who has (or who can afford) the **better lawyer** and **not a truth seeking process**

Why is the preponderance of the evidence the best standard?

1. Administrative conduct proceedings do not take away a student's civil liberties, therefore anything higher than the preponderance of the evidence standard is **inappropriate**
2. POE is the only standard that doesn't assume wrongdoing of either party – therefore it is the **equitable** standard
3. Nearly all administrative proceedings, like school disciplinary hearings and civil proceedings, use POE
4. To use a higher standard would assume that sexual assault is less serious than other code violations that use POE like physical assault and theft or other serious offenses in civil proceedings like wrongful death.
5. This is **NOT a criminal law** meant to put rapists in prison. It is a civil law meant to **ensure that all students have equal access to education**. This law does not give schools the power to send offenders to prison, therefore a higher burden of proof would be **unfair** and **inconsistent**.
6. The **stakes are just as high for the complainant** as they are for respondents since the decision of whether to stay in school is often largely dependent on the outcome of the conduct process
7. POE is the only standard that is **constitutionally firm** and doesn't discriminate against either party
8. Anything higher than POE sends a message that the complainant's voice **carries less weight** than the respondents.
9. Puts schools in the **impossible position** of having cases where they believe that it is more likely that a student committed a violent crime but can take no action to protect other students on Campus
10. A higher standard would **fundamentally work against** those whose credibility is most likely questioned including LGBTQW and students of color

Why doesn't the bill select and mandate an Investigation Model?

1. Campus Advocates and Title IX coordinators throughout the state have seen success in a **variety** of investigation models
2. We didn't want to dictate a certain model because campus throughout the state have their own **unique campus communities, needs, and available resources**

Why doesn't the bill mandate that all institutions have an Appeals process?

1. Our original focus for the bill was to create **equitable standards** in the current process, such as ensuring if schools did have an appeals process that both the complainant and respondent would have equal access to that process.
2. Because not all schools offer an appeals process we believe addressing the specifics of appeals would need to be its own separate bill. Our bill was about **establishing fairness** in current practice.