

Memo

Title IX for a New Generation (WGST 150) Fall 2020

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What changes can be made to ensure LGBTQ students are protected by Title IX?

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Abstract

It is historically ambiguous how Title IX applies to LGBTQ students, and schools often have their own policies for how these students should be treated under Title IX. This memo investigates the protections LGBTQ students receive under Title IX both generally and at Georgetown specifically. It finds that schools can set their own Title IX policies for LGBTQ students and that Georgetown has committed to equal protection under Title IX. It also investigates whether LGBTQ students face unique issues under Title IX despite Georgetown's commitment to equality. It finds that there is a possibility these issues exist but concludes there is not enough data available to determine conclusively what these issues are or how to fix them. It recommends that the university survey LGBTQ students' experiences under Title IX so future researchers may identify the problems LGBTQ students face and their solutions.

Background

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex, but how does it protect LGBTQ students at Georgetown University from discrimination? Despite the large number of LGBTQ students who report facing sexual harassment at Georgetown, the university has not yet undertaken a sustained investigation into these students' experiences under Title IX.¹

There is no federal guidance explaining how Title IX applies to LGBTQ students. The Obama administration released specific guidance that Title IX covers discrimination based on sexual orientation or gender identity. However, in 2017, the Trump administration rescinded this guidance, which left the decision of whether to consider discrimination based on sexual orientation and gender identity under Title IX up to individual schools. Some schools continue these protections, while others do not.²

Courts have also not interpreted Title IX uniformly in the context of anti-LGBTQ discrimination. Some have ruled that Title IX does not cover anti-LGBTQ discrimination, while others have ruled that it only covers some forms of anti-LGBTQ discrimination.

¹ "2019 Campus Climate Survey Results," *Georgetown University*, 2019, <https://sexualassault.georgetown.edu/survey/2019surveyresults/>.

² Interview with Georgetown Title IX expert, October 27, 2020.

For instance, many courts understand why gender stereotyping of LGBTQ students is prohibited under Title IX but cannot understand why discrimination for expressing attraction to members of the same gender is as well.³

Another issue LGBTQ students face is religious exemptions, which can limit the protections afforded to them under Title IX. Schools may apply for religious exemptions to Title IX protections for LGBTQ students if the law conflicts with the institution's religious principles. These exemptions allow schools to discriminate against LGBTQ students while receiving federal funding. There are no explicit guidelines for eligibility for a religious exemption, and the OCR often does not investigate whether claims to religious exemption are sincere. These broad guidelines allow schools to claim religious exemptions to protecting LGBTQ students where they otherwise could not.⁴

Georgetown University itself has stated its Title IX policies cover anti-LGBTQ discrimination. It has also refrained from claiming a religious exemption to Title IX in the past and says it has no intention of doing so in the future.⁵

LGBTQ students at Georgetown face issues with the Title IX process despite the school's commitment to equitable protections. Many LGBTQ students do not understand Title IX protects them. Additionally, many LGBTQ students do not have healthy role models for what same-gender relationships look like, which creates problems in identifying healthy behavior in their relationships. This lack of role models means LGBTQ students can have trouble recognizing their experiences as sexual assault or harassment.⁶

Analysis

LGBTQ students face many potential issues with Title IX. The first potential issue is schools enacting policies that do not prohibit anti-LGBTQ discrimination under Title IX. The second potential issue is schools claiming a religious exemption to justify discriminating against LGBTQ students. LGBTQ students at Georgetown face neither of these problems because the school has committed to protecting LGBTQ students equitably under Title IX.

However, LGBTQ students face issues outside the scope of the law. For instance, many LGBTQ students do not understand that they can pursue Title IX claims in response to sexual assault because they internalize definitions of sexual assault as only occurring

³ Kimmel, Adele P., "Title IX: An Imperfect but Vital Tool to Stop Bullying of LGBT Students," *Yale Law Journal*, vol. 125, no. 7 (May 2016): 2006-2037.

⁴ Warbelow, Sarah, and Remington Gregg, "Rethinking Religious Exemptions from Title IX After Obergefell," *Brigham Young University Education and Law Journal*, no. 2 (2017): 249-284.

⁵ Interview with Georgetown Title IX expert, October 27, 2020.

⁶ Interview with Georgetown LGBTQ expert, November 3, 2020.

between men and women. This confusion is specifically an issue with awareness of what Title IX covers rather than an issue with Georgetown's Title IX policy itself.

There is an overwhelming lack of data regarding other issues LGBTQ students face under Title IX. Georgetown University has not attempted to survey or record LGBTQ students' experiences with Title IX. Additionally, creating new data by interviewing individual students is difficult because many LGBTQ students do not want to speak about their experiences with Title IX in general, much less on the record. It is thus unknown how LGBTQ students themselves conceptualize their experiences under Title IX and what they believe should be changed policy-wise and culturally.

Recommendation

Georgetown has made several indications that it cares about LGBTQ equity and inclusivity. For instance, Georgetown has stated that its values of "*cura personalis*" and "community in diversity" make the establishment of spaces such as the LGBTQ Resource Center important.⁷ Additionally, Georgetown has committed on paper to LGBTQ equity in Title IX.⁸

To fully uphold this commitment, the university should attempt to close the existing data gap by surveying LGBTQ students' experiences with Title IX. The current lack of specific findings on LGBTQ students' experiences means that it is difficult to evaluate whether they face issues under Title IX. Despite indications that LGBTQ students face some barriers within Title IX proceedings, without more data, it is impossible to suggest specific measures to combat these barriers.

There are several ways the university could survey LGBTQ students. One method is creating a survey that would be sent to all students, asking them to anonymously self-report their status as LGBTQ and their experiences with Title IX proceedings. Another option is for Georgetown to create a form with questions about LGBTQ status and Title IX experiences and distribute it to LGBTQ leaders on campus, such as the director of the LGBTQ Resource Center, to give to students.

When designing a survey, Georgetown should consider several limitations that make collecting information of this nature difficult. First, Title IX proceedings involve sensitive information related to discrimination and sexual violence, so students may be reluctant to talk about their experiences. Second, not all LGBTQ students want to identify publicly as such. Third, students may refrain from disclosing their experiences because they do not trust researchers to use their information in a way that reflects their best interests.

⁷ "About Us," *Georgetown LGBTQ Resource Center*, <https://lgbtq.georgetown.edu/about-us/>.

⁸ Interview with Georgetown Title IX expert, October 27, 2020.

To minimize the effects of these limitations, Georgetown should consider a survey design that preserves students' anonymity and fosters trust between researchers and students.

Whatever the final method, researching LGBTQ students' experiences with Title IX is imperative to create a more equitable campus culture that is responsive to issues faced by marginalized students. Georgetown should care about establishing such a culture given its past commitments to the LGBTQ community on campus.

Interview Summaries

The first interview I conducted was with an expert on Georgetown's Title IX policy. The purpose of this interview was to learn more about Georgetown's official policy and federal Title IX regulations regarding LGBTQ students. This information would give a baseline for evaluating the efficacy of Georgetown's policies. The first thing I learned from this interview was background information on federal guidance regarding LGBTQ students; the Obama administration released guidance saying that Title IX covered discrimination based on sexual orientation and gender identity. However, the Trump administration repealed that guidance, leaving the decision of whether to cover anti-LGBTQ discrimination under Title IX up to individual schools. I also learned that Georgetown's Title IX policies still cover discrimination based on sexual orientation and/or gender despite the Trump administration's repeal of Obama-era guidance. Finally, I learned that Georgetown has a separate system for dealing with discrimination complaints that do not fall under Title IX. This system, called IDEAA, covers any complaint not related to sex and gender discrimination, such as discrimination based on race or religion. The expert said that students are not the ones responsible for determining whether their experience falls under Title IX, and the Title IX office will send complaints to the proper office if the complaint does not fall under Title IX.

My second interview was with an expert on LGBTQ students at Georgetown. The goal of this interview was to identify potential barriers faced by LGBTQ students in the Title IX process. This information would allow me to know whether there were gaps between Georgetown's commitment to equal protection of LGBTQ students under Title IX and the implementation of Title IX. The biggest takeaway from this interview was that LGBTQ students face barriers due to a lack of awareness of what Title IX covers. Many LGBTQ students do not realize they are protected under Title IX because they have internalized ideas that sexual assault only happens between a man and a woman. Additionally, students in same-gender relationships may feel pressured to refrain from identifying violence in their relationships to avoid feeling like they are upholding narratives about same-gender relationships being inherently unhealthy. LGBTQ students also may not have role models from whom they can learn what healthy same-gender relationships look like, which can create a barrier to identifying abusive behavior in their relationships. Another takeaway from this interview was that many LGBTQ students believe that they are not covered under Title IX at all. This misunderstanding is another issue that stems from a lack of awareness surrounding what Title IX does rather than from the policy itself.