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Theologies of Exclusion: Christian Universities and Discrimination against Sexual Minorities¹

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ABSTRACT

In an era of rapidly evolving attitudes toward lesbian, gay, bisexual, and transgender rights, why do some Christian colleges and universities continue to discriminate against lesbian, gay, and bisexual students? The most intuitive answer to this question might point to many religious traditions' conservative teachings about same-sex relationships. Nevertheless, many schools associated with socially conservative religious traditions are actually inclusive of their sexual minority students. Building on recent insights from the literature on religion and the “culture wars,” and analyzing original data on student handbook bans on same-sex relationships and “homosexual behavior” across 682 Christian colleges and universities, I show that it is when schools are associated with individualist religious traditions that emphasize personal piety that conservative teachings on same-sex relationships are associated with discrimination against sexual minorities. The study holds implications both for research on the exclusion of sexual minorities in schools and for theoretical debates on the relationship between religion and social injustice.

Introduction

Despite the rapid gains by the lesbian, gay, bisexual, and transgender (LGBT) movement in the United States, many Christian faith traditions continue to resist extending equal rights to LGBT people. For example, the largest Christian group in the United States—the Roman Catholic Church—maintains that “homosexual acts [are] acts of grave depravity” and opposes the full inclusion of its noncelibate lesbian, gay, and bisexual members (Human Rights Campaign 2015). Although several mainline Protestant denominations (e.g., Disciples of Christ, Episcopal Church, Evangelical Lutheran Church in America, Presbyterian Church USA, and United Church of Christ) now accept lesbian, gay, and bisexual members and clergy, the largest mainline Protestant denomination, the United Methodist Church, continues to label homosexuality as a “sin” and refuses to ordain openly lesbian, gay, and bisexual clergy (Human Rights Campaign 2015). No major white evangelical Protestant denominations (e.g., Assemblies of God, Churches of Christ, Church of the Nazarene, Lutheran Church—Missouri Synod, Southern Baptist Convention, Wesleyan Church, and Wisconsin Evangelical Lutheran Synod) have embraced LGBT inclusion, and most black Protestant denominations and other religious groups emanating from the Christian tradition continue to resist LGBT inclusion.

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Given the generally bleak landscape for LGBT people within Christian faith traditions (although see, e.g., Adler 2012; Kane 2013b; Whitehead 2013, 2017), it is perhaps no surprise that many Christian-affiliated colleges and universities in the United States still actively discriminate against LGBT students. Indeed, many Christian colleges and universities (31%) maintain official bans on “homosexual acts” or “homosexual behavior” (or similar prohibitions on same-sex relationships), generally found alongside bans on rape and incest in student handbooks.² The consequences of such discriminatory stances toward sexual minority students can be significant, certainly putting many students at risk of expulsion. Even if such bans are not always enforced, “if [people] define situations as real, they are real in their consequences” (Thomas and Thomas 1928:571–572): such bans contribute to a negative campus climate for lesbian, gay, and bisexual students (Craig et al. 2017; Rockenbach and Crandall 2016; Woodford, Levy, and Walls 2013) and thus put students at risk of bullying, harassment, and mental health problems (Craig et al. 2017; Wolff et al. 2016). Still, recent research shows that most Christian-affiliated colleges and universities (55%) have actually adopted official nondiscrimination policies protective of their lesbian, gay, and bisexual students, and this group of schools includes many colleges and universities affiliated with Christian traditions that maintain that homosexuality is a “sin” (Coley 2017). Why is it, then, that some Christian colleges and universities officially discriminate against sexual minorities while others do not?

Although a handful of recent studies have examined predictors of LGBT inclusion in U.S. schools (Coley 2017; Fetner and Kush 2008; Fine 2012; Kane 2013b), only one study to date has examined discriminatory policies in U.S. schools in the form of formal prohibitions on same-sex relationships or sexual behavior. That study, by Wolff and Himes (2010), examines a random selection of 20 Christian colleges and universities associated with the Council for Christian Colleges and Universities (CCCU), finding that all had some form of campus ban on homosexual acts, homosexual behavior, or extramarital sexual relations. The study helpfully identifies an issue of ongoing concern for sexual minority students at Christian colleges and universities, but the group of Christian colleges and universities from which that sample was drawn is not representative of all Christian colleges and universities—the CCCU represents only conservative (and mostly, white evangelical Protestant) Christian campuses. The study is also descriptive in nature and does not examine predictors of discriminatory policies. We thus continue to lack research that can explain the variation in discriminatory policies toward sexual minorities across a wide range of Christian colleges and universities.

In this study, I address the puzzle of why some Christian colleges and universities discriminate against sexual minorities while others do not by drawing on recent insights from the literature on religion and the “culture wars.” Moving past the binary division of religious traditions into “conservative” and “liberal” camps—with religious traditions that oppose rights for sexual minorities assumed to be in the former camp and religious traditions that support rights for sexual minorities assumed to be in the latter camp—an emerging literature recognizes that religious traditions are also characterized by “individualist” (sometimes labeled “libertarian”) and “communalist” (or “communal”) impulses (Fuiist, Stoll, and Kniss 2012; Kniss 2003; Kniss and Numrich 2007). Individualist religious traditions emphasize personal morality and piety, whereas communalist religious traditions emphasize social justice. Put another way, individualist religious traditions concentrate on the failings of individuals and the obligations of individuals within the larger society; they deploy the language of “sin” and emphasize the need for personal responsibility. Communalist religious traditions concentrate on the failings of society and the obligations of society to their members, and they deploy a language of structural failings and call for human

²I do not focus on bans on gender transitions or transgender identification in this study, because few Christian colleges and universities have adopted explicit policies on transgender issues in their student handbooks. This is not to suggest, however, that Christian colleges and universities are inclusive of transgender students: As Coley (2017:103) found, only 10% of Christian colleges and universities have adopted nondiscrimination policies inclusive of “gender identity” or “gender expression.”

rights. Although many religious traditions that have adopted conservative teachings on same-sex relationships fall squarely in the individualist camp, other religious traditions that maintain conservative positions on same-sex relationships are nevertheless better characterized by their communalist impulses. As I show, it is when Christian colleges and universities are associated with religious traditions that are both conservative *and* individualist that they will be most likely to maintain official bans on same-sex relationships or sexual behavior (most commonly referred to as “homosexual acts” or “homosexual behavior”).

The study’s findings hold not only theoretical implications for literatures in the sociology of religion and sexualities but also practical implications for students mobilizing to challenge discriminatory policies across many Christian colleges and universities (Coley 2014, 2018; Hughes 2018; McEntarfer 2011; Vespone 2016). I elaborate on these findings and their implications later in the article, but I first review previous research on religious opposition to and support for LGBT rights and discuss my data and analytic approach.

Theorizing discrimination against sexual minorities at Christian colleges and universities

A large body of research has attempted to account for the role of religious groups in the “culture war” debates, including the ongoing debates over LGBT rights. Some researchers (e.g., Hunter 1991; Wuthnow 1988, 1989) link conservative and liberal divides to different religious positions on social issues. Christians with *conservative* religious beliefs—defined in terms of their traditionalist beliefs in the inerrancy and infallibility of church scriptures and/or the authority of church leaders—tend to oppose the incorporation of LGBT members within their religious traditions and are more likely to oppose LGBT rights. In comparison, Christian with *liberal* religious beliefs—defined in terms of their adherence to modernist readings of church scriptures—are more likely to support inclusion of LGBT members within their traditions and thus endorse LGBT rights. Although researchers have debated whether these conservative versus liberal divides are most evident between entire denominations or between congregations in any given denomination, the literature’s overall emphasis on conservative versus liberal divides (rather than other potential dividing lines) is of primary interest here. Furthermore, although conservative and liberal divides manifest in a wide range of social debates, I concentrate here on denominations’ conservative and liberal divides over the morality of same-sex relationships.

Research on religion and support or opposition to LGBT rights does show that Christian religious traditions with conservative beliefs on same-sex relationships tend to oppose extending rights to LGBT people, whereas Christian religious traditions with liberal beliefs on same-sex relationships tend to endorse LGBT rights. Perhaps unsurprising, at the U.S. denominational level, religious groups with conservative religious teachings on the morality of same-sex relationships all ban the ordination of lesbian, gay, and bisexual clergy and refuse to recognize same-sex marriages (Human Rights Campaign 2015). Most religious groups with conservative teachings on same-sex relationships have also advised congregations to deny lesbian, gay, and bisexual people membership, with the notable exception of the United Methodist Church, which advises the acceptance of lesbian, gay, and bisexual members (Human Rights Campaign 2015). Similarly, in studies of acceptance of gays and lesbians conducted at the U.S. congregational level, Adler (2012:192) showed that “congregations that are *not* biblically inerrant are over two times as likely ... to allow membership privileges than those that are biblically inerrant,” and Whitehead (2013:307) found that religiously “conservative ... congregations are much less likely to include lesbians and gays in congregational life or formally welcome them” especially as compared to religiously liberal congregations. In a sign that religious traditions’ official theological positions may be loosely coupled with congregational practices regarding the inclusion of sexual minorities, though, the studies show that Catholic parishes, despite belonging to a religious tradition that

officially condemns same-sex relationships, are highly likely to welcome those who are in same-sex relationships as members in practice (see also Whitehead 2017).

A variety of studies have also documented mobilization against LGBT rights in the public sphere by religious traditions with conservative beliefs about same-sex relationships. It is true that, in the early 1960s, many people of faith who maintained that homosexuality was a “sin” were inspired to become active in homophile organizations, arguing against anti-sodomy laws and police harassment of lesbian, gay, and bisexual people (White 2015:ch. 3). Yet by the late 1960s and early 1970s, as gay liberationists and lesbian feminists began mobilizing alongside civil rights, feminist, and working-class movements in the United States, Christians increasingly perceived their institutions to be under assault and came to form the backbone of a major backlash against LGBT rights. Evangelical activist Anita Bryant, for example, formed the organization Save Our Children in 1977, mobilizing churchgoers against local nondiscrimination ordinances inclusive of sexual orientation (Fetner 2008). Similarly, Baptist minister Jerry Falwell formed the Moral Majority in 1979, a conservative coalition that would mobilize churchgoers in support of socially conservative politicians and against any attempts to advance LGBT rights (Wilcox 1991). Conservative Christians were instrumental in a number of anti-LGBT rights policy campaigns thereafter, including in opposition to funding for HIV/AIDS research in the 1980s, in support of discriminatory federal legislation such as the Defense of Marriage Act in the 1990s, in support of a Federal Marriage Amendment that would define marriage as a union between one man and one woman in the 2000s (Griffith 2017; Williams 2010), and in support of religious freedom laws allowing religious discrimination against LGBT people in the 2010s (Kazyak, Burke, and Stange 2018).

Although most research on religious opposition to or support for various “culture war” issues such as LGBT rights continues to focus on such conservative versus liberal religious divides over the morality of same-sex relationships, emerging research (e.g., Fuist et al. 2012; Kniss 2003; Kniss and Numrich 2007) links individualist (sometimes called “libertarian”) and communalist (or “communal”) religious divides to positions on social issues. Christians who hold *individualist* orientations—and who believe that churches should focus on reforming individuals—generally believe homosexuality threatens their moral purity and are more likely to oppose LGBT rights. However, Christians who hold *communalist* orientations—and who believe that churches should focus on promoting social and/or economic justice in the wider society—are more likely to support LGBT rights. Communalist religious traditions often exhibit a tendency to endorse human rights even for those whom they disagree, and thus a communalist orientation can lead religious traditions to oppose discrimination against LGBT people and endorse LGBT rights even when they hold conservative beliefs on the morality of same-sex relationships.

Recent research on religion and LGBT rights supports a link between individualist and communalist theological orientations and opposition to or support for LGBT rights. In their article aptly titled “Beyond the Liberal-Conservative Divide,” Fuist et al. (2012:68) mapped the theological orientations of various religious traditions; they showed that all of the religious traditions with LGBT-inclusive policies happen to have communalistic theologies. In addition, many LGBT religious organizations protesting their denominations’ policies on same-sex relationships draw on communalistic theological arguments, with the primary exceptions being those LGBT religious organizations protesting the Church of Jesus Christ of Latter-day Saints, Jehovah’s Witness, and evangelical Protestant groups (Fuist et al. 2012:70). In a study on LGBT inclusion at Christian colleges and universities, Coley (2017) shows that Christian schools affiliated with communalist religious traditions are much more likely to have LGBT groups and nondiscrimination policies inclusive of sexual orientation than are Christian schools affiliated with individualist religious traditions, even when controlling for religious traditions’ conservative or liberal teachings on same-sex relationships.

Such insights on individualist and communalist theological orientations across religious traditions allow us to move past binary conceptions of conservative and liberal religious divides and thus understand religious traditions as the more complex and multifaceted entities that they are. Specifically, such insights allow us to understand how Christian colleges and universities associated with religious traditions that teach that homosexuality is a “sin” might nevertheless choose not to discriminate against sexual minority students, that is, if these Christian colleges and universities are also associated with religious traditions that have well-developed bodies of social justice teachings, comfort with the idea of universal human rights, and/or concern for the way that societies fail their most vulnerable members. Conversely, Christian colleges and universities may interpret teachings stating that homosexuality is a “sin” as mandates to discriminate when those schools are associated with religious traditions that emphasize personal piety. Denominations certainly have ways to encourage or even require a Christian college or university to adopt an accommodating or discriminatory stance toward their lesbian, gay, and bisexual students, such as requiring schools to place members of or leaders in their denominations on those schools’ boards of trust or attaching certain expectations or requirements to money given to the school by a denomination (Coley 2018:ch. 4). If students at a school, or alumni of or donors to a school, are members of the denomination in question, they may add additional pressure to a school drawing on the language of their theological traditions (a phenomenon Fuist et al. [2012] certainly documented in their study of LGBT activists groups mobilizing to promote inclusive membership policies within their respective denominations).

Overall, given the theory and research on religion and the “culture wars” just reviewed, I proceed in this study to test this central proposition: Christian colleges and universities associated with religious traditions that view same-sex relationships as “sinful” will adopt student handbook bans on same-sex relationships or sexual behavior (most commonly referred to as “homosexual behavior” or “homosexual acts”) when those denominations also exhibit individualist theological orientations.

Data and methods

The study’s population of interest is Christian colleges and universities in the United States ($N = 682$). I generated a list of such schools through the U.S. Department of Education’s Integrated Postsecondary Education Data System (Integrated Postsecondary Education Data System [IPEDS] 2014) website. Although these schools certainly differ in the degree to which they expect all members of their community to be Christian—with schools that accept only Christian students or hire Christian faculty or staff on one end, to schools that maintain no expectations that students, faculty, staff, or administrators be Christian on the other end—all of these schools currently maintain religious ties to a Christian denomination or, in the case of non-denominational schools, at least actively identify themselves as Christian.

The dependent variable is a discriminatory student handbook ban on same-sex relationships or sexual behavior.³ To identify such bans, I examined the student handbooks of the 682 Christian colleges and universities for the 2013 to 2014 school year. I searched for terms such as “homosexual,” “homosexuality,” “gay,” and “sex” to identify any language in the student handbooks regarding sexual intercourse or relationships between two people of the same sex. The schools that adopted discriminatory policies against lesbian, gay, and bisexual students generally

³A potential additional source for data on discriminatory policies at Christian colleges and universities might be the Title IX waivers that the U.S. Department of Education began issuing to Christian colleges and universities toward the end of the Obama administration, allowing religious schools to discriminate against transgender students in particular (Gjelten 2018). However, the Trump administration rescinded protections for transgender students—in essence issuing a “blanket Title IX waiver” for religious schools to be able to discriminate (Soulforce 2018)—making these waivers redundant and leading many schools to stop requesting them (Allen 2018).

did so by banning “homosexual acts” or “homosexual behavior” alongside behaviors such as “rape” and “incest” in a student code of conduct section of the student handbook (although I also counted a school as having a discriminatory student handbook ban if it had other language suggesting that same-sex relationships were banned or that the school viewed marriage as only being between a man and a woman).⁴ Because the language of “homosexual acts” and “homosexual behavior” was remarkably similar across the student handbooks of the Christian colleges and universities with such bans, Christian colleges and universities were likely looking to peer schools to see how other schools dealt with such relationships or behavior. In qualitative interviews as part of a larger project (Coley 2018), I found that the seemingly broad and ambiguous language of “homosexual acts” and “homosexual behavior” (rather than homosexual intercourse, same-sex relationships, etc.) was adopted out of a belief, at the time such language was drafted, that only two people of the opposite sex could properly have sexual intercourse. Thus, the language of “homosexual acts” and “homosexual behavior” is meant to be enforced against two people of the same sex engaged in sexual activity. Nevertheless, because of the ambiguity of the language, it could theoretically be applied against two people of the same sex engaged in behaviors such as hand-holding. I found that bans on same-sex relationships or sexual behavior were present at 31% of the Christian colleges and universities ($n = 211$ of 682).

The primary independent variables of interest are affiliation with *individualist* (rather than communalist) religious traditions and affiliation with religious traditions with *conservative* (rather than liberal) teachings on same-sex relationships, with a special focus on the interaction between individualism and conservative positions on same-sex relationships. To construct the variable that indicates whether a school is affiliated with an individualist religious tradition, I obtained information on religious affiliation from IPEDS (2014) and then coded the data according to classifications by Fuist et al. (2012:68).⁵ Table 1 lists examples of religious traditions with individualist and communal orientations. In general, evangelical Protestant denominations (e.g., Assemblies of God, Churches of Christ, Church of the Nazarene, Lutheran Church—Missouri Synod, Southern Baptist Convention, Wesleyan Church, Wisconsin Evangelical Lutheran Synod) and independent and nondenominational Christian traditions possess individualist orientations, whereas the Roman Catholic Church, black Protestant denominations (e.g., African Methodist Episcopal, Christian Methodist Episcopal Church, National Baptist Convention), mainline Protestant denominations (e.g., American Baptist Churches USA, Disciples of Christ, Episcopal Church, Evangelical Lutheran Church in America, Presbyterian Church USA, United Church of Christ, United Methodist Church), and the historic Protestant peace churches (Church of the Brethren, Friends General Conference, Mennonite Church USA) exhibit communal orientations.⁶ Overall, 35% of Christian universities are associated with individualist religious traditions ($n = 238$ of 682).

To construct the variable that indicates whether a school belongs to a religious tradition with socially conservative teachings on same-sex relationships, I used the data on religious affiliation from IPEDS (2014) and then coded these religious traditions as having socially conservative positions on same-sex relationships if they consider same-sex relationships to be “sinful.” I draw

⁴Note that some schools (13.7%) adopted broader bans on “homosexual/heterosexual intercourse.” For my initial analyses, unless these schools separately indicated that they believed same-sex relationships to be intrinsically immoral or that they believed marriage should be between only a man and a woman, I did not code schools with such bans as having discriminatory handbook bans.

⁵I cross-checked Fuist et al.’s (2012) classifications and filled in occasional gaps in their study with my own review of official materials provided on the websites of these denominations.

⁶Although Fuist et al. (2012) consider only formal denominations in their study, I code independent and nondenominational Christian schools as individualist given that their doctrines generally align with evangelical Protestant denominations (Association of Religion Data Archives 2018). Indeed, past research shows nondenominational Christian churches to be deeply individualist in nature, perhaps unsurprising given that they reject formal association with other congregations (e.g., Cohen and Hill 2007).

Table 1. Examples of major religious traditions, by individualist and communal orientations and by conservative and liberal teachings on same-sex relationships.

| | Religious traditions with communal orientations | Religious traditions with individualist orientations |
|---|---|--|
| Religious traditions with conservative teachings on same-sex relationships | African Methodist Episcopal American Baptist Churches USA Christian Methodist Episcopal Church Church of the Brethren Mennonite Church USA Moravian Church in North America National Baptist Convention Roman Catholic Church United Methodist Church | Assemblies of God Churches of Christ Church of the Nazarene Lutheran Church—Missouri Synod Seventh Day Adventist Southern Baptist Convention Wesleyan Church Wisconsin Evangelical Lutheran Synod |
| Religious traditions with liberal teachings on same-sex relationships | Disciples of Christ Episcopal Church Evangelical Lutheran Church in America Friends General Conference Presbyterian Church USA United Church of Christ | Nondenominational Christian ^a Independent Baptist ^a Independent Lutheran ^a |

^aNondenominational and independent schools were coded as being associated with liberal teachings on same-sex relationships if those schools had broken off from a denomination due to a rejection of a denomination's social conservatism.

primarily on information from the Human Rights Campaign's (2015) faith statement database. Religious traditions with socially conservative or liberal teachings on same-sex relationships are also noted in Table 1. The group of religious traditions with socially conservative positions on same-sex relationships includes not only the aforementioned evangelical Protestant denominations but also the Roman Catholic Church, all of the aforementioned black Protestant denominations, two of the mainline Protestant denominations (American Baptist Churches USA and United Methodist Church), and two of the historic peace churches of Protestantism (Church of the Brethren and Mennonite Church USA). Religious traditions with socially liberal positions on same-sex relationships are limited to some of the mainline Protestant denominations (e.g., Disciples of Christ, Episcopal Church, Evangelical Lutheran Church in America, Presbyterian Church USA, and United Church of Christ) and the Friends General Conference, along with some independent or nondenominational Christian universities that have broken off previous ties to socially conservative denominations.⁷ Overall, 79% of Christian universities are associated with religious traditions that teach that same-sex relationships are "sinful" ($n = 538$ of 682).

I include control variables from past studies on LGBT groups and policies in U.S. schools (Coley 2017; Fetner and Kush 2008; Fine 2012; Kane 2013a). Although these studies concentrate on LGBT-inclusive policies in U.S. schools, I include variables from such studies with the expectation that any positive effects in studies of LGBT inclusion would be reversed in a study of discriminatory policies toward sexual minorities. For a first group of control variables, I consider institutional characteristics associated with LGBT-related policies, specifically a school's selectivity (percentage acceptance rate, drawing directly from data on the IPEDS [2014] website) and endowment per student (drawn directly from data on FindTheBest [2014], given the lack of data on endowment in IPEDS [2014]). Findings in past studies would seem to imply a negative effect for school selectivity and endowment on discriminatory handbook policies (Coley 2017; Kane 2013a).

For a second group of control variables, I consider student body characteristics associated with LGBT-related policies: the number of students at a school, the percentage of students of color,

⁷Although I classified many nondenominational Christian colleges and universities as socially conservative, given that their doctrines generally align with evangelical Protestant denominations (Association of Religion Data Archives 2018), if I found specific documentation that a school had broken off from a Christian denomination in reaction to its social conservatism, I coded that school as "liberal."

the percentage of women students, the percentage of students on need-based loans, and the percentage of students who major in religious studies or theological studies, all drawn directly from data on the IPEDS (2014) website. Findings in past studies would seem to suggest that schools with a lower total number of students and more religious/theological studies students would tend to adopt discriminatory handbook policies (Coley 2017; Fetner and Kush 2008; Fine 2012). (Findings on race, gender, and income composition of students have been extremely mixed across studies, with some indication that a higher percent of students of color is negatively associated with LGBT inclusion; Coley 2017; Kane 2013a.)

Finally, a third group of control variables relates to the sociopolitical contexts in which these Christian colleges and universities are embedded. I consider whether a school is located in a “blue” (Democratic-leaning) state, whether a school is located outside of the South, and whether the school is located outside of a rural area, drawing on data on school location from IPEDS (2014) matched with relevant data on 2012 election results and Census Bureau classification of southern states and rurality. Past studies would seem to imply negative effects for location in “blue states,” the non-South, and nonrural areas on the presence of discriminatory handbook policies (Coley 2017; Fetner and Kush 2008; Fine 2012).

In the analyses that follow, I provide descriptive statistics and results from logistic regressions. The descriptive statistics compare schools with discriminatory handbook bans to schools without discriminatory bans in terms of all variables included in the study (not holding other variables constant). I indicate when differences between schools with discriminatory bans and schools without discriminatory bans are statistically significant by providing results from chi-square tests of proportions and *t* tests of means. The multivariate logistic regression analyses indicate the logged odds of a Christian college or university having a student handbook ban on same-sex relationships or sexual behavior (e.g., “homosexual behavior” or “homosexual acts”). Because intraclass correlation coefficients indicate that a significant proportion of the total variance in discriminatory handbook bans is explained by clustering within religious traditions (but not within states), I employ cluster robust standard errors by religious tradition.⁸

Results

I begin by providing descriptive statistics. Specifically, Table 2 contrasts schools with discriminatory policies to schools without discriminatory policies in terms of each variable included in the study. The results show that schools with discriminatory policies tend to be associated with religious traditions with conservative teachings on same-sex relationships (94.31%); however, numerous schools without discriminatory policies are also associated with religious traditions maintaining conservative positions on same-sex relationships (75.14%). Schools with discriminatory policies are similarly associated with individualist religious traditions (91%), but the contrast with the percentage of schools that lack discriminatory policies but are associated with individualist religious traditions (9.77%) is much more stark. The bivariate relationships for control variables generally align with expectations.

Next, Table 3 provides the results of the multivariate logistic regression analyses of discriminatory student handbook bans at Christian colleges and universities. Model 1 represents the base model, including all control variables but excluding variables related to the individualist or socially conservative nature of a school’s affiliated religious tradition. The measure of model fit (Nagelkerke’s measure) is approximately 0.48. The remaining models (2 through 4) then introduce the variables for affiliated religious traditions seriatim. Model 2 shows that affiliation with a religious tradition that maintains a conservative position on same-sex relationships is significantly

⁸I also estimated results from multilevel models that conceptualize school (i.e., student body and institutional) characteristics as nested within denominations and found that the results were consistent with the logistic regression models that follow.

Table 2. Descriptive statistics for discriminatory handbook policies at Christian universities.

| | All schools | Schools with discriminatory policies | Schools without discriminatory policies | Sig. |
|--|-------------|--------------------------------------|---|------|
| Affiliation with conservative religious tradition (prop.) | 78.89% | 94.31% | 75.14% | *** |
| Affiliation with individualist religious tradition (prop.) | 34.90% | 91.00% | 9.77% | *** |
| Number of students (mean) | 2,430 | 1,985 | 2,630 | *** |
| % Students of color (mean) | 31.79% | 27.41% | 33.75% | *** |
| % Women (mean) | 59.17% | 53.27% | 61.81% | *** |
| % Students on loans (mean) | 67.07% | 63.54% | 68.66% | ** |
| Endowment (FTE) (mean) | \$30,025 | \$18,121 | \$35,358 | *** |
| % Acceptance (mean) | 67.70% | 70.77% | 66.32% | * |
| % State vote for Obama (mean) | 48.93% | 46.82% | 49.87% | *** |
| Non-South (prop.) | 61.88% | 53.55% | 65.61% | *** |
| Nonrural (prop.) | 74.78% | 70.14% | 76.86% | * |
| Sample size | 682 | 211 | 471 | |

Note. Sig. = significance; prop. = proportion; FTE = full-time equivalent.

* $p < .05$. ** $p < .01$. *** $p < .001$ (two-tailed tests).

Table 3. Logistic regression models for discriminatory handbook policies at Christian universities.

| | Model 1 | Model 2 | Model 3 | Model 4 |
|--|-----------|-----------|-----------|-----------|
| | <i>b</i> | <i>b</i> | <i>b</i> | <i>b</i> |
| | SE | SE | SE | SE |
| <i>Religion variables</i> | | | | |
| Affiliation with religious tradition with conservative teachings on same-sex relationships | | 1.565* | | -0.945 |
| | | 0.737 | | 0.619 |
| Affiliation with individualist religious tradition | | | 4.275*** | 0.778 |
| | | | 0.445 | 1.282 |
| Affiliation with religious tradition with conservative teachings on same-sex relationships x individualist religious tradition | | | | 4.281** |
| | | | | 1.355 |
| <i>Student body characteristics</i> | | | | |
| Number of students | 0.000 | 0.000 | 0.000 | 0.000 |
| | 0.000 | 0.000 | 0.000 | 0.000 |
| % Students of color | -2.413** | -2.557** | -2.631** | -2.315* |
| | 0.892 | 0.844 | 0.875 | 1.010 |
| % Women | -2.045 | -1.952 | -2.308 | -2.037 |
| | 1.434 | 1.497 | 1.543 | 1.767 |
| % Student loans | -0.957 | -0.715 | -0.139 | -0.802 |
| | 0.825 | 0.884 | 1.026 | 1.015 |
| % Religion majors | 7.750*** | 7.450*** | 4.723*** | 4.463*** |
| | 2.247 | 2.214 | 0.937 | 1.083 |
| <i>Institutional characteristics</i> | | | | |
| Endowment (FTE) | 0.000 | 0.000 | 0.000 | 0.000 |
| | 0.000 | 0.000 | 0.000 | 0.000 |
| % Acceptance | -0.298 | -0.249 | 0.218 | 1.021 |
| | 0.684 | 0.677 | 0.930 | 0.982 |
| <i>Contextual characteristics</i> | | | | |
| % State vote for Obama | -2.292 | -2.232 | -1.759 | -2.471 |
| | 1.690 | 1.544 | 3.214 | 3.430 |
| Non-South | -0.637 | -0.672 | 0.110 | 0.109 |
| | 0.379 | 0.421 | 0.581 | 0.552 |
| Nonrural | -0.177 | -0.316 | -0.342 | -0.210 |
| | 0.267 | 0.281 | 0.278 | 0.360 |
| Constant | 3.068* | 1.594 | -0.551 | 0.026 |
| | 1.341 | 1.279 | 1.254 | 1.156 |
| Chi-square | 281.00*** | 304.80*** | 526.49*** | 561.83*** |
| Nagelkerke | 0.476 | 0.508 | 0.758 | 0.791 |

Note. SE = standard error; FTE = full-time equivalent.

* $p < .05$. ** $p < .01$. *** $p < .001$ (two-tailed tests).

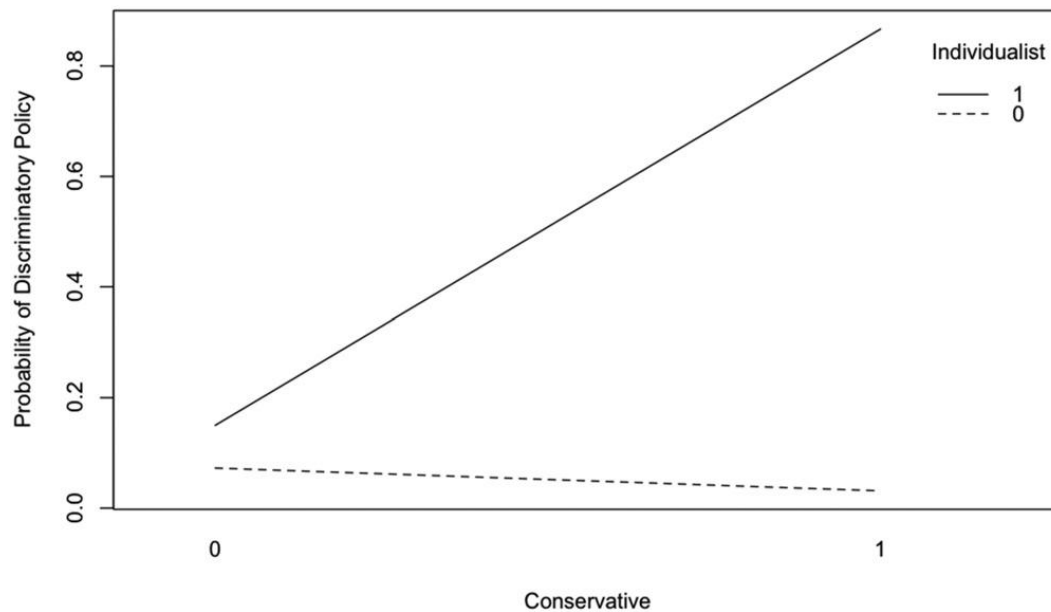


Figure 1. Interaction effect between individualist orientation and conservative teachings about same-sex relationships on presence of discriminatory policy.

and positively associated with the presence of discriminatory student handbook bans, as expected. By exponentiating the coefficient for a religious tradition with a conservative position on same-sex relationships, one finds that the odds of having a discriminatory handbook ban are 4.78 times greater for schools associated with religious traditions maintaining conservative positions on same-sex relationships than for schools associated with religious traditions maintaining liberal positions on same-sex relationships. Note, however, that the measure of model fit in Model 2 improves only slightly (to 0.51). Model 3 introduces the variable for affiliation with an individualist religious tradition, and this variable is similarly significantly and positively associated with the presence of student handbook bans. In this case, however, the odds of having a discriminatory handbook ban are 71.88 times greater for schools associated with individualist religious traditions than for schools associated with communal religious traditions. Nagelkerke's measure now improves to 0.76. Finally, Model 4 introduces the interaction term indicating whether a school is affiliated with a religious tradition that is both conservative and individualist in nature. This interaction term is significantly and positively associated with the presence of student handbook bans, indicating that when a school is associated with an individualist religious tradition, the simultaneous association with a religious tradition maintaining a conservative position on same-sex relationships now leads to 72.31 greater odds of having a discriminatory handbook ban. In this final combined model, the measure of model fit improves further to 0.79.

Figure 1 provides a visual model of the interaction effect between theological orientation and teachings on same-sex relationships and makes the utility of the interaction term clear. Specifically, Figure 1 shows that it is when a school is associated with a religious tradition that maintains both a conservative teaching on same-sex relationships and an overall individualist orientation that it is more likely to have a discriminatory ban than not (with more than 80% of such schools having discriminatory policies). Schools affiliated with religious traditions that maintain conservative teachings on same-sex relationships yet are also associated with communalist religious traditions are not likely to have discriminatory bans, and similarly any schools affiliated with religious traditions with liberal teachings on same-sex relationships (whether those religious traditions are individualist or not) are unlikely to have student handbook bans.

Only rarely do any of the control variables have statistically significant effects on the presence of student handbook bans. Specifically, in each of the models, an increase in the percentage of

students of color at a school is negatively associated with the presence of a student handbook ban, whereas an increase in the percentage of religion or theological studies majors at a school is positively associated with the presence of a student handbook ban. No other control variables are significant. The finding on a school's racial composition is somewhat surprising, given that the percentage of students of color at a school has sometimes been negatively associated with the presence of LGBT groups at colleges and universities (Coley 2017; Kane 2013a). This finding seems to indicate that, although racially diverse campuses may not be particularly inclusive, they do not go out of their way to be exclusionary, either. By contrast, the finding on percentage of religion and theological studies majors at a school is very much in line with past literature and may partly be driven by some highly conservative schools that require students to maintain religion or theological studies as one of their college majors (Coley 2017).

Alternative models

It is possible that the dependent variable included in the preceding models undercounts the number of schools that take discriminatory actions against sexual minority students. Specifically, although past research has shown that more than 55% of Christian colleges and universities have adopted nondiscrimination policies inclusive of sexual orientation (Coley 2017), and although this study shows that more than 31% of Christian colleges and universities have adopted student handbook policies on same-sex relationships or sexual behavior, a remaining 13.7% of Christian colleges and universities lack either kind of policy or have seemingly neutral policies toward sexual minority students (e.g., bans on “homosexual/heterosexual intercourse”). It is possible these schools might still find ways to discriminate against sexual minority students or enforce seemingly neutral bans against their lesbian, gay, bisexual students more often than against their heterosexual students. Thus, in additional analyses (not shown here but available upon request), I constructed an alternative dependent variable that analyzes whether a school has declined to adopt a nondiscrimination policy inclusive of sexual orientation (and thus has a formal student handbook ban on same-sex relationships or behavior, a seemingly neutral policy against homosexual/heterosexual policy, or no policy at all). The results remain consistent with the models just presented—the interaction effect between individualist orientation and a conservative teaching on same-sex relationships remains the strongest predictor—although the overall model fit is slightly weaker (0.64 in the combined model). The only control variable that is significant (and a negative predictor) in a combined model is a state's percentage vote for Obama, indicating that a state's political leanings may rise in importance when considering why schools lack inclusive nondiscrimination policies.

Discussion

Why do some Christian colleges and universities discriminate against lesbian, gay, and bisexual students? The results clearly support the central proposition advanced in this study—specifically, Christian colleges and universities associated with conservative religious traditions that teach that homosexuality is a “sin” will tend to adopt discriminatory student handbook bans on same-sex relationships or sexual behavior if those religious traditions also exhibit individualist theological orientations that emphasize matters of personal piety. Christian schools associated with conservative religious traditions that nevertheless exhibit communal theological orientations—that is, that are oriented toward issues of social justice—tend to lack such handbook bans, as do most Christian schools associated with liberal religious traditions (whether individualist or communalist).

A close analysis of the data reveals limited heterogeneity among schools associated within any given denomination in terms of their policies on same-sex relationships; in other words, schools

associated within any given denomination largely take the same approach to same-sex relationships. Specifically, the following denominations (all exhibiting communal orientations) are not affiliated with any schools that have adopted discriminatory student handbook policies regarding same-sex relationships or sexual behavior: African American Episcopal Church, American Baptist Churches USA, Disciples of Christ, Episcopal Church, Evangelical Lutheran Church in America, United Church of Christ, and United Methodist Church. Roman Catholic Church, Presbyterian Church USA, and Friends schools come quite close to lacking discriminatory policies. This is not to say these schools are entirely welcoming—indeed, school cultures likely vary significantly—but it is to say that these schools have generally decided not to formally exclude lesbian, gay, and bisexual students from their schools. Conversely, all schools affiliated with the following denominations (all exhibiting individualist orientations) have adopted discriminatory policies toward “homosexual acts” and “homosexual behavior”: Assemblies of God and Wesleyan Church. Churches of Christ, Nazarene, and Seventh Day Adventist schools also come close to nearly all having discriminatory policies. (For the sake of this discussion, I have not listed those denominations that are only affiliated with fewer than five schools.)

The schools with the most diversity in terms of their policies among the remaining larger religious traditions are independent and nondenominational Christian schools (some of which broke off from denominations because of objections to their social conservatism and thus no longer have a formal denomination holding them back from opening their doors to lesbian, gay, and bisexual students), as well as Southern Baptist schools. The Southern Baptist Convention is more decentralized than many other large denominations, and indeed Baptist schools tend to be affiliated with state Baptist conventions (rather than the national Southern Baptist Convention as a whole), which may provide individual schools some flexibility in setting policies. Again, it is important to emphasize that schools that lack discriminatory handbook bans are not necessarily welcoming—indeed, very few Baptist schools have gone so far as to adopt inclusive nondiscrimination policies—as well as to note that many of the schools continue to marginalize sexual minority students through more subtle ways, such as through heteronormative housing policies.

Overall, though, it seems clear that the religious traditions with which Christian colleges and universities are affiliated have a strong impact on their schools’ policies toward sexual minorities, and this effect is likely due to those religious traditions’ individualist or communal orientations. Indeed, the theological orientations of the religious traditions with which Christian colleges and universities are affiliated may shape schools’ conceptions of what it means to *be* a Christian college or university. Specifically, schools associated with individualist religious traditions (which emphasize personal piety) may see themselves as catering primarily to Christian students and hold them to their traditions’ interpretations of Christian teachings on same-sex relationships. However, schools associated with communal religious traditions (which emphasize social justice) may see themselves as providing education to everyone in their surrounding communities, whether those people are Christian or non-Christian, and that means that these schools open their doors even to students with whom they disagree.

Conclusion

Lesbian, gay, and bisexual students attend Christian colleges and universities for many of the same reasons as straight students: Some students are devoutly religious and seek to both grow in their faith and have opportunities to explore questions regarding the meaning of life in ways that might not be possible at secular schools (Glanzer, Hill, and Johnson 2017; Hawthorne 2014). Other lesbian, gay, and bisexual students, much like their heterosexual peers, attend Christian colleges and universities not so much out of any strong faith convictions (Dalessandro 2016) but because their parents have encouraged them to go there, because the school is in an attractive location, because the school has a good academic reputation, or because the school gave them the

most financial aid (Coley 2018). Regardless, sexual minority students face particular challenges to their inclusion at nearly one-third of such campuses in the form of student handbook bans on same-sex relationships and sexual behavior.

This study is the first both to document and to explain variations in the presence of discriminatory policies toward sexual minority students across Christian colleges and universities in the United States, showing that schools tend to discriminate against their sexual minority students when they are affiliated with religious traditions that teach that same-sex relationships are “sinful” and exhibit an overarching focus on issues of personal piety. The study not only fills a lacuna in research on campus policies toward lesbian, gay, and bisexual students but also seeks to advance sociological theory on the role of various religious traditions in the “culture wars.” Specifically, the study pushes back against the notion that religious traditions engaged in the culture wars can be distinguished along predictable conservative or liberal lines and instead argues that to fully understand religious traditions’ support or opposition to social justice, one must also understand these religious traditions’ individualist or communal orientations (Fuist et al. 2012; Kniss 2003; Kniss and Numrich 2007). Past studies in the sociology of religion on black Protestant churches, although not using the same language of individualism or communalism, have demonstrated similar divides between (and within) religious traditions. For example, Barnes (2004:202) has shown that black churches specializing in “prophetic functions” (e.g., by promoting community empowerment) were more involved in providing social services to black communities than black churches specializing in “priestly functions,” which focused on “spiritual/religious needs of members” (see also Reed, Williams, and Ward [2016] on this priestly and prophetic distinction). Similarly, Davidson and Garcia (2014) have shown that, due to their churches’ histories of teachings in favor of social justice, black Protestants are more likely to support social services for undocumented immigrants as compared to the more individualistic white evangelical Protestants. However, this study is relatively unique in applying such a framework across a full range of Christian religious traditions (also see Coley 2017; Fuist et al. 2012). Future studies might similarly draw on this framework to understand religious traditions’ stances on social issues such as transgender rights, no-fault divorce, and access to contraception.

The results also contribute to the literature on gender, sexuality, and education. Past scholarship has identified predictors of LGBT groups and inclusive nondiscrimination policies in U.S. schools (Fetner and Kush 2008; Fine 2012; Kane 2013b), including Christian colleges and universities in particular (Coley 2017). However, we have lacked insight into why some schools adopt policies that discriminate against their sexual minority students, a phenomenon mostly confined to religious colleges and universities and previously identified by Wolff and Himes (2010). This study has both documented and theorized variation in such discriminatory policies across the full range of Christian colleges and universities in the United States. Future studies might examine whether the framework can explain discriminatory policies at non-Christian religious colleges and universities in the United States or at Christian colleges and universities outside the United States.

Finally, the results have practical implications for the growing number of student movements mobilizing to challenge discriminatory policies at Christian colleges and universities (Coley 2014, 2018; McEntarfer 2011; Vespone 2016), as well as for the work of activist groups such as Soulforce (a national organization that has held “Equality Rides” to schools with discriminatory student handbook policies; see Powell 2011; Spencer and Barnett 2013). Lesbian, gay, and bisexual students attending many Christian colleges and universities face a negative campus climate (Craig et al. 2017; Rockenbach and Crandall 2016; Woodford et al. 2013), placing them at risk of bullying, harassment, and mental health problems (Craig et al. 2017; Wolff et al. 2016). Sexual minority students at such schools also commonly report experiencing personal religious-sexual identity conflicts (Bailey and Strunk 2018; Coley 2014; Hughes 2018; Longard 2013; Wedow et al. 2017), given long-standing skepticism and hostility toward lesbian, gay, and bisexual people from many

people of faith (e.g., Barringer, Gay, and Lynxwiler 2013; Zeininger, Holtzman, and Kraus 2017). The results suggest one practical strategy for challenging such discriminatory policies and thus improving the campus climate for sexual minorities (and perhaps also transgender students) at Christian colleges and universities: deploying communalist religious arguments in favor of LGBT rights. One comparative study of LGBT activism at four Christian colleges and universities showed that employing religious discourse that emphasizes that a Christian community should be loving and welcoming toward everyone has been highly successful at ending discriminatory policies at some schools (such as Belmont University, a formerly Southern Baptist and currently non-denominational university in Nashville, Tennessee, and Goshen College, a Mennonite college in Goshen, Indiana) (Coley 2018:ch. 4). Activist groups that eschewed religious discourse in favor of more generic pro-human rights arguments were, by comparison, less successful in challenging discriminatory policies (Coley 2018:ch. 4). The continued individualist leanings of many of these schools' affiliated denominations will continue, however, to remain an obstacle, as will these schools' affiliation with conservative consortiums such as the CCCU (Wolff and Himes 2010), which will perhaps force more pointed policy and legal conversations in the years to come (Gjelten 2018).

Author notes

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References

- Adler, Gary. 2012. "An Opening in the Congregational Closet? Boundary-Bridging Culture and Membership Privileges for Gays and Lesbians in Christian Religious Congregations." *Social Problems* 59(2):177–206
- Allen, Samantha. 2018. "Under Trump and DeVos, Trans Students Face 'Spiritual Violence' at Religious Schools." *The Daily Beast*. Retrieved August 25, 2018 (<https://www.thedailybeast.com/under-trump-and-devos-trans-students-face-spiritual-violence-at-religious-schools>).
- Association of Religion Data Archives. 2018. "Evangelical Protestant Denominations." Retrieved March 31 2018. (<http://www.thearda.com/rcms2010/evangelical.asp>).
- Bailey, Lucy E., and Kamden K. Strunk. 2018. "A Question Everybody Danced Around: Gay Men Making Sense of Their Identities in Christian Colleges." *Educational Studies* 54(5):483–504. doi:10.1080/00131946.2018.1453513.
- Barnes, Sandra L. 2004. "Priestly and Prophetic Influences on Black Church Social Services." *Social Problems* 51(2): 202–21. doi:10.1525/sp.2004.51.2.202.
- Barringer, Mandi Nicole, David A. Gay, and John P. Lynxwiler. 2013. "Gender, Religiosity, Spirituality, and Attitudes toward Homosexuality." *Sociological Spectrum* 33(3):240–57. doi:10.1080/02732173.2013.732903.
- Cohen, Adam B., and Peter C. Hill. 2007. "Religion as Culture: Religious Individualism and Collectivism among American Catholics, Jews, and Protestants." *Journal of Personality* 75(4):709–42.
- Coley, Jonathan S. 2014. "Social Movements and Bridge Building: Religious and Sexual Identity Conflicts." *Research in Social Movements, Conflicts, and Change* 37:125–51.
- Coley, Jonathan S. 2017. "Reconciling Religion and LGBT Rights: Christian Universities, Theological Orientations, and LGBT Inclusion." *Social Currents* 4(1):87–106. doi:10.1177/2329496516651639.

- Coley, Jonathan S. 2018. *Gay on God's Campus: Mobilizing for LGBT Equality at Christian Colleges and Universities*. Chapel Hill, NC: University of North Carolina Press.
- Craig, Shelley L., Ashley Austin, Mariam Rashidi, and Marc Adams. 2017. "Fighting for Survival: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Students in Religious Colleges and Universities." *Journal of Gay and Lesbian Social Services* 29(1):1–24. doi:10.1080/10538720.2016.1260512.
- Dallessandro, Cristen. 2016. "I Don't Advertise the Fact That I'm a Catholic': College Students, Religion, and Ambivalence." *Sociological Spectrum* 36(1):1–12. doi:10.1080/02732173.2015.1068141.
- Davidson, Theresa C., and Carlos Garcia. 2014. "Welcoming the Stranger: Religion and Attitudes toward Social Justice for Immigrants in the U.S." *Journal of Religion and Society* 16(1):1–21.
- Fetner, Tina. 2008. *How the Religious Right Shaped Lesbian and Gay Activism*. Minneapolis, MN: University of Minnesota Press.
- Fetner, Tina, and Kristin Kush. 2008. "Gay-straight Alliances in High Schools: Social Predictors of Early Adoption." *Youth and Society* 40(1):114–30. doi:10.1177/0044118X07308073.
- Fine, Leigh E. 2012. "The Context of Creating Space: Assessing the Likelihood of College LGBT Center Presence." *Journal of College Student Development* 53(2):285–99. doi:10.1353/csd.2012.0017.
- Fuist, Todd N., Laurie Cooper Stoll, and Fred Kniss. 2012. "Beyond the Liberal-Conservative Divide: Assessing the Relationship between Religious Denominations and Their Associated LGBT Organizations." *Qualitative Sociology* 35(1):65–87. doi:10.1007/s11133-011-9211-3.
- Gjelten, Tom. 2018. "Christian Colleges Are Tangled in Their Own LGBT Policies." NPR. Retrieved March 31, 2018 (<https://www.npr.org/2018/03/27/591140811/christian-colleges-are-tangled-in-their-own-lgbt-policies>).
- Glanzer, Perry L., Jonathan P. Hill, and Byron R. Johnson. 2017. *The Quest for Purpose: The Collegiate Search for a Meaningful Life*. Albany, NY: SUNY Press.
- Griffith, R. Marie. 2017. *Moral Combat: How Sex Divided American Christians & Fractured American Politics*. New York, NY: Basic Books.
- Hawthorne, John W. 2014. *A First Step into a Much Larger World: The Christian University and beyond*. Eugene, OR: Wipf & Stock.
- Hughes, Bryce E. 2018. "Resilience of Grassroots Leaders Involved in LGBT Issues at a Catholic University." *Journal of Student Affairs Research and Practice* 55(2):123–36. doi:10.1080/19496591.2017.1366330.
- Human Rights Campaign. 2015. "Faith Positions." Retrieved June 20:2015. <https://www.hrc.org/resources/faith-positions>.
- Hunter, James D. 1991. *Culture Wars: The Struggle to Define America*. New York: Basic Books.
- Integrated Postsecondary Education Data System (IPEDS). 2014. "College Navigator." U.S. Department of Education. Retrieved November 16, 2014 (<http://nces.ed.gov/ipeds>).
- Kane, Melinda D. 2013a. "Finding 'Safe' Campuses: Predicting the Presence of LGBT Student Groups at North Carolina Colleges and Universities." *Journal of Homosexuality* 60:328–52.
- Kane, Melinda D. 2013b. "LGBT Religious Activism: Predicting State Variations in the Number of Metropolitan Community Churches, 1974-2000." *Sociological Forum* 28(1):135–58. doi:10.1111/sof.12006.
- Kazyak, Emily, Kelsy Burke, and Matthew Stange. 2018. "Logics of Freedom: Debating Religious Freedom Laws and Gay and Lesbian Rights." *Socius* 4:1–18.
- Kniss, Fred. 2003. "Mapping the Moral Order: Depicting the Terrain of Religious Conflict and Change." Pp. 331–47 in *Handbook of the Sociology of Religion*, edited by Michele Dillon. New York: Cambridge University Press.
- Kniss, Fred, and Paul D. Numrich. 2007. *Sacred Assemblies and Civic Engagement: How Religion Matters for America's Newest Immigrants*. New Brunswick, NJ: Rutgers University Press.
- Longard, Shelby. 2013. "The Reflexivity of Individual and Group Identity within Identity-Based Movements: A Case Study." *Humanity and Society* 37(1):55–79. doi:10.1177/0160597612455745.
- McEntarfer, Heather Killelea. 2011. "Not Going Away': Approaches Used by Students, Faculty, and Staff Members to Create Gay-straight Alliances at Three Religiously Affiliated Universities." *Journal of LGBT Youth* 8(4): 309–31.
- Powell, Rachel. 2011. "Frames and Narratives as Tools for Recruiting and Sustaining Group Members: The Soulforce Equality Ride as a Social Movement Organization." *Sociological Inquiry* 81(4):454–76. doi:10.1111/j.1475-682X.2011.00386.x.
- Reed, Jean-Pierre, Rhys H. Williams, and Kathryn B. Ward. 2016. "Civil Religious Contention in Cairo, Illinois: Priestly and Prophetic Ideologies in a 'Northern' Civil Rights Struggle." *Theory and Society* 45(1):25–55. doi:10.1007/s11186-015-9262-7.
- Rockenbach, Alyssa N., and Rebecca E. Crandall. 2016. "Faith and LGBTQ Inclusion: Navigating the Complexities of the Campus Spiritual Climate in Christian Higher Education." *Christian Higher Education* 16(1–2):62–71. doi:10.1080/15363759.2015.1106355.
- Soulforce. 2018. "#GiveBackIX FAQ." Soulforce. Retrieved August 25, 2018 (<https://www.soulforce.org/ix-campaign>).

- Spencer, Leland G., and Joshua Trey Barnett. 2013. "Touring Homophobia: Understanding the Soulforce Equality Ride as a Toxic Tour." *Southern Communication Journal* 78(1):25–41. doi:[10.1080/1041794X.2012.717683](https://doi.org/10.1080/1041794X.2012.717683).
- Thomas, William Isaac, and Dorothy Swaine Thomas. 1928. *The Child in America: Behavior Problems and Programs*. New York, NY: Knopf.
- Vesponse, Brianna M. 2016. "Integrating Identities: Facilitating a Support Group for LGBTQ Students on a Christian Campus." *Christian Higher Education* 15(4):215–29. doi:[10.1080/15363759.2016.1186250](https://doi.org/10.1080/15363759.2016.1186250).
- Wedow, Robbee, Landon Schnabel, Lindsey K. D. Wedow, and Mary Ellen Konieczny. 2017. "I'm Gay and I'm Catholic": Negotiating Two Complex Identities at a Catholic University." *Sociology of Religion* 78(3):289–317. doi:[10.1093/socrel/srx028](https://doi.org/10.1093/socrel/srx028).
- White, Heather. 2015. *Reforming Sodom: Protestants and the Rise of Gay Rights*. Chapel Hill, NC: University of North Carolina Press.
- Whitehead, Andrew L. 2013. "Religious Organizations and Homosexuality: The Acceptance of Gays and Lesbians in American Congregations." *Review of Religious Research* 55(2):297–317. doi:[10.1007/s13644-012-0066-1](https://doi.org/10.1007/s13644-012-0066-1).
- Whitehead, Andrew L. 2017. "Institutionalized Norms, Practical Organizational Activity, and Loose Coupling: Inclusive Congregations' Responses to Homosexuality." *Journal for the Scientific Study of Religion* 56(4):820–35. doi:[10.1111/jssr.12484](https://doi.org/10.1111/jssr.12484).
- Wilcox, Clyde. 1991. *God's Warriors: The Christian Right in Twentieth-Century America*. Baltimore, MD: Johns Hopkins University Press.
- Williams, Daniel K. 2010. *God's Own Party: The Making of the Christian Right*. New York, NY: Oxford University Press.
- Wolff, Joshua R., and Heather L. Himes. 2010. "Purposeful Exclusion of Sexual Minority Youth in Christian Higher Education: The Implications of Discrimination." *Christian Higher Education* 9(5):439–60. doi:[10.1080/15363759.2010.513630](https://doi.org/10.1080/15363759.2010.513630).
- Wolff, Joshua R., Heather L. Himes, Sabrina D. Soares, and Ellen Miller Kwon. 2016. "Sexual Minority Students in Non-Affirming Religious Higher Education: Mental Health, Outness, and Identity." *Psychology of Sexual Orientation and Gender Diversity* 3(2):201–12. doi:[10.1037/sgd0000162](https://doi.org/10.1037/sgd0000162).
- Woodford, Michael R., Denise Levy, and N. Eugene Walls. 2013. "Sexual Prejudice among Christian College Students, Denominational Teachings, and Personal Religious Beliefs." *Review of Religious Research* 55(1):105–30. doi:[10.1007/s13644-012-0067-0](https://doi.org/10.1007/s13644-012-0067-0).
- Wuthnow, Robert. 1988. *The Restructuring of American Religion: Society and Faith since World War II*. Princeton, NJ: Princeton University Press.
- Wuthnow, Robert. 1989. *The Struggle for America's Soul: Evangelicals, Liberals, and Secularism*. Grand Rapids, MI: Eerdmans.
- Zeininger, Katherine, Melissa Holtzman, and Rachel Kraus. 2017. "The Reciprocal Relationship between Religious Beliefs and Acceptance of One's Gay or Lesbian Family Member." *Sociological Spectrum* 37(5):282–98. doi:[10.1080/02732173.2017.1348279](https://doi.org/10.1080/02732173.2017.1348279).

Sexual Minority Students in Non-Affirming Religious Higher Education: Mental Health, Outness, and Identity

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Sexual minority (SM) students are vulnerable to increased rates of psychological distress and harassment as a result of stigma and other forms of marginalization in the college environment. However, little research has been conducted on the experiences and psychological functioning among SMs who attend nonaffirming religiously affiliated universities (NARAU) that enforce restrictive admission and conduct policies toward SM students, and/or view same-sex romantic expressions and identities as sinful. SM students ($N = 213$) attending NARAU completed the Counseling Center Assessment of Psychological Symptoms (CCAPS), the Outness Inventory (OI), and the Lesbian, Gay and Bisexual Identity Scale (LGBIS). Results indicate that SM students who attend Mormon, Evangelical, and Nondenominational Christian NARAU had more difficulty coming to terms with their sexual orientation than those in Catholic or Mainline Protestant schools. Furthermore, Mormon students reported significantly more incongruence between their sexual orientation and religious beliefs than other religious groups. Students who were involved with a Gay–Straight Alliance (GSA) had significantly less difficulty with their sexual orientation, less negative identities, and less religious incongruence than those students not involved with a GSA. More than 1 third (37%) reported being bullied or harassed at school because of their sexual orientation. Almost 1 in 5 (17%) reported a mental health professional had attempted to change their sexual orientation. Implications and recommendations for NARAU campus communities and counseling centers are discussed.

Keywords: gay, higher education, lesbian, religion, sexual minority

Sexual minorities¹ (SM; a term that encompasses lesbian, gay, bisexual, and queer/questioning [LGBQ] persons) can encounter unique challenges in the college environment, including verbal and sexual harassment, threats, and physical assaults (Rankin, Weber, Blumenfeld, & Frazer, 2010). More subtle forms of marginalization are often overlooked, including anti-LGBQ jokes or slurs, incivility and social rejection, limited access to SM role models,

lack of inclusion of LGBQ topics in curriculum, insufficient support services, and poor overall campus climate (Meyer, Oullette, Haile, & McFarlane, 2011; Swim, Pearson, & Johnston, 2007; Woodford, Han, Craig, Lim, & Matney, 2014). Students who have multiple minority identities (e.g., a Black lesbian female) report even higher rates of victimization and marginalization than both SM and non-SM students (Rankin, 2005; Rankin et al., 2010).

SM students who feel marginalized on their campuses are more likely to conceal their identity to avoid harassment, intimidation, and/or being identified as a SM (Pachankis & Goldfried, 2006; Rankin, 2005). Concealment, harassment, and stigma are associated with feeling of isolation, emotional distress, cognitive preoccupation, negative self-esteem, disengagement from academic responsibilities, and lower GPA among SM college students (Pachankis, 2007; Smart & Wegner, 1999; Woodford & Kulick, 2015). Further, SM students are more likely to seek college counseling services, and report significantly higher amounts of depressive symptoms, social anxiety, and eating concerns than their heterosexual peers, particularly among SMs who are questioning

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¹ We did not include gender minorities (e.g., transgender, genderqueer persons) in most of this article because a majority of the studies reviewed and measures used (see Method section) were only standardized on sexual minority populations. Data on gender minority students were collected in a separate follow-up study.

their sexual orientation (Center for Collegiate Mental Health [CCMH], 2015a; Effrig, Maloch, McAleavey, Locke, & Bieschke, 2014; Maloch, Bieschke, McAleavey, & Locke, 2013; McAleavey, Castonguay, & Locke, 2011; Woodford et al., 2014). Given these disparities, it is unsurprising that past data indicate that SM students are up to 2.6 times more likely to attempt suicide than heterosexual peers (Kisch, Leino, & Silverman, 2005). Recent data suggest that perceived burdensomeness of sexual orientation may be a factor that mediates this increased risk among cisgender SM individuals (Silva, Chu, Monahan, & Joiner, 2015).

These challenges may influence SM students in disproportional ways than heterosexual peers, even at college campuses that promote inclusive and LGBQ-affirming environments (Rankin et al., 2010; Woodford et al., 2014). However, many unanswered questions remain about campus environments that are explicitly non-affirming or rejecting toward SM students. In particular, almost no data exist on the experiences of SM students who attend nonaffirming religiously affiliated universities (NARAU). *Affirming* describes religious communities and beliefs that fully welcome SM individuals to all levels of participation (e.g., church membership) and view nonheterosexual identities and relationships as normative (Barnes & Meyer, 2012; Lee, 2012). In contrast, *non-affirming* religious perspectives and communities maintain that only heteronormative roles and relationships are morally acceptable. As such, the majority of same-sex romantic behaviors and gender nonconforming expressions are viewed as sinful and/or psychologically disordered (Barnes & Meyer, 2012; Lee, 2012). These faith communities often do not allow SM persons to become members, hold positions of leadership or employment, or participate in sacred traditions (e.g., communion; Hatzenbuehler, Pachankis, & Wolff, 2012). As a result, the purpose of this study is to examine the experiences, psychological functioning, sexual identity, and overall outness of SM students who attend NARAU.

Religion and Spirituality Among SM Individuals

Religion and spirituality play an important role in identity development and disclosure among SMs. In a sample of strongly religious Christian SM students at three religiously affiliated Evangelical universities, participants reported both positive and negative experiences following initial awareness of same-sex attraction including shame, guilt, fear about their families reaction, or being part of “[God’s] diverse Kingdom” (Yarhouse, Stratton, Dean, & Brooke, 2009, p. 100). Only a small proportion had disclosed their sexual identities to family members, a youth pastor, or a teacher, yet more than half had disclosed to a friend. Furthermore, only 14% of the SM sample identified as “gay,” and those who did not identify as gay reported greater confusion about their sexual identity. Other findings suggest that greater involvement in nonaffirming religious communities is associated with higher *internalized homophobia*—the extent that a person absorbs negative social and community sentiments toward LGB persons—among SMs (Barnes & Meyer, 2012).

Religion and religious community involvement can be important sources of social and emotional support that can be associated with positive health benefits and decreased psychiatric morbidity (Galek, Flannely, Ellison, Sifton, & Jankowski, 2015; Hamblin & Gross, 2014). Other benefits can include a sense of connection with a higher power to help resolve identity concerns, connection

to others who share similar values, and a general sense of love, hope, grace, forgiveness, support, encouragement, strength, and acceptance (Yarhouse et al., 2009). Additionally, those who experience dissonance with their sexual orientation may also see religion as a means of healing or correcting perceived sinful identities and/or sexual/romantic attractions (Yarhouse et al., 2009). Despite the potential benefits of religious involvement for SM individuals, significantly fewer LGB adults identify as religious when compared to heterosexual adults (Pew Research Center, 2015a).

Evidence remains mixed as to whether benefits associated with religion exist for SM individuals (Rodriguez, 2009; Rosario, Yali, Hunter, & Gwadz, 2006). To examine the ecological impact of religion on LGB youth, Hatzenbuehler, Pachankis, and Wolff (2012) conducted a population-based study of LGB youth in Oregon to assess whether denominational positions on homosexuality and gay rights were predictive of alcohol abuse and sexually transmitted infection (STI) risks (assessed via number of sexual partners). The authors found that LGB youth living in counties that had higher concentrations of nonaffirming faith communities had increased rates of alcohol abuse and more sexual partners than LGB youth who lived in counties with more affirming faith communities. The results remained significant even when controlling for other community factors (e.g., number of gay-straight-alliances in school) and were stronger among LGB youth when compared with a heterosexual control group. Among LGB adults, Meyer, Teylan, and Schwartz (2015) found that seeking treatment from a religious or spiritual advisor was associated with increased odds of attempting suicide, even when controlling for previous mental health diagnoses and multiple suicide attempts. Furthermore, individuals who experience dissonance between their religious beliefs and sexual orientation are often inclined to seek out sexual orientation change efforts (SOCE), such as reparative (“reorientation”) therapies (Bradshaw, Dehlin, Crowell, Galliher, & Bradshaw, 2015; Jones & Yarhouse, 2011). Thus, seeking help from a religious resource may worsen health outcomes for many SMs.

A likely moderator that could explain the discrepancies found in the data could be whether faith communities are affirming or nonaffirming. Nonaffirming views are largely (though not always) consistent with official doctrine of faith communities that most Americans belong to: Evangelical Protestants (25.4% of all Americans), Catholics (20.8%), Mainline Protestants (14.7%), Jews (1.9%), and Mormon/LDS (1.6%; Pew Research Center, 2015a). Past studies are helpful to distinguish group differences, noting that Protestants and Catholic LGB adults report more conflict about their sexual orientation than those who are Jewish, atheist, or agnostic (Schuck & Liddle, 2001). A potentially important nuance is that some faiths and religious individuals emphasize same-sex behavior as sinful as opposed to sexual orientation or attraction alone (Rosik, Griffith, & Cruz, 2007). Of note, many SM individuals who perceive rejection from nonaffirming religious communities often leave their religious faith entirely, become spiritual but no longer religious, or reinterpret religious teaching and their own personal theology (Schuck & Liddle, 2001). Further, attending a nonaffirming church is associated with symptoms of anxiety in lesbian and gay adults (Hamblin & Gross, 2013). Nonaffirming communities may also contribute to the perception that one must be less open about their sexual orientation. In a study of Mormon

adults who experienced same-sex attraction, participants who felt stigmatized by the Church of Jesus Christ of Latter-day Saints (LDS) reported greater concealment of their sexual orientation, which was positively associated with symptoms of anxiety and depression (Grigoriou, 2014).

SM Student Experiences in Non-Affirming Religious Higher Education

NARAU's include colleges, universities, and seminaries that have a rich and important history of providing students with liberal arts education while also nurturing faith and spiritual development through theological integration, community worship, and a range of other religious activities on campus. Though lacking in recent data, previous estimates indicate that there are over 200 NARAU's in the United States that actively bar admission of openly SM students, maintain behavioral codes that prohibit same-sex romantic expression, and/or limit and prohibit student organizations that affirm SM identities (Soulforce, 2008). Many NARAU's do not hold behavioral policies on campus, yet adhere to teachings that reject SM identities or relationships (e.g., marriage should only be between one man and one woman). Among religious institutions and communities, there is a wide range of beliefs and practices regarding gender and sexuality issues. Further, many faith-leaders and individuals have called for greater compassion and grace toward members of the SM community (e.g., Donadio, 2013) or advocated for civil rights such as legalization of same-sex marriage (Jones, 2015), though such remarks are not always synonymous with full affirmation of SM identities or relationships.

To understand sexual identity and developmental milestones of SM students who attend NARAU's, Stratton, Dean, Yarhouse, and Latoria (2013) sampled 247 SM students from 19 NARAU's. The authors operationalized SMs as individuals who experienced "same-sex attraction" (SSA), on the grounds that "persons in Christian colleges and universities who experience SSA but would not self-identify as gay, lesbian, bisexual" because of religious conflict with these terms (Yarhouse et al., 2009, p. 99). Results indicated that students who experienced moderate levels of SSA experienced significantly more confusion about their sexual identity than those with a high degree of SSA. Furthermore, the attitude toward one's sexual orientation was moderated by level of SSA, such that students with high amounts of SSA and low amounts of "opposite sex attraction" were less likely to view same-sex relationships and attractions as negative. Another important finding was that among students who reported SSA, an overwhelming majority (79%) still identified as heterosexual. The authors concluded that the decision to identify as heterosexual "may be associated with the influence of the campus culture, religious conviction, or personal choice, but it may also reflect a distinctive of those seeking to develop an identity that engages both the religious and the sexual" (Stratton et al., p. 19).

Data have also explored policies and behavioral standards that restrict LGBQ expressions and carry potential consequences at NARAU's. In a random sample of written student codes of conduct at 20 member institutions of the Council for Christian Colleges and Universities (primarily Evangelical schools), Wolff and Himes (2010) found the following consequences for LGBQ "behavior" (e.g., holding hands, kissing, or any other form of sexual expression): academic probation, mandatory psychological counseling,

on-campus restrictions/limitations of privileges, suspension, and dismissal/expulsion. Further, a flurry of recent media reports show that many NARAU's deny the use of campus space to LGBQ affirming student organizations or clubs, maintain hostile classroom and campus environments for SM students, and endorse SOCE (Eckholm, 2011; Hinch, 2013; Jaschik, 2013; Sieczkowski, 2014). A qualitative study at a Roman Catholic university provided concrete examples of hostilities and harassment on campus, noting that SM students received death threats, saw hate speech (e.g., "God Hates Fags") written on dorm room doors and bathrooms, and encountered other difficulties (Getz & Kirkley, 2006). A recent study at a Roman Catholic college in the Northeast found that half of SM and gender minority undergraduate students reported being harassed or bullied on campus, and that up to 16% experienced violence (Lockhart, 2013). However, students rarely report these incidents because of fears of not being taken seriously and/or treated with disrespect, having to out themselves in an unsupportive environment, and the perception that reporting will only make the situation worse (Lockhart). A majority of these students reported that they regretted coming out while attending that college and made considerable effort to conceal their sexual or gender identity on campus.

Such policies and campus climates create potential difficulties for students wishing to form LGBQ-affirming spaces. McEntarfer (2011) examined the approaches used and subsequent experiences of SM students attempting to create an affirming student group (e.g., Gay-Straight Alliance) at three NARAU's, and found four major strategies used: (a) collaborative (i.e., finding common ground with school administrators); (b) conciliatory (i.e., accepting restrictions of what can be done); (c) assertive (e.g., public, non-violent protests and rejection of campus policies); and (d) underground/subversive (i.e., promoting change and advocacy via non-identified students). Regardless of approach, students and allied faculty made diversity a core focus of their efforts, which required significant time and energy (often being stressful). Though some NARAU faculty and staff were visibly supportive of SM students in McEntarfer's study, other research portrays situations in which affirming faculty and staff are much less visible due to fears of job loss, career repercussions, or lack of training (Estanek, 1998; Getz & Kirkley, 2006).

An important limitation of the above research is that much of the current data do not capture more recent student experiences. Social attitudes toward LGBQ individuals and rights are rapidly shifting toward greater acceptance (Pew Research Center, 2015b). Evidence of increasing social acceptance of LGBQ individuals can even be found in traditionally nonaffirming faith communities, though to a much lesser extent (Pew Research Center, 2015c). Given the swiftly changing social trends toward LGBQ rights and the prevalence of nonaffirming faith communities in the United States, current research on the experiences of SM individuals who take part in religious higher education is needed.

Current Study

No study to date (to the best of our knowledge) has attempted a quantitative investigation of the mental health and psychological functioning of SM students who attend NARAU's. Given the unique environment and potential challenges that SM students can experience in NARAU's, as well as increased media attention and

student activism, this is an important and timely topic for further study. Our first aim was to assess the role of campus climate in regard to sexual identity, outness, and mental health (Rankin et al., 2010). SM individuals from nonaffirming faith communities may be more likely to experience rejection and harassment/bullying, and have difficulty forming a Gay–Straight Alliance (GSA) on campus (Lockhart, 2013; McEntarfer, 2011). As a result, we hypothesized:

Hypothesis 1: Sexual minority students who are not involved with a GSA and/or have been bullied at school will be less open about their sexual orientation, have more negative views about their sexual orientation, experience more difficulty coming to terms with their sexual orientation, and experience greater psychological distress.

Data suggest that SM students are more likely to seek mental health services and experience significantly higher amounts of depressive symptoms, social anxiety, and eating concerns than heterosexual peers (Effrig et al., 2014; McAleavey, Castonguay, & Locke, 2011). Other studies indicate greater associations between SM status and general psychopathology and academic concerns (e.g., Woodford & Kulick, 2015). Hence, we hypothesized:

Hypothesis 2: Sexual minority students who attend NARAU will report psychological distress as evidenced by clinically elevated (high) symptoms of depression, social anxiety, and eating concerns, as well as moderately elevated symptoms of substance abuse, hostility, academic distress, and generalized anxiety.

Belonging to a nonaffirming religious faith may be a predictor of mental health symptoms for SMs who experience dissonance between their orientation/identity and religious beliefs, particularly for Mormons (Grigoriou, 2014). Further, explicit evidence exists that Evangelical NARAUs enforce consequences for SM relationships and expression (Wolff & Himes, 2010). Furthermore, many SM students at NARAUs choose not to disclose their SM status or outwardly identify as heterosexual (Stratton et al., 2013). However, no study to date (to the best of our knowledge) has investigated whether differences are found across different types of religious schools. As a result:

Hypothesis 3: Sexual minority students who identify as Christian or Mormon, or attend an Evangelical or Mormon NARAU will have the most psychological distress, negative views about their sexual orientation, difficulty coming to terms with their sexual orientation, and be the least open about their sexual orientation.

Method

Participants

The sample consisted of 213 SM students currently enrolled in various NARAUs. Eligibility criteria were as follows: (a) currently attends a religious college, university, or seminary that holds a nonaffirming view of LGBQ topics and/or does not admit openly LGBQ students and/or prohibits expression of LGBQ identity; (b) identifies as LGBQ and/or is questioning sexual orientation; (c) is

18 years of age or older; and (d) lives in the United States. The exact number of NARAUs represented is unknown because the specific college attended was an optional question in the hope that participants would feel safer (and therefore be more honest) when answering questions. Participants attended NARAUs from all parts of the U.S. The majority of participants identified as White (83%), Christian (62%), undergraduates (78%), and identified as gay/lesbian (56%). The mean age of the sample was 22.5 years ($SD = 4.5$). The Other Non-Christian (12%) category of personal religion included non-Christian faiths with less than 10 respondents (e.g., Muslim, Jewish, Bahai'i). Mainline Protestant schools (14%) included Lutheran, Presbyterian and Methodist. Other Christian schools (16%) included those that participants did not endorse any of the nominal categories we provided, wrote in their own responses, and had fewer than 10 responses (e.g., Church of Christ, Mennonite, and Quaker). We intentionally allowed individuals who were questioning ($n = 11$) their sexual orientation to participate even if they did not identify as LGBQ, given that not all SMs use or feel comfortable with LGBQ labels (Yarhouse et al., 2009). We also decided to keep heterosexual-identified ($n = 7$) students in our analyses in light of data that some highly religious SMs still identify as heterosexual because of potential stigma or congruence with religious beliefs (Stratton et al., 2013), an inherent limitation in SM research (Hamblin & Gross, 2014). Demographics are reported in Table 1.

Table 1
Sample Demographics ($N = 213$)

| Characteristic | n (%) |
|------------------------------|----------|
| Gender | |
| Male | 91 (43) |
| Female | 109 (51) |
| Transgender/other | 12 (6) |
| Ethnicity | |
| Latino/a | 18 (8) |
| Caucasian | 177 (83) |
| Black | 7 (3) |
| Asian/Pacific Islander | 1 (.5) |
| Other | 11 (.5) |
| Current religion | |
| Christian | 133 (62) |
| Agnostic | 27 (13) |
| Atheist | 14 (7) |
| Mormon (LDS) | 14 (7) |
| Other non-Christian | 26 (12) |
| Class standing | |
| Undergraduate | 155 (72) |
| Grad Student | 59 (28) |
| School religious affiliation | |
| Catholic | 60 (28) |
| Mainline Protestant | 30 (14) |
| Evangelical | 28 (13) |
| Non-denominational | 43 (20) |
| Mormon (LDS) | 16 (8) |
| Other Christian | 35 (16) |
| Sexual orientation | |
| Gay or lesbian | 119 (56) |
| Heterosexual | 7 (3) |
| Bisexual | 51 (24) |
| Questioning | 11 (5) |
| Other | 26 (12) |

Procedures

Data were collected online using a secure platform. Participants were recruited through nonrandom purposive sampling techniques via paid social media and newspaper advertisements, e-mailing SM and religious organizations, professional list-serves and colleagues, and contacting SM student groups at religious colleges. This sampling method was similar to other studies that have recruited often difficult to access SM individuals in nonaffirming environments (Grigoriou, 2014). We questioned whether or not to approach NARAU administrators or staff directly to help with recruitment, but were skeptical that we would receive their support given the potential for the results to portray NARAUs negatively, or whether SM students would answer as openly knowing their school had approved the study. Recruitment messages also stated the opportunity to be entered into a drawing to win one of four small gift cards to increase participation. Participants completed the measures described below.

Measures

Lesbian, Gay and Bisexual Identity Scale (LGBIS). The LGBIS measures both internalized and externalized homonegativity, and how these constructs affect LGB individuals' sexual identity formation (Mohr & Fassinger, 2000). Using a 7-point Likert scale, participants respond to questions about various LGB identity experiences by selecting from 1 (*disagree strongly*) to 7 (*agree strongly*). The LGBIS consists of several subscales (e.g., Identity Confusion, Difficult Process, Need for Acceptance) and one composite score, "Negative Identity." Participants completed the entire LGBIS. However, we only included the Difficult Process subscale (e.g., "admitting to myself that I'm an LGB person has been a very painful process") and composite score in the results as these most pertained to our research hypotheses. For additional analysis, we created a "Religious Incongruence" subscale that included two items ("I'll never be fully accepted by God if I'm in a same-sex relationship," and "I can't be true to my faith and be in a same-sex relationship at the same time"). The subscale demonstrated a modest relationship with the Negative Identity composite scale, $r = .420$, $p < .01$, suggesting concurrent validity yet also distinctness. The interitem correlation was moderate, $r = .565$, $p < .001$, and demonstrated acceptable internal consistency (Cronbach's alpha = .722). This subscale was not included in the composite score.

Outness Inventory (OI). The OI focuses on degree of openness ("outness") regarding one's sexual orientation to family, religious community (e.g., rabbi, priest), and employers (Mohr & Fassinger, 2000). The OI is based on the theoretical assumption that LGB individuals will determine their level of outness depending on how accepting they perceive others in their life to be regarding sexual orientation topics. Using a 7-point Likert scale, participants select their response from options ranging from 1 (*the person definitely does NOT know about your sexual orientation status*) to 7 (*the person definitely knows about your sexual orientation status, and it is OPENLY talked about*). The OI contains an "Overall Outness" composite score. For additional analysis, we created an "Out to College" subscale that included items relevant to roommate, professor/faculty, and classmate disclosure. The subscale demonstrated a modest relationship with the Overall Outness scale, $r = .671$, $p < .001$, suggesting concurrent validity

yet also distinctness. Interitem correlations on the Out to College subscale were all moderately positive, $r = .335-.585$, $p < .001$, and demonstrated acceptable internal consistency (Cronbach's alpha = .732). The college subscale was not included in the Overall Outness composite score.

Counseling Center Assessment of Psychological Symptoms (CCAPS). The CCAPS is standardized 62-item instrument that assesses mental health symptoms in college students (CCMH, 2015b). The instrument is widely used among students who are obtaining services at college counseling centers (CCMH, 2015b; McAleavey et al., 2012). The CCAPS has been widely validated, has a large standardization sample, and shows moderate to strong concurrent validity with related measures: Beck Depression Inventory & CCAPS Depression subscale, $r = .82$, Eating Attitudes Test-26 & Eating Concerns subscale, $r = .58$, Social Phobia Diagnostic Questionnaire & Social Anxiety subscale, $r = .75$ (McAleavey et al., 2012). Participants indicate how well various statements describe them during the past two weeks on a 0–4 Likert scale (e.g., 0 = *not at all like me* to 4 = *extremely like me*). The CCAPS consists of several subscales that maintain strong internal consistencies: (a) Depression ($\alpha = .91$), (b) Social Anxiety ($\alpha = .84$), and (c) Eating Concerns ($\alpha = .90$), among others. These three subscales appear to be the most relevant to SM students (Effrig et al., 2014; McAleavey, Castonguay, & Locke, 2011). The CCAPS also contains a composite Distress Index, but this was not included due to strong overlap with the Depression subscale in our sample ($r = .93$).

The CCAPS provides numeric "cut points" which are helpful in determining symptom severity (low, moderate, & high) and also provide an estimate of whether individuals are most likely to resemble a clinical (i.e., in treatment) or a nonclinical level of psychological distress (CCMH, 2015b, p. 14). Cut points were validated by comparing college students in treatment, not in treatment, and those in treatment who also met *DSM-IV-TR* diagnostic criteria for more severe psychopathology (McAleavey et al., 2012). Hence, individuals who surpass the cut points (whether moderate or high) are more likely to be experiencing symptoms that are "potentially problematic" (p. 14).

Experiential and demographic questions. We also collected data on a range of campus-related experiences and involvement with a gay-straight alliance (GSA). Participants were asked to check whether each of the experiences listed had happened to them or not, and to indicate GSA involvement (yes/no). These items are presented in Table 2.

Statistical Analyses

To test the first hypotheses about campus experiences and climate, GSA involvement and bullying because of sexual orien-

Table 2
Student Experiences and Campus Climate (N = 213)

| Experience | n (%) |
|---|----------|
| Involved with a Gay–Straight Alliance that is part of the school | 95 (45) |
| Bullied or harassed at school because of sexual orientation | 78 (37) |
| Mental health professional attempted to change sexual orientation | 36 (17) |
| Mental health professional affirmed LGB sexual orientation | 101 (47) |

tation were used as categorical (independent) variables, with dependent variables consisting of subscales on the OI (Out to College, Overall Outness), LGBIS (Negative Identity, Difficult Process, Religious Incongruence), and the CCAPS (Depression, Social Anxiety, Eating Concerns). Differences were analyzed using Factorial MANCOVA to control Type I error rates. We used age of participant as a covariate on the first hypothesis only, because older participants may have had more time to acquire campus experiences (bullying, involvement with GSA). Means and standard deviations for all of the CCAPS subscales were calculated and compared with clinical cut points provided by the CCAPS manual to test the second hypothesis using a descriptive comparison. To test the third hypothesis, categorical differences in the dependent variables (Overall Outness, Out to College, Negative Identity, Religious Incongruence, Depression, Social Anxiety, and Eating Concerns) were analyzed using one-way MANOVA with LSD post hoc comparison for each of the independent variables (School Affiliation and Participant Religion). We ran two separate one-way MANOVAs, rather than one Factorial MANOVA, because of inadequate sample sizes in some categories needed to test for interactions.

Results

To test the first hypothesis, categorical differences on the CCAPS, LGBIS, and OI scales were analyzed by campus climate variables (involvement with a GSA and bullying because of sexual orientation), while controlling for age as a covariate. Box’s Test of Equality was significant, Box’s $M = 149.16, p < .05$, hence unequal variance was assumed using Pillai’s trace. Factorial MANCOVA results revealed significant main effects for age, trace = .127, $F(8, 179) = 3.261, \eta^2 = .127, p < .01$, involvement with a GSA, trace = .142, $F(8, 179) = 3.711, \eta^2 = .142, p < .001$, and bullying, trace = .138, $F(8, 179) = 3.587, \eta^2 = .138, p < .01$. An interaction was not significant for bullying \times GSA involvement, trace = .039, $F(8, 179) = .914, \eta^2 = .039, p > .05$. Between-subjects ANCOVAs were calculated as follow-up to the MANCOVA model. Marginal means, standard errors, F values, and effect sizes are presented in Table 3. The age covariate was significant for Out to College, $F(1, 191) = 19.392, \eta^2 = .094, p < .001$, and Overall Outness, $F(1, 191) = 7.457, \eta^2 = .039, p < .01$, suggesting that group differences are attributable to age on these scales. Main effects in GSA involvement were found for the Difficult Process, Negative Identity, and Religious Incongruence subscales, indicating that students involved with a GSA had less negative identities, less difficulty with their sexual orientation, and less religious incongruence. A main effect for bullying was found on the Depression subscale, such that students who were bullied because of their sexual orientation at school reported higher levels of depressive symptoms.

To test the second hypothesis, sample means and standard deviations were compared with clinical “cut points” established by the CCAPS manual (CCMH, 2015b). All of the means surpassed the cut point for “moderate” criteria, suggesting that our sample demonstrated a greater likelihood of potential clinical concerns. None of the means surpassed the cut points for “high” clinical concerns. Results are summarized in Table 4.

Regarding the third hypothesis, categorical differences on the Depression, Social Anxiety, Eating Concerns, Negative Identity, Difficult Process, Religious Incongruence, Overall Outness, and

Table 3
Campus Variables: MANCOVA Model Results (Age as Covariate)

| Measure | LGBIS | | | OI | | CCAPS | | |
|---|---------------------------------|---------------------------------|-------------------------------------|---------------------------|-----------------------------|----------------------------|--------------------------|--------------------------|
| | Difficult process | Negative identity | Religious incongruence ^a | Overall outness | Out to college ^a | Depression | Social anxiety | Eating concerns |
| Involved with GSA at school | $F(\eta^2) = 18.03 (.09)^{***}$ | $F(\eta^2) = 21.43 (.10)^{***}$ | $F(\eta^2) = 5.05 (.03)^*$ | $F(\eta^2) = 4.04 (.02)$ | $F(\eta^2) = 11.34 (.06)$ | $F(\eta^2) = 3.25 (.02)$ | $F(\eta^2) = 1.51 (.01)$ | $F(\eta^2) = 2.92 (.02)$ |
| Yes, $M (SE)$ | 4.07 (.17) | 3.52 (.12) | 2.23 (.21) | 4.05 (.17) | 4.81 (.21) | 1.35 (.11) | 1.78 (.12) | 1.10 (.11) |
| No, $M (SE)$ | 5.00 (.14) | 4.27 (.10) | 2.85 (.17) | 3.59 (.14) | 3.89 (.17) | 1.62 (.09) | 1.97 (.10) | 1.36 (.10) |
| Bullied or harassed at school due to sexual orientation | $F(\eta^2) = .67 (.00)$ | $F(\eta^2) = .73 (.00)$ | $F(\eta^2) = .35 (.00)$ | $F(\eta^2) = 12.96 (.07)$ | $F(\eta^2) = 8.54 (.04)$ | $F(\eta^2) = 4.23 (.02)^*$ | $F(\eta^2) = .10 (.00)$ | $F(\eta^2) = .15 (.00)$ |
| Yes, $M (SE)$ | 4.45 (.17) | 3.83 (.13) | 2.46 (.21) | 4.21 (.18) | 4.74 (.21) | 1.63 (.11) | 1.90 (.12) | 1.20 (.12) |
| No, $M (SE)$ | 4.62 (.13) | 3.97 (.09) | 2.62 (.16) | 3.42 (.13) | 3.96 (.16) | 1.34 (.08) | 1.85 (.09) | 1.26 (.09) |

Note. Higher scores on the LGBIS indicate a more negative view of one’s sexual identity. Higher scores on the OI indicate greater amount of openness about sexual orientation. Higher scores on the CCAPS indicate greater levels of psychological distress.

^a Experimental subscales. Not included in the composite variables.

* $p < .05$. *** $p < .001$.

Table 4
CCAPS Risk & Severity Indicators

| Subscale | M (SD) | Cut point classification | Clinical interpretation |
|---------------------|-------------|--------------------------|-------------------------|
| Depression | 1.48 (.93) | Moderate | Potentially problematic |
| Substance use | .77 (.86) | Moderate | Potentially problematic |
| Generalized anxiety | 1.67 (1.00) | Moderate | Potentially problematic |
| Social anxiety | 1.88 (.95) | Moderate | Potentially problematic |
| Eating concerns | 1.26 (.95) | Moderate | Potentially problematic |
| Academic distress | 1.54 (.97) | Moderate | Potentially problematic |
| Hostility | 1.07 (.95) | Moderate | Potentially problematic |
| Family distress | 1.62 (.99) | Moderate | Potentially problematic |
| Distress index | 1.60 (.89) | Moderate | Potentially problematic |

Note. Means classified as Low, Moderate, or High per clinical cutoffs. Scores in the Moderate or High category can be “potentially problematic” (CCMH, 2015b).

Out to College scales were analyzed by school religious affiliation and participant religion. The independent variables were analyzed separately because we did not have sufficient sample sizes to test for interactions. Box’s Test of Equality was significant, Box’s $M = 253.74, p < .05$, hence unequal variance was assumed using Pillai’s trace for school affiliation. Box’s Test of Equality was not significant, Box’s $M = 181.47, p = .44$, hence equal variance was assumed using Wilk’s Λ criteria for participant religion. MANOVA results revealed significant main effects for both participant religion, Wilk’s $\Lambda = .646, F(32, 680) = 2.669, \eta^2 = .103, p < .001$ and school religious affiliation, trace = .422, $F(40, 930) = 2.142, \eta^2 = .084, p < .001$.

Between-subjects ANOVAs were calculated as follow-up to the MANOVA model. Marginal means, standard errors, F values, and effect sizes are presented in Table 5.

For the School Affiliation variable, differences were significant for Difficult Process, Negative Identity, Religious Incongruence, Depression, and Social Anxiety, but not for Overall Outness, Outness to College, or Eating Concerns. Post hoc analyses revealed that SM students who attend Nondenominational, Evangelical, and Mormon NARAUs had significantly more difficult sexual identity processes than students in Catholic and Mainline Protestant schools. SM students attending Other Christian schools also had more difficult processes than those in Catholic NARAUs. SM students in Nondenominational and Mormon NARAUs reported more negative sexual identities than students in Catholic NARAUs. SM students who attend Mormon NARAUs endorsed significantly higher levels of religious incongruence about their sexual orientation than students who attended all other types of NARAUs. Students who attended Other Christian programs reported significantly fewer symptoms of depression and social anxiety than students at Catholic, Mainline Protestant, and Mormon NARAUs.

For the Participant Religion variable, between-subjects ANOVA revealed that differences were significant for the Difficult Process, Negative Identity, and Religious Incongruence scales, but not the other variables. Post hoc analyses revealed that Mormon students reported a more difficult process and negative sexual identity than students who identified as Atheist, Agnostic, or Other Non-Christian. Likewise, Christian students reported a more difficult process and negative sexual identity than Agnostic and Other

Table 5
Religion Variables: MANOVA Model Results

| Measure | LGBIS | | OI | | CCAPS | | | | |
|-----------------------------|-----------------------|--------------------------------|--------------------------------|-------------------------------------|--------------------------|-----------------------------|----------------------------|----------------------------|--------------------------|
| | Composite or subscale | Difficult process | Negative identity | Religious incongruence ^a | Overall outness | Out to college ^a | Depression | Social anxiety | Eating concerns |
| Participant religion | | $F(\eta^2) = 6.52 (.12)^{***}$ | $F(\eta^2) = 5.26 (.10)^{***}$ | $F(\eta^2) = 8.15 (.15)^{***}$ | $F(\eta^2) = 1.62 (.03)$ | $F(\eta^2) = 1.49 (.03)$ | $F(\eta^2) = .38 (.01)$ | $F(\eta^2) = .83 (.02)$ | $F(\eta^2) = .56 (.01)$ |
| Christian, M (SE) | | 4.86 (.12) | 4.15 (.09) | 2.39 (.15) | 3.59 (.14) | 4.14 (.16) | 1.44 (.09) | 1.82 (.09) | 1.29 (.09) |
| Agnostic, M (SE) | | 4.22 (.28) | 3.59 (.21) | 2.89 (.34) | 3.42 (.31) | 4.05 (.38) | 1.40 (.20) | 2.08 (.20) | 1.31 (.20) |
| Atheist, M (SE) | | 4.29 (.38) | 3.66 (.28) | 2.50 (.45) | 4.38 (.41) | 4.39 (.51) | 1.47 (.26) | 1.97 (.26) | .88 (.27) |
| Mormon (LDS), M (SE) | | 5.46 (.36) | 4.60 (.27) | 4.89 (.43) | 3.33 (.39) | 3.43 (.49) | 1.65 (.25) | 2.19 (.26) | 1.24 (.26) |
| Other non-Christian, M (SE) | | 3.56 (.28) | 3.37 (.21) | 2.13 (.39) | 4.07 (.31) | 4.86 (.38) | 1.60 (.20) | 1.79 (.20) | 1.27 (.20) |
| School affiliation | | $F(\eta^2) = 5.14 (.12)^{***}$ | $F(\eta^2) = 3.09 (.08)^*$ | $F(\eta^2) = 6.75 (.15)^{***}$ | $F(\eta^2) = .74 (.02)$ | $F(\eta^2) = 1.12 (.03)$ | $F(\eta^2) = 2.36 (.06)^*$ | $F(\eta^2) = 2.35 (.06)^*$ | $F(\eta^2) = 1.54 (.04)$ |
| Catholic, M (SE) | | 4.03 (.19) | 3.59 (.14) | 2.19 (.22) | 3.76 (.20) | 4.49 (.25) | 1.58 (.13) | 1.91 (.13) | 1.35 (.13) |
| Mainline Protestant, M (SE) | | 4.26 (.25) | 4.01 (.19) | 2.66 (.30) | 3.61 (.28) | 4.20 (.34) | 1.74 (.17) | 2.18 (.17) | 1.54 (.18) |
| Evangelical, M (SE) | | 5.06 (.26) | 4.06 (.20) | 2.23 (.31) | 3.93 (.28) | 4.39 (.35) | 1.34 (.18) | 1.72 (.18) | 1.01 (.18) |
| Non-denominational, M (SE) | | 5.22 (.23) | 4.35 (.18) | 2.71 (.27) | 3.28 (.25) | 3.66 (.31) | 1.42 (.15) | 1.87 (.16) | 1.28 (.16) |
| Mormon (LDS), M (SE) | | 5.28 (.34) | 4.45 (.26) | 4.75 (.41) | 3.58 (.37) | 3.80 (.46) | 1.75 (.23) | 2.23 (.23) | 1.31 (.24) |
| Other Christian, M (SE) | | 4.64 (.24) | 3.92 (.18) | 2.36 (.29) | 3.74 (.26) | 4.20 (.32) | 1.06 (.16) | 1.49 (.16) | .98 (.17) |

Note. Higher scores on the LGBIS indicate a more negative view of one’s sexual identity. Higher scores on the OI indicate greater amount of openness about sexual orientation. Higher scores on the CCAPS indicate greater levels of psychological distress.

^a Experimental subscales. Not included in the composite variables.

* $p < .05$. *** $p < .001$.

Non-Christians. Finally, Mormon SM students endorsed significantly higher levels of religious incongruence about their sexual orientation than all of the other groups.

Supplementary frequency data was collected on the experimental OI “Out to College” subscale. 54% of SM students reported that they have talked about their sexual orientation with a professor or faculty member at least once, 51% have talked about their sexual orientation with a classmate or peer at least one time, and 69% of students who have a roommate have talked about their sexual orientation with their roommate at least once (more than half report that they talk about it openly with their roommate).

Discussion

Our findings present a complex picture of SM student experiences, sexual identity, outness, and psychological functioning at NARAU in the United States. We stress that NARAU are a very diverse group of institutions, and therefore conclusions and results may not apply to all NARAU.

Our first hypothesis was partially supported in that SM student involvement with a GSA on campus was associated with a more positive view of their sexual identity, less religious incongruence, and less difficulty with their sexual orientation than students not involved with a GSA. This finding is not surprising considering students who know other SM students would have less stigma or shame about their sexual orientation if they know they are not alone, have a place to discuss concerns, and form peer relationships. Another consideration is that NARAU who allowed a GSA to form on campus may already be more welcoming (or at least less restrictive) campuses to SMs, hence these results may be explained by the campus climate rather than the involvement with a GSA. A possible limitation is selection bias, in which students who join GSA’s may already be more socially adept, have less stigma about their sexual orientation, and perhaps have greater baseline wellbeing.

With regard to bullying, our hypothesis was again partially supported in that students who were bullied at school because of their sexual orientation reported more symptoms of depression. Contrary to our expectations, no differences were found on the other variables (social anxiety, negative identity, and outness). Rankin et al.’s 2010 national survey of LGBTQ college students found that 23% of LGBTQ students experienced bullying or harassment on campus, whereas this was even higher among our sample (37%). A possible explanation is that stigma associated with reporting sexual orientation harassment, as well as lack of clear protections for SM students, contribute to this discrepancy at NARAU, a finding consistent with another study at a Catholic NARAU (Lockhart, 2013). As a result, it is likely that more harassment and bullying of SM students occur at NARAU, a finding which warrants both concern and further study.

Our second hypothesis aimed to understand whether our SM sample demonstrated potential clinical concerns on a range of mental health indicators; this portion of the hypothesis was supported. All of the subscales on the CCAPS were above the “moderate” cut point, suggesting that SM students in our sample who attend NARAU are at-risk for potentially significant concerns that could become the focus of clinical attention. However, our hypothesis that students would have elevated (“high”) scores on the Depression, Social Anxiety, and Eating Concerns subscales was not supported. This is not to say that

these subscales could not be a clinically significant concern. Yet for our sample as a whole, these symptoms did not rise to the diagnostic threshold for serious psychiatric pathology. We did not assess for whether participants were currently in counseling services, though it would not be surprising if many were because there is evidence that SMs seek out counseling services at higher rates than their heterosexual peers (McAleavey, Castonguay, & Locke, 2011). A *self-selection* bias could have existed in that SM adults experiencing distress may have been more interested and willing to participate in a study that asked them about those experiences that are associated with distress (Grasser, 2014).

With regard to mental health symptoms, our third hypotheses was partially supported for Mormons, but not Evangelicals. Students who attended Other Christian schools reported significantly fewer symptoms of depression and social anxiety than students at Catholic, Mainline Protestant, and Mormon NARAU. We did not find any significant differences for personal religion on any of the CCAPS subscales. This is a difficult finding to interpret, given the range of Other Christian affiliations reported (e.g., Mennonite, Quaker, and Church of God). A possible explanation for why Evangelical students did not report more depressive symptoms and social anxiety than those in other schools could be that students who find nonaffirming theological positions and environments congruent with their religious beliefs would likely not be distressed by them (e.g., a student who believes being gay is sinful would not be distressed by a school code of conduct that supports this position). Also, religion may offer a substantial amount of comfort and source of community to many SM individuals who find incongruence with their sexual orientation and their faith (Yarhouse et al., 2009).

With regard to sexual identity and religious incongruence, our hypothesis was largely supported for Mormons, but only partially for Evangelicals. Results indicated that SM students who attend Nondenominational, Evangelical, and Mormon NARAU had significantly more difficult sexual identity processes than students in Catholic and Mainline Protestant schools, and that SM students attending Other Christian schools had more difficult processes than those in Catholic NARAU. SM students in Nondenominational and Mormon NARAU reported more negative sexual identities than students in Catholic NARAU. Though we did not ascertain the exact theological positions of all of the nondenominational schools, it is likely that many of these programs strongly resemble Evangelical Christian programs. For example, three of the most well-known Evangelical colleges in the U.S. (Wheaton College, Biola University, & Regent University) could be considered nondenominational because they are not affiliated with a specific church. Parallel results indicated that both Mormon and Christian students reported a more difficult process and negative sexual identity than students who identified as Agnostic or Other Non-Christian. These results are consistent with past research in that Protestants (including Evangelicals) and Catholic LGB adults report more conflict about their sexual orientation than those who are Jewish, Atheist, or Agnostic (Schuck & Liddle, 2001).

Our results appear to cast Catholic schools in a different light in comparison with most of the other schools with regard to SM identities and difficulty with one’s sexual orientation. We theorize that Catholic schools are different from many of the other NARAU we assessed because, although Church doctrine may officially condemn LGB relationships, we did not find evidence that they explicitly ban

SM students from forming same-sex relationships or attending their schools, unlike many Evangelical, Nondenominational, and Mormon schools (Biaggio, 2014; Lyon, 2007; Wolff & Himes, 2010). Furthermore, without such a ban in place, more Catholic schools may allow GSAs and other SM-themed activities on campus than more restrictive NARAUs. However, data about the exact policies at each school were not collected. Further, a selection bias is again possible in that SM students may choose to attend a school that is less restrictive, hence potentially inflating baseline wellbeing or openness.

A somewhat surprising result was that students who identified as Mormon/LDS or attend Mormon schools were more likely to report incongruence between their sexual orientation and religious faith than all of the other groups. Hence, Mormon students and college environments appear to be unique. This finding may be important to understand in terms of the LDS church's stance on SM issues. For instance, sexual activity between members of the same-sex is grounds for excommunication within the LDS church, a serious consequence (Grigoriou, 2014). Excommunication involves no longer having church membership, ostracism from loved ones, and the belief that the excommunicated individual will be separated from God and family members for eternity (Public Broadcasting System, April, 2007). As such, Mormon students may hold to nonaffirming religious beliefs in especially strong ways in light of severe consequences for violating strict heteronormative rules. Our findings should be interpreted with caution as we did not have many Mormon participants ($n = 16$). However, a much larger study of 634 Mormons supports these conclusions; recent data indicate that sexual identity confusion is correlated with symptoms of depression for SM Mormons, and greater involvement with the LDS church is associated with increased minority stress for SMs (Crowell, Galliher, Dehlin, & Bradshaw, 2015).

Contrary to our third hypothesis, we did not find any differences in students' outness about their sexual orientation across participants' religion or school affiliations. We question whether an individual's perception of openness may be mediated by the presence of having a few individuals they could talk to openly about their orientation regardless of the actual campus environment. This may be supported by our frequency data; more than half of our sample reported having talked to a faculty member or classmate about their sexual orientation, whereas more than two thirds have talked to a roommate. Given the stigma surrounding LGBQ topics on many campuses, it seems reasonable to assume that SM students would not disclose such information unless they felt comfortable sharing it, hence pointing to the likelihood of supportive faculty members, peers, and roommates. However, we did not assess the individual's reactions to their disclosures, and the possibility exists that such disclosures may have been more harmful than helpful if the person reacted in a negative or rejecting manner.

Helping Sexual Minority Students on Religious Campuses

Our results indicate that involvement with a school GSA was associated with less negative perceptions of sexual identity, less difficulty with one's sexual orientation, and less religious incongruence. As such, allowing students to form GSAs would appear to have potential benefits. However, this could have potential drawbacks in NARAUs as well, given that school administrators may wish to control or monitor content, membership, and so forth. Furthermore, more than a third of students reported being bullied because of their

sexual orientation at school. Rankin and colleagues' 2010 Campus Pride report lays a comprehensive framework for best practices to improve campus climate for SM students, which could in turn reduce bullying and harassment on campus. Steps include: (a) developing LGBTQ inclusive policies; (b) demonstrating institutional commitment to LGBTQ diversity; (c) integrating LGBTQ topics and concerns into curricular and cocurricular education; (d) responding appropriately to anti-LGBTQ harassment, violence, and other incidents; (e) creating "brave spaces" for student dialogue on-campus, especially in dormitories (p. 16); (f) offering comprehensive, culturally appropriate medical and mental health services; and (g) improving recruitment and retention efforts of LGBTQ students. We recognize that several of these recommendations are more difficult to implement than others, though this does not excuse lack of effort to safeguard SM students.

Wolff and Himes (2010) note that NARAUs can improve campus climate for SM students in manners that are consistent with their institutional religious values. For example, most NARAUs have mission statements that strive for virtues such as love, grace, or compassion (e.g., "love thy neighbor"). Furthermore, many NARAUs pride themselves on creating campus climates that allow for spiritual growth through fellowship and community with others. This is a unique and important strength NARAUs possess that could be further enhanced to support SM students who wish to openly discuss their sexual orientation with others. Of note, some Evangelical NARAUs campuses have taken small but important strides to better support this kind of dialogue. For example, Biola University (2014) held an event featuring a gay speaker whose views did not align with the university's official theological position. Given that our results point to higher religious incongruence and difficult processes among Mormon students, similar dialogue could be helpful at Mormon/LDS schools if it were to feature differing perspectives of LGBQ Mormons.

Some NARAUs have made other systemic changes to make campus environments much more welcoming to SM students. Steps include adding sexual orientation as a protected class to antiharassment policies, starting focus groups on campus, and providing administrative support for educational programs and staff training on LGBTQ topics (Getz & Kirkley, 2006). Limited outcome data exist on the benefits of such programming, but suggest increased awareness of social and cultural identity for all students, improved confidence among faculty/staff/students to be resources for SM students, and greater sensitivity and compassion toward SM individuals across the campus community (Getz & Kirkley, 2006). Also, a study of primarily heterosexual Evangelical Christian college students found that when students know someone who is LGB, they have significantly less negative attitudes toward LGB persons (Wolff, Himes, Miller Kwon, & Bolinger, 2012). Therefore, having open, nonjudgmental, and nonpunitive dialogue on campus is likely to have many benefits to students, faculty, staff, and positively affect campus climates. Findings from Eisenberg (2002) on condom use among LGB students on college campuses may have useful parallels to these implications. The study found that the more LGB resources on campus (e.g., having a LGB student group, staff who were implementing LGB diversity, etc.), the more likely sexually active LGB students were to use condoms. Such results are important in that improving campus climate for SM students as a whole may have many other benefits in addition to mental health.

Implications for College Counseling Centers

Findings revealed that nearly a fifth of students (17%) have had a mental health professional attempt to change their sexual orientation, a process referred to as reparative/conversion therapy or sexual orientation change efforts (SOCEs). Of note, we did not assess whether SOCEs occurred on-campus or with an outside provider. However, it seems reasonable to infer that a sizable portion of these respondents have received such services at a university/college counseling center given their ease of access and affordability, or been referred off-campus if these services were not available on-campus.

These findings raise significant concerns. In 2009, a task force of the American Psychological Association concluded that “efforts to change sexual orientation are unlikely to be successful and involve some risk of harm” and are most likely to be sought out by those who are “strongly religious” (*American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation*, 2009, p. v). Furthermore, the American Psychiatric Association declared that SOCEs “represent a significant risk of harm by subjecting individuals to forms of treatment which have not been scientifically validated and by undermining self-esteem when sexual orientation fails to change” (*American Psychological Association*, 2013). Some SM students, particularly those who experience strong dissonance between their sexual orientation and religious beliefs, may come to counseling with the stated desire for SOCE. As a result, significant staff training is needed in models of psychotherapy which are exceptionally focused on encouraging self-determination, sensitive to religion/spirituality, embrace a developmental view of sexual and gender identity, and have safeguards to protect students from therapist bias and potentially harmful practices.

Limitations & Future Directions

External validity may be limited by the nonrandom purposive sampling approach and relatively small sample, though a range of NARAUs were included. Another limitation of this study was the small number of racial/ethnic minority participants, as well as those from non-Christian religious traditions. However, NARAUs are overwhelmingly Christian in the United States. We used standardized inventories and questions focused on sexual minorities. As such, our results cannot be generalized to gender minority students. Another limitation is that we relied solely on participant responses and perceptions, and did not collect parallel objective campus climate data (e.g., reviewing the school’s nondiscrimination policy). Hence, we were not able to analyze the potential impact of community-level determinants on mental health independently. Also, we did not collect a representative sample of heterosexual NARAU students or SMs who attend nonreligious schools, which could have served as a comparison group. A qualitative study would likely provide very rich, valuable data to supplement this study’s quantitative results.

Conclusion

Religiously affiliated colleges, universities, and seminaries are an important, unique part of the American higher education system. Such institutions also maintain strong traditions and practices

central to their campus identity and mission. Efforts aimed at helping SM students who attend such institutions are no easy task. Greater dialogue about sexual orientation issues and development, sensitivity toward diverse populations, compassion and care for SM students, and the use of data to guide interventions may be important steps in promoting campus climates that can be welcoming to SM students at NARAUs.

References

- American Psychiatric Association. (2013). *Position statement on issues related to homosexuality*. Washington, DC: Author.
- American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation. (2009). *Report of the Task Force on Appropriate Therapeutic Responses to Sexual Orientation*. Washington, DC: American Psychological Association.
- Barnes, D. M., & Meyer, I. H. (2012). Religious affiliation, internalized homophobia, and mental health in lesbians, gay men, and bisexuals. *American Journal of Orthopsychiatry*, 82, 505–515. <http://dx.doi.org/10.1111/j.1939-0025.2012.01185.x>
- Biaggio, M. (2014). Do some APA-accredited programs undermine training to serve clients of diverse sexual orientations? *Psychology of Sexual Orientation and Gender Diversity*, 1, 93–95. <http://dx.doi.org/10.1037/sgd0000027>
- Biola University. (2014). *Biola events: How do we love? A thoughtful dialogue on sexual differences*. Retrieved February 5, 2015, from <http://now.biola.edu/events/2014/Oct/07/how-do-we-love-thoughtful-dialogue-sexual-differences/>
- Bradshaw, K., Dehlin, J. P., Crowell, K. A., Galliher, R. V., & Bradshaw, W. S. (2015). Sexual orientation change efforts through psychotherapy for LGBQ individuals affiliated with the Church of Jesus Christ of Latter-day Saints. *Journal of Sex & Marital Therapy*, 41, 391–412. <http://dx.doi.org/10.1080/0092623X.2014.915907>
- Center for Collegiate Mental Health [CCMH]. (2015a). *2014 annual report*. University Park, PA: Author.
- Center for Collegiate Mental Health [CCMH]. (2015b). *CCAPS user manual*. University Park, PA: Author.
- Crowell, K. A., Galliher, R. V., Dehlin, J., & Bradshaw, W. S. (2015). Specific aspects of minority stress associated with depression among LDS affiliated non-heterosexual adults. *Journal of Homosexuality*, 62, 242–267. <http://dx.doi.org/10.1080/00918369.2014.969611>
- Donadio, R. (2013, July 29). On gay priests, Pope Francis Asks, ‘Who am I to judge?’ *The New York Times*. Retrieved April 24, 2014, from <http://www.nytimes.com/2013/07/30/world/europe/pope-francis-gay-priests.html?pagewanted=all>
- Eckholm, E. (2011, April 18). Even on religious campuses, students fight for gay identity. *The New York Times*. Retrieved April 24, 2014, from <http://www.nytimes.com/2011/04/19/us/19gays.html>
- Effrig, J. C., Maloch, J. K., McAleavey, A., Locke, B. D., & Bieschke, K. J. (2014). Change in depressive symptoms among treatment-seeking college students who are sexual minorities. *Journal of College Counseling*, 17, 271–285. <http://dx.doi.org/10.1002/j.2161-1882.2014.00063.x>
- Eisenberg, M. E. (2002). The association of campus resources for gay, lesbian, and bisexual students with college students’ condom use. *Journal of American College Health*, 51, 109–116. <http://dx.doi.org/10.1080/07448480209596338>
- Estanek, S. M. (1998). Working with gay and lesbian students at Catholic colleges and universities: A student affairs perspective. *Catholic Education: A Journal of Inquiry and Practice*, 2, 151–158.
- Galek, K., Flannelly, K. J., Ellison, C. G., Silton, N. R., & Jankowski, K. B. (2015). Religion, meaning and purpose, and mental health. *Psychology of Religion and Spirituality*, 7, 1–12. <http://dx.doi.org/10.1037/a0037887>

- Getz, C., & Kirkley, E. (2006). Shaking up the status quo: Challenging intolerance of the lesbian, gay and bisexual community at a private Roman Catholic university. *College Student Journal*, 40, 857–869.
- Grasser, M. W. (2014). *Research methods: Concepts and connections*. New York, NY: Worth.
- Grigoriou, J. A. (2014). Minority stress factors for same-sex attracted Mormon adults. *Psychology of Sexual Orientation and Gender Diversity*, 1, 471–479. <http://dx.doi.org/10.1037/sgd0000078>
- Hamblin, R., & Gross, A. M. (2013). Role of religious attendance and identity conflict in psychological well-being. *Journal of Religion and Health*, 52, 817–827. <http://dx.doi.org/10.1007/s10943-011-9514-4>
- Hamblin, R. J., & Gross, A. M. (2014). Religious faith, homosexuality, and psychological well-being: A theoretical and empirical review. *Journal of Gay & Lesbian Mental Health*, 18, 67–82. <http://dx.doi.org/10.1080/19359705.2013.804898>
- Hatzenbuehler, M. L., Pachankis, J. E., & Wolff, J. (2012). Religious climate and health risk behaviors in sexual minority youths: A population-based study. *American Journal of Public Health*, 102, 657–663. <http://dx.doi.org/10.2105/AJPH.2011.300517>
- Hinch, J. (2013, June 28). Gay students speaking out at Christian schools. *The Orange County Register*. Retrieved April 24, 2014, from <http://www.ocregister.com/articles/biola-514884-students-gay.html?p=1>
- Jaschik, S. (2013, October 28). Gay Rights and Religious Colleges. *Inside Higher Education*. Retrieved April 24, 2014, from <http://www.insidehighered.com/news/2013/10/28/tensions-over-gay-rights-two-religious-colleges>
- Jones, R. P. (2015, April 28). Religious Americans support gay marriage. *Public Religion Research Institute*. Retrieved May 22, 2015, from http://publicreligion.org/2015/04/in-the-atlantic-religious-americans-support-gay-marriage-2/#.VV-gV0_BzGd
- Jones, S. L., & Yarhouse, M. A. (2011). A longitudinal study of attempted religiously mediated sexual orientation change. *Journal of Sex & Marital Therapy*, 37, 404–427. <http://dx.doi.org/10.1080/0092623X.2011.607052>
- Kisch, J., Leino, E. V., & Silverman, M. M. (2005). Aspects of suicidal behavior, depression, and treatment in college students: Results from the spring 2000 national college health assessment survey. *Suicide and Life-Threatening Behavior*, 35, 3–13. <http://dx.doi.org/10.1521/suli.35.1.3.59263>
- Lee, J. (2012). *Torn: Rescuing the Gospel from the gays-vs.-Christians debate*. New York, NY: Jericho.
- Lockhart, J. (April 17, 2013). *Sexual & gender minority students speak out: A campus climate survey*. Presentation at the Fordham University Undergraduate Research Symposium.
- Lyon, J. (April 17, 2007). BYU changes honor code text about gay students. *The Salt Lake Tribune*. Retrieved July 23, 2015, from http://www.sltrib.com/news/ci_5684555.
- Maloch, J. K., Bieschke, K. J., McAleavey, A. A., & Locke, B. D. (2013). Eating concerns in college women across sexual orientation identities. *Journal of College Counseling*, 16, 275–288. <http://dx.doi.org/10.1002/j.2161-1882.2013.00042.x>
- McAleavey, A. A., Castonguay, L. G., & Locke, B. D. (2011). Sexual orientation minorities in college counseling: Prevalence, distress, and symptom profiles. *Journal of College Counseling*, 14, 127–142. <http://dx.doi.org/10.1002/j.2161-1882.2011.tb00268.x>
- McAleavey, A. A., Nordberg, S. S., Hayes, J. A., Castonguay, L. G., Locke, B. D., & Lockard, A. J. (2012). Clinical validity of the counseling center assessment of psychological symptoms-62 (CCAPS-62): Further evaluation and clinical applications. *Journal of Counseling Psychology*, 59, 575–590. <http://dx.doi.org/10.1037/a0029855>
- McEntarfer, H. K. (2011). “Not going away”: Approaches used by students, faculty, and staff members to create Gay-Straight Alliances at three religiously affiliated universities. *Journal of LGBT Youth*, 8, 309–331. <http://dx.doi.org/10.1080/19361653.2011.607623>
- Meyer, I. H., Ouellette, S. C., Haile, R., & McFarlane, T. A. (2011). “We’d be free”: Narratives of life without homophobia, racism, or sexism. *Sexuality Research & Social Policy*, 8, 204–214. <http://dx.doi.org/10.1007/s13178-011-0063-0>
- Meyer, I. H., Teylan, M., & Schwartz, S. (2015). The role of help-seeking in preventing suicide attempts among lesbians, gay men, and bisexuals. *Suicide and Life-Threatening Behavior*, 45, 25–36.
- Mohr, J. J., & Fassinger, R. E. (2000). Measuring dimensions of lesbian and gay male experience. *Measurement and Evaluation in Counseling and Development*, 33, 66–90.
- Pachankis, J. E. (2007). The psychological implications of concealing a stigma: A cognitive-affective-behavioral model. *Psychological Bulletin*, 133, 328–345. <http://dx.doi.org/10.1037/0033-2909.133.2.328>
- Pachankis, J. E., & Goldfried, M. R. (2006). Social anxiety in young gay men. *Journal of Anxiety Disorders*, 20, 996–1015. <http://dx.doi.org/10.1016/j.janxdis.2006.01.001>
- Pew Research Center. (2015a). *America’s changing religious landscape*. Washington, DC: Author. Retrieved May 22, 2015, from <http://www.pewforum.org/files/2015/05/RLS-05-08-full-report.pdf>
- Pew Research Center. (2015b). *Changing attitudes on gay marriage*. Washington, DC: Author. Retrieved July 15, 2015, from <http://www.pewforum.org/2015/06/08/graphics-slideshow-changing-attitudes-on-gay-marriage/>
- Pew Research Center. (2015c). *Support for same-sex marriage at record high, but key segments remain opposed*. Washington, DC: Author. Retrieved July 15, 2015, from <http://www.people-press.org/2015/06/08/support-for-same-sex-marriage-at-record-high-but-key-segments-remain-opposed/>
- Public Broadcasting System. (April, 2007). The Mormons: FAQs. Retrieved August 28, 2015, from <http://www.pbs.org/mormons/faqs/controversies.html>
- Rankin, S. R. (2005). Campus climate for sexual minorities. *New Directions for Student Services*, 2005, 17–23. <http://dx.doi.org/10.1002/ss.170>
- Rankin, S. R., Weber, G., Blumenfeld, W., & Frazer, S. (2010). *2010 state of higher education for lesbian, gay, bisexual, and transgender people*. Charlotte, NC: Campus Pride.
- Rodriguez, E. M. (2009). At the intersection of church and gay: A review of the psychological research on gay and lesbian Christians. *Journal of Homosexuality*, 57, 5–38. <http://dx.doi.org/10.1080/00918360903445806>
- Rosario, M., Yali, A. M., Hunter, J., & Gwadz, M. V. (2006). Religion and health among lesbian, gay, and bisexual youths: An empirical investigation and theoretical explanation. In A. M. Omoto & H. S. Kurtzman (Eds.), *Sexual orientation and mental health: Examining identity and development in lesbian, gay, and bisexual people*. Washington, DC: APA. <http://dx.doi.org/10.1037/11261-006>
- Rosik, C. H., Griffith, L. K., & Cruz, Z. (2007). Homophobia and conservative religion: Toward a more nuanced understanding. *American Journal of Orthopsychiatry*, 77, 10–19. <http://dx.doi.org/10.1037/0002-9432.77.1.10>
- Schuck, K. D., & Liddle, B. J. (2001). Religious conflicts experienced by lesbian, gay, and bisexual individuals. *Journal of Gay & Lesbian Psychotherapy*, 5, 63–83. http://dx.doi.org/10.1300/J236v05n02_07
- Sieczkowski, C. (2014, March 21). Gay student says he was rejected from college after coming out. *The Huffington Post*. Retrieved April 24, 2014, from http://www.huffingtonpost.com/2014/03/21/gay-student-baptist-college_n_5008203.html
- Silva, C., Chu, C., Monahan, K. R., & Joiner, T. E. (2015). Suicide risk among Sexual Minority college students: A mediated moderation model of sex and perceived burdensomeness. *Psychology of Sexual Orientation and Gender Diversity*, 2, 22–33. <http://dx.doi.org/10.1037/sgd0000086>
- Smart, L., & Wegner, D. M. (1999). Covering up what can’t be seen: Concealable stigma and mental control. *Journal of Personality and Social Psychology*, 77, 474–486. <http://dx.doi.org/10.1037/0022-3514.77.3.474>
- Soulforce. (September, 2008). Soulforce releases route for 2008 equality ride. Retrieved May 22, 2015, from <http://www.archives.soulforce.org/2008/09/09/soulforce-releases-route-for-2008-equality-ride/>

- Stratton, S. P., Dean, J., Yarhouse, M., & Lastoria, M. (2013). Sexual minorities in faith-based higher education: A national survey of attitudes, milestones, identity, and religiosity. *Journal of Psychology and Theology, 41*, 3–23.
- Swim, J. K., Pearson, N. B., & Johnston, K. E. (2007). Daily encounters with heterosexism: A week in the life of lesbian, gay, and bisexual individuals. *Journal of Homosexuality, 53*, 31–48. <http://dx.doi.org/10.1080/00918360802101179>
- Wolff, J. R., & Himes, H. L. (2010). The purposeful exclusion of sexual minority youth in religious higher education: The implications of discrimination. *Christian Higher Education, 9*, 439–460. <http://dx.doi.org/10.1080/15363759.2010.513630>
- Wolff, J. R., Himes, H. L., Miller Kwon, E., & Bollinger, R. (2012). Evangelical Christian college students and attitudes toward gay rights: A California university sample. *Journal of LGBT Youth, 9*, 200–224. <http://dx.doi.org/10.1080/19361653.2012.652892>
- Woodford, M. R., Han, Y., Craig, S., Lim, C., & Matney, M. M. (2014). Discrimination and mental health among sexual minority college students: The type and form of discrimination does matter. *Journal of Gay & Lesbian Mental Health, 18*, 142–163. <http://dx.doi.org/10.1080/19359705.2013.833882>
- Woodford, M. R., & Kulick, A. (2015). Academic and social integration on campus among sexual minority students: The impacts of psychological and experiential campus climate. *American Journal of Community Psychology, 55*, 13–24. <http://dx.doi.org/10.1007/s10464-014-9683-x>
- Yarhouse, M. A., Stratton, S. P., Dean, J. B., & Brooke, H. L. (2009). Listening to sexual minorities on Christian college campuses. *Journal of Psychology and Theology, 37*, 96–113.

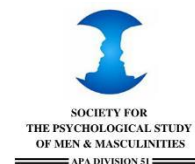
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SOCIETY of GROUP PSYCHOLOGY
and GROUP PSYCHOTHERAPY



Professional Psychology Groups urge the U.S. Department of Education to Protect LGBTQ+ Students at Religious Colleges and Universities

Our signing professional psychological groups affirm the importance of religious diversity and freedom of religious expression. Further, our groups recognize that religion and spirituality (R/S) are important to the lives of thousands of lesbian, gay, bisexual, transgender, and queer (LGBTQ+) people.

While recognizing the potential benefits of religious faith and participation, our groups echo the *American Psychological Association's* (APA) statement that “prejudice based on or derived from religion continues to result in various forms of harmful discrimination,” as stated in the [APA Resolution on Religious, Religion-Based and/or Religion-Derived Prejudice](#)¹. Too many in the LGBTQ+ community are painfully aware of the ways in which they have been excluded from religious participation, condemned for their identities, and watched religion be used to oppose equity and civil rights for LGBTQ+ people all over the world – which have caused many harms to the community^{2,3}.

Decades of psychological research has consistently found that discrimination toward LGBTQ+ people is harmful, and can result in increased rates of suicide, mental health symptoms, substance abuse, isolation, and lower academic achievement in school settings⁴. We also know that policies and practices that promote equity and safety for LGBTQ+ people are associated with mental health benefits, improved wellbeing, and better academic outcomes⁴.

LGBTQ+ students and employees at *non-affirming faith-based colleges and universities* (NFBCUs) are discriminated against in admission, retention, and employment due to a combination of restrictive policies, stigma, absence of formal social support groups, and lack of legal protections⁵. Recent studies and reports suggest that LGBTQ+ students at NFBCUs may experience higher rates of bullying and harassment than their heterosexual and cisgender peers⁶, and develop mental health symptoms because of psychological distress and isolation^{6,7}.

Further, several studies show evidence that some LGBTQ+ students have been referred for *sexual orientation/gender identity change efforts* at NFBCUs^{6,7,8}. APA's [Resolution on Sexual](#)

This is an official statement of the Divisions, Societies, and Associations listed above, and does not represent the position of the American Psychological Association or any of its other Divisions or subunits.

*Orientation Change Efforts*⁹ (SOCE) states that “APA opposes SOCE because such efforts put individuals at significant risk of harm and encourage individuals, families, health professionals, and organizations to avoid SOCE.” Similarly, the APA *Resolution on Gender Identity Change Efforts* (GICE) states that “explicit attempts to change individuals’ gender according to cisnormative pressures [...] cause harm by reinforcing anti-transgender and anti-gender nonbinary stigma and discrimination”¹⁰. Our groups hold strong concerns that some NFBCUs have policies that attach disciplinary threats to transgender and non-binary students who transition¹¹, thus discouraging students from accessing gender-affirming medical and psychological services. These gender-affirming clinical services have been shown to be lifesaving for many transgender and non-binary people¹⁰.

Unlike LGBTQ+ people at non-religious universities, LGBTQ+ students and employees at NFBCUs are left with no legal protections due to exemptions in current Title IX legislation, which are granted by the U.S. Department of Education (ED)⁶. Consistent with APA’s Resolution on *Opposing Discriminatory Laws, Policies, and Practices Aimed at LGBTQ+ Persons*¹², our groups “oppose the enactment of laws, policies, and procedures that exempt any group from following antidiscrimination laws designed to protect any group”, and call upon policy makers and courts to recognize religious freedom without ignoring harmful practices and policies directed at LGBTQ+ people. Our groups also raise this concern given that NFBCUs are indirectly funded by the U.S. government through student loans, research grants, and other federal dollars; thus, taxpayers are, even if unwittingly, funding religiously-based discrimination.

In response, our groups call on ED to *investigate allegations of harm* toward LGBTQ+ students at NFBCUs, and to *take appropriate actions* to protect LGBTQ+ students.

Signatories:

Society for the Psychology of Sexual Orientation and Gender Diversity (APA Division 44)
 Society for the Teaching of Psychology (APA Division 2)
 Society for the Psychological Study of Social Issues (APA Division 9)
 Society of Counseling Psychology (APA Division 17) Section on Lesbian, Gay, Bisexual, and Transgender issues
 Psychologists in Public Service (APA Division 18)
 Society for Military Psychology (APA Division 19)
 Society for Community Research and Action (APA Division 27)
 Society for Humanistic Psychology (APA Division 32)
 Society for the Psychology of Women (APA Division 35)
 Society for Child and Family Policy and Practice (APA Division 37)
 Society for Psychoanalysis and Psychoanalytic Psychology (APA Division 39)
 American Psychology-Law Society (APA Division 41)
 Society of Group Psychology and Group Psychotherapy (APA Division 49)
 Society for the Psychological Study of Men & Masculinities (APA Division 51)
 Society for Pediatric Psychology (APA Division 54)
 Asian American Psychological Association (AAPA)
 National Latinx Psychological Association (NLPA)/Orgullo Latinx: Sexual Orientation and Gender Diversity special interest group

References

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- ¹ American Psychological Association. (2007, August 16). *Resolution on Religious, Religion-Based and/or Religion-Derived Prejudice*. <https://www.apa.org/about/policy/religious-discrimination.pdf>
- ² Hatzenbuehler, M. L., Keyes, K. M., & Hasin, D. S. (2009). State-level policies and psychiatric morbidity in lesbian, gay, and bisexual populations. *American Journal of Public Health, 99*, 2275-2281. <https://doi.org/10.2105/AJPH.2008.153510>
- ³ Gibbs, J. J., & Goldbach, J. (2015). Religious conflict, sexual identity, and suicidal behaviors among LGBT young adults. *Archives of Suicide Research: Official Journal of the International Academy for Suicide Research, 19*(4), 472–488. <https://doi.org/10.1080/13811118.2015.1004476>
- ⁴ American Psychological Association. (n.d.). *Social science research supporting passage of the Equality Act (H.R.5/S. 788)*. <https://www.apa.org/advocacy/civil-rights/sexual-diversity/equality-act-research.pdf>
- ⁵ Wolff, J., Okech, J. A., Smith, L. C., & Southwick, P. J. C. (2020). Protecting sexual and gender minorities in academic institutions with disallowing policies: Psychological, ethical, and accreditation concerns. *Training and Education in Professional Psychology, 14*(3), 249–256. <https://dx.doi.org/10.1037/tep0000272>
- ⁶ Religious Exemption Accountability Project and College Pulse (2021). *The LGBTQ+ Student Divide: The State of Sexual and Gender Minority Students at Taxpayer-Funded Christian Colleges*. <https://www.thereap.org/>
- ⁷ Wolff, J. R., Himes, H. L., Soares, S. D., & Miller Kwon, E. (2016). Sexual minority student experiences in non-affirming religious higher education: Mental health, outness and identity. *Psychology of Sexual Orientation and Gender Diversity, 3*(2), 201-212. <https://doi:10.1037/sgd0000162>
- ⁸ Craig, S. L., Austin, A., Rashidi, M, and Adams, M. (2017). Fighting for survival: The experiences of lesbian, gay, bisexual, transgender, and questioning students in religious colleges and universities. *Journal of Gay and Lesbian Social Services, 29*(1), 1-24.
- ⁹ American Psychological Association (February, 2021). *APA Resolution on Sexual Orientation Change Efforts*. <https://www.apa.org/about/policy/resolution-sexual-orientation-change-efforts.pdf>
- ¹⁰ American Psychological Association (February, 2021). *APA Resolution on Gender Identity Change Efforts*. <https://www.apa.org/about/policy/resolution-gender-identity-change-efforts.pdf>
- ¹¹ Jaschik, S. (July 14, 2014). *Freedom of Religion or Freedom to Discriminate? Inside Higher Ed*. <https://www.insidehighered.com/news/2014/07/14/two-legal-cases-illustrate-growing-tensions-over-rights-transgender-students>
- ¹² American Psychological Association (n.d.). *Resolution on opposing discriminatory laws, policies, and practices aimed at LGBTQ+ persons*. <https://www.apa.org/pi/lgbt/resources/policy/opposing-laws>

BRIEFING ROOM

Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity

MARCH 08, 2021 • PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. It is the policy of my Administration that all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity. For students attending schools and other educational institutions that receive Federal financial assistance, this guarantee is codified, in part, in Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance.

Sec. 2. Review of Agency Actions. (a) Within 100 days of the date of this order, the Secretary of Education, in consultation with the Attorney General, shall review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that are or may be inconsistent with the policy set forth in section 1 of this order, and provide the findings of this review to the Director of the Office of Management and Budget.

(i) As part of the review required under subsection (a) of this section, the Secretary of Education shall review the rule entitled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 85 Fed. Reg. 30026 (May 19, 2020), and any other agency actions taken pursuant to that rule, for consistency with governing law, including Title IX, and with the policy set forth in

section 1 of this order.

(ii) As soon as practicable, and as appropriate and consistent with applicable law, the Secretary of Education shall review existing guidance and issue new guidance as needed on the implementation of the rule described in subsection (a)(i) of this section, for consistency with governing law, including Title IX, and with the policy set forth in section 1 of this order.

(iii) The Secretary of Education shall consider suspending, revising, or rescinding – or publishing for notice and comment proposed rules suspending, revising, or rescinding – those agency actions that are inconsistent with the policy set forth in section 1 of this order as soon as practicable and as appropriate and consistent with applicable law, and may issue such requests for information as would facilitate doing so.

(b) The Secretary of Education shall consider taking additional enforcement actions, as appropriate and consistent with applicable law, to enforce the policy set forth in section 1 of this order as well as legal prohibitions on sex discrimination in the form of sexual harassment, which encompasses sexual violence, to the fullest extent permissible under law; to account for intersecting forms of prohibited discrimination that can affect the availability of resources and support for students who have experienced sex discrimination, including discrimination on the basis of race, disability, and national origin; to account for the significant rates at which students who identify as lesbian, gay, bisexual, transgender, and queer (LGBTQ+) are subject to sexual harassment, which encompasses sexual violence; to ensure that educational institutions are providing appropriate support for students who have experienced sex discrimination; and to ensure that their school procedures are fair and equitable for all.

Sec. 3. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers,

employees, or agents, or any other person.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,

March 8, 2021.



MEMORANDUM

March 26, 2021

TO: Federal Agency Civil Rights Directors and General Counsels

FROM: Principal Deputy Assistant Attorney General Pamela S. Karlan
Civil Rights Division PSK

SUBJECT: Application of *Bostock v. Clayton County* to Title IX of the Education Amendments of 1972

Several federal agencies have recently contacted the Civil Rights Division with questions regarding the application of the Supreme Court’s reasoning in *Bostock v. Clayton County*, 140 S. Ct. 1731, 590 U.S. ___ (2020), to Title IX of the Education Amendments of 1972, as amended (20 U.S.C. § 1681 *et seq.*) (Title IX), particularly in light of Executive Order 13988, *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*, 86 Fed. Reg. 7023 (Jan. 25, 2021). The Department of Justice is charged with coordination of the implementation and enforcement of Title IX by Executive agencies. Exec. Order No. 12250, § 1-2, 45 Fed. Reg. 72,995 (Nov. 4, 1980). Under the Executive Order 12250 authority delegated to the Civil Rights Division, 28 C.F.R. § 0.51(a) (1981) and 28 C.F.R. § 42.412(a) (1981), I write to share the Division’s view as to whether *Bostock* applies to Title IX.

Executive Order 13988 sets out the Administration’s policy that “[a]ll persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.” Citing the Supreme Court’s holding in *Bostock* that the prohibition on discrimination “because of . . . sex” under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (Title VII), covers discrimination on the basis of gender identity and sexual orientation, the Executive Order explains that *Bostock*’s reasoning applies with equal force to other laws that prohibit sex discrimination “so long as the laws do not contain sufficient indications to the contrary.” The Executive Order directs agencies to review other laws that prohibit sex discrimination, including Title IX, to determine whether they prohibit discrimination on the basis of gender identity and sexual orientation. We conclude that Title IX does.

Title IX provides that “[n]o 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.” 20 U.S.C. § 1681(a). Because their statutory prohibitions against sex discrimination are similar, the Supreme Court and other federal courts consistently look to interpretations of Title VII to inform Title IX. *See, e.g., Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 75 (1992); *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007); *Gossett v. Oklahoma ex rel. Bd. of Regents for Langston Univ.*, 245 F.3d 1172, 1176 (10th Cir. 2001). Thus, *Bostock*’s discussion of the text of Title VII informs the Division’s analysis of the text of Title IX.

First, like Title VII, Title IX applies to sex discrimination against individuals. The *Bostock* Court focused on this feature of Title VII in reaching its holding. *Bostock*, 140 S. Ct. at 1740–41 (“[The statute] tells us three times—including immediately after the words “discriminate against”—that our focus should be on individuals”). Similarly, Title IX focuses on individuals when it uses the term “person.” See *Cannon v. Univ. of Chicago*, 441 U.S. 677, 704 (1979) (stating that, in enacting Title IX, Congress “wanted to provide *individual citizens* effective protection against those [discriminatory] practices” (emphasis added)).

Second, Title IX’s “on the basis of sex” language is sufficiently similar to “because of” sex under Title VII as to be considered interchangeable. In *Bostock* itself, the Supreme Court described Title VII’s language that way: “[I]n Title VII, Congress outlawed discrimination in the workplace *on the basis of* race, color, religion, sex, or national origin.” *Bostock*, 140 S. Ct. at 1737 (emphasis added); see also *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986) (“[W]hen a supervisor sexually harasses a subordinate *because of* the subordinate’s sex, that supervisor ‘discriminate[s]’ *on the basis of* sex.” (emphasis added)). The *Bostock* Court concluded that Title VII’s prohibition of discrimination “because of” sex includes discrimination because of sexual orientation and transgender status, finding that when an employer discriminates against employees for being gay or transgender, “the employer must intentionally discriminate against individual men and women in part because of sex.” *Bostock*, 140 S. Ct. at 1740–43. The same reasoning supports the interpretation that Title IX’s prohibition of discrimination “on the basis of” sex would prohibit recipients from discriminating against an individual based on that person’s sexual orientation or transgender status. This interpretation of Title IX is consistent with the Supreme Court’s longstanding directive that “if we are to give Title IX the scope that its origins dictate, we must accord it a sweep as broad as its language.” *N. Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 521 (1982) (citations and internal alterations omitted).

In the months following the *Bostock* decision, two appellate courts have reached the same conclusion, citing *Bostock* to support their holdings that Title IX protects transgender students from discrimination on the basis of gender identity. *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *reh’g en banc denied*, 976 F.3d 399 (4th Cir. 2020), *petition for cert. filed*, No. 20-1163 (Feb. 24, 2021); *Adams v. Sch. Bd. of St. Johns Cnty.*, 968 F.3d 1286, 1305 (11th Cir. 2020), *petition for reh’g en banc pending*, No. 18-13592 (Aug. 28, 2020). Other circuits reached this conclusion before *Bostock*. See *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1049–50 (7th Cir. 2017) (transgender boy was likely to succeed on his claim that school district violated Title IX by excluding him from the boys’ restroom); *Dodds v. U.S. Dep’t of Educ.*, 845 F.3d 217, 221–22 (6th Cir. 2016) (per curiam) (school district that sought to exclude transgender girl from girls’ restroom was not likely to succeed on the claim because Title IX prohibits discrimination based on sex stereotyping and gender nonconformity).

After considering the text of Title IX, Supreme Court caselaw, and developing jurisprudence in this area, the Division has determined that the best reading of Title IX’s prohibition on discrimination “on the basis of sex” is that it includes discrimination on the basis of gender identity and sexual orientation. Before reaching this conclusion, the Division considered whether Title IX “contain[s] sufficient indications” that would merit a contrary conclusion. The Division carefully considered, among other things, the dissenting opinions in

Gloucester and *Adams*, and the concerns raised in the dissents in *Bostock*. Like the majority opinions in those cases, however, the Division ultimately found nothing persuasive in the statutory text, legislative history, or caselaw to justify a departure from *Bostock*'s textual analysis and the Supreme Court's longstanding directive to interpret Title IX's text broadly. Whether allegations of sex discrimination, including allegations of sexual orientation or gender identity discrimination, constitute a violation of Title IX in any given case will necessarily turn on the specific facts, and therefore this statement does not prescribe any particular outcome with regard to enforcement.

I hope this memorandum provides a starting point for your agencies to ensure the consistent and robust enforcement of Title IX, in furtherance of the commitment that every person should be treated with respect and dignity. The Civil Rights Division is available to answer any questions your agencies have as you implement Title IX's protections against sexual orientation and gender identity discrimination.

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–057 to read as follows:

§ 165.T11–057 Safety Zone; Southwest Shelter Island Channel Entrance Closure, San Diego, CA.

(a) *Location.* The following area is a safety zone: The Northeast Shelter Island Channel Entrance and all navigable waters of San Diego Bay encompassed by a three hundred yard circle centered on the coordinate 32°43'13.7" N, longitude 117°13'7.8" W.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector San Diego (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 8:30 a.m. until 10:30 a.m. on June 22, 2021.

Dated: June 16, 2021.

T.J. Barelli,

Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.

[FR Doc. 2021–13136 Filed 6–21–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter I

Enforcement of Title IX of the Education Amendments of 1972 With Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Interpretation.

SUMMARY: The U.S. Department of Education (Department) issues this interpretation to clarify the Department's enforcement authority over discrimination based on sexual orientation and discrimination based on gender identity under Title IX of the Education Amendments of 1972 in light of the Supreme Court's decision in *Bostock v. Clayton County*. This interpretation will guide the Department in processing complaints and conducting investigations, but it does not itself determine the outcome in any particular case or set of facts.

DATES: This interpretation is effective June 22, 2021.

FOR FURTHER INFORMATION CONTACT: Alejandro Reyes, Director, Program Legal Group, Office for Civil Rights. Telephone: (202) 245–7272. Email: Alejandro.Reyes@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background: Title IX of the Education Amendments of 1972, 20 U.S.C. 1681–1688, prohibits discrimination on the basis of sex in any education program or activity offered by a recipient of Federal financial assistance. The Department's Office for Civil Rights (OCR) is responsible for the Department's enforcement of Title IX.

OCR has long recognized that Title IX protects all students, including students who are lesbian, gay, bisexual, and transgender, from harassment and other forms of sex discrimination. OCR also has long recognized that Title IX prohibits harassment and other forms of discrimination against all students for not conforming to stereotypical notions of masculinity and femininity. But OCR at times has stated that Title IX's prohibition on sex discrimination does not encompass discrimination based on sexual orientation and gender identity. To ensure clarity, the Department issues this Interpretation addressing Title IX's coverage of discrimination based on sexual orientation and gender identity

in light of the Supreme Court decision discussed below.

In 2020, the Supreme Court in *Bostock v. Clayton County*, 140 S. Ct. 1731, 590 U.S. ____ (2020), concluded that discrimination based on sexual orientation and discrimination based on gender identity inherently involve treating individuals differently because of their sex. It reached this conclusion in the context of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*, which prohibits sex discrimination in employment. As noted below, courts rely on interpretations of Title VII to inform interpretations of Title IX.

The Department issues this Interpretation to make clear that the Department interprets Title IX's prohibition on sex discrimination to encompass discrimination based on sexual orientation and gender identity and to provide the reasons for this interpretation, as set out below.

Interpretation:

Title IX Prohibits Discrimination Based on Sexual Orientation and Gender Identity.

Consistent with the Supreme Court's ruling and analysis in *Bostock*, the Department interprets Title IX's prohibition on discrimination “on the basis of sex” to encompass discrimination on the basis of sexual orientation and gender identity. As was the case for the Court's Title VII analysis in *Bostock*, this interpretation flows from the statute's “plain terms.” See *Bostock*, 140 S. Ct. at 1743, 1748–50. Addressing discrimination based on sexual orientation and gender identity thus fits squarely within OCR's responsibility to enforce Title IX's prohibition on sex discrimination.

I. The Supreme Court's Ruling in *Bostock*

The Supreme Court in *Bostock* held that sex discrimination, as prohibited by Title VII, encompasses discrimination based on sexual orientation and gender identity. The Court explained that to discriminate on the basis of sexual orientation or gender identity “requires an employer to intentionally treat individual employees differently because of their sex.” 140 S. Ct. at 1742.¹ As the Court also explained,

¹ The Court recognized that the parties in *Bostock* each presented a definition of “sex” dating back to Title VII's enactment, with the employers' definition referring to “reproductive biology” and the employees' definition “capturing more than anatomy[.]” 140 S. Ct. at 1739. The Court did not adopt a definition, instead “assum[ing]” the definition of sex provided by the employers that the employees had accepted “for argument's sake.” *Id.* As the Court made clear, it did not need to adopt

when an employer discriminates against a person for being gay or transgender, the employer necessarily discriminates against that person for “traits or actions it would not have questioned in members of a different sex.” *Id.* at 1737.

The Court provided numerous examples to illustrate why “it is impossible to discriminate against a person” because of their sexual orientation or gender identity “without discriminating against that individual based on sex.” *Id.* at 1741. In one example, when addressing discrimination based on sexual orientation, the Court stated:

Consider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer’s mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to fire based in part on the employee’s sex, and the affected employee’s sex is a but-for cause of his discharge.

Id.

In another example, the Court showed why singling out a transgender employee for different treatment from a non-transgender (*i.e.*, cisgender) employee is discrimination based on sex:

[T]ake an employer who fires a transgender person who was identified as a male at birth but who now identifies as a female. If the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again, the individual employee’s sex plays an unmistakable and impermissible role in the discharge decision.

Id. at 1741–42.

II. *Bostock*’s Application to Title IX

For the reasons set out below, the Department has determined that the interpretation of sex discrimination set out by the Supreme Court in *Bostock*—that discrimination “because of . . . sex” encompasses discrimination based on sexual orientation and gender identity—properly guides the

either definition to conclude that discrimination “because of . . . sex” encompasses discrimination based on sexual orientation and gender identity. *Id.* (“[N]othing in our approach to these cases turns on the outcome of the parties’ debate . . .”). Similar to the Court’s interpretation of Title VII, the Department’s interpretation of the scope of discrimination “on the basis of sex” under Title IX does not require the Department to take a position on the definition of sex, nor do we do so here.

Department’s interpretation of discrimination “on the basis of sex” under Title IX and leads to the conclusion that Title IX prohibits discrimination based on sexual orientation and gender identity.

a. *There is textual similarity between Title VII and Title IX.*

Like Title VII, Title IX prohibits discrimination based on sex.

Title IX provides, with certain exceptions: “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” 20 U.S.C. 1681(a).

Title VII provides, with certain exceptions: “It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . sex[] . . . ; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s . . . sex[]” 42 U.S.C. 2000e–2(a). (Title VII also prohibits discrimination based on race, color, religion, and national origin.)

Both statutes prohibit sex discrimination, with Title IX using the phrase “on the basis of sex” and Title VII using the phrase “because of” sex. The Supreme Court has used these two phrases interchangeably. In *Bostock*, for example, the Court described Title VII in this way: “[I]n Title VII, Congress outlawed discrimination in the workplace on the basis of race, color, religion, sex, or national origin.” 140 S. Ct. at 1737 (emphasis added); *id.* at 1742 (“[I]ntentional discrimination based on sex violates Title VII” (emphasis added)); see also *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 174 (2005) (“[W]hen a funding recipient retaliates against a person because he complains of sex discrimination, this constitutes intentional ‘discrimination’ ‘on the basis of sex,’ in violation of Title IX.” (second emphasis added)); *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 64 (1986) (“[W]hen a supervisor sexually harasses a subordinate because of the subordinate’s sex, that supervisor ‘discriminate[s]’ on the basis of sex.” (emphasis added)).

In addition, both statutes specifically protect *individuals* against

discrimination. In *Bostock*, 140 S. Ct. at 1740–41, the Court observed that Title VII “tells us three times—including immediately after the words ‘discriminate against’—that our focus should be on individuals.” The Court made a similar observation about Title IX, which uses the term *person*, in *Cannon v. University of Chicago*, 441 U.S. 677, 704 (1979), stating that “Congress wanted to avoid the use of federal resources to support discriminatory practices [and] to provide *individual* citizens effective protection against those practices.” *Id.* (emphasis added).

Further, the text of both statutes contains no exception for sex discrimination that is associated with an individual’s sexual orientation or gender identity. As the Court stated in *Bostock*, “when Congress chooses not to include any exceptions to a broad rule, courts apply the broad rule.” 140 S. Ct. at 1747. The Court has made a similar point regarding Title IX: “[I]f we are to give Title IX the scope that its origins dictate, we must accord it a sweep as broad as its language.” *N. Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 521 (1982) (citations and internal alterations omitted). It also bears noting that, in interpreting the scope of Title IX’s prohibition on sex discrimination the Supreme Court and lower Federal courts have often relied on the Supreme Court’s interpretations of Title VII. See, e.g., *Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 75 (1992); *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007); *Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 66 (1st Cir. 2002); *Gossett v. Oklahoma ex rel. Bd. of Regents for Langston Univ.*, 245 F.3d 1172, 1176 (10th Cir. 2001).

Moreover, the Court in *Bostock* found that “no ambiguity exists about how Title VII’s terms apply to the facts before [it]”—*i.e.*, allegations of discrimination in employment against several individuals based on sexual orientation or gender identity. 140 S. Ct. at 1749. After reviewing the text of Title IX and Federal courts’ interpretation of Title IX, the Department has concluded that the same clarity exists for Title IX. That is, Title IX prohibits recipients of Federal financial assistance from discriminating based on sexual orientation and gender identity in their education programs and activities. The Department also has concluded for the reasons described in this document that, to the extent other interpretations may exist, this is the best interpretation of the statute.

In short, the Department finds no persuasive or well-founded basis for declining to apply *Bostock*’s reasoning—discrimination “because of

. . . sex” under Title VII encompasses discrimination based on sexual orientation and gender identity—to Title IX’s parallel prohibition on sex discrimination in federally funded education programs and activities.

b. Additional case law recognizes that the reasoning of Bostock applies to Title IX and that differential treatment of students based on gender identity or sexual orientation may cause harm.

Numerous Federal courts have relied on *Bostock* to recognize that Title IX’s prohibition on sex discrimination encompasses discrimination based on sexual orientation and gender identity. *See, e.g., Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *reh’g en banc denied*, 976 F.3d 399 (4th Cir. 2020), *petition for cert filed*, No. 20–1163 (Feb. 24, 2021); *Adams v. Sch. Bd. of St. Johns Cnty.*, 968 F.3d 1286, 1305 (11th Cir. 2020), *petition for reh’g en banc pending*, No. 18–13592 (Aug. 28, 2020); *Koenke v. Saint Joseph’s Univ.*, No. CV 19–4731, 2021 WL 75778, at *2 (E.D. Pa. Jan. 8, 2021); *Doe v. Univ. of Scranton*, No. 3:19–CV–01486, 2020 WL 5993766, at *11 n.61 (M.D. Pa. Oct. 9, 2020).

The Department also concludes that the interpretation set forth in this document is most consistent with the purpose of Title IX, which is to ensure equal opportunity and to protect individuals from the harms of sex discrimination. As numerous courts have recognized, a school’s policy or actions that treat gay, lesbian, or transgender students differently from other students may cause harm. *See, e.g., Grimm*, 972 F.3d at 617–18 (describing injuries to a transgender boy’s physical and emotional health as a result of denial of equal treatment); *Adams*, 968 F.3d at 1306–07 (describing “emotional damage, stigmatization and shame” experienced by a transgender boy as a result of being subjected to differential treatment); *Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1044–46, 1049–50 (7th Cir. 2017) (describing physical and emotional harm to a transgender boy who was denied equal treatment); *Dodds v. U.S. Dep’t of Educ.*, 845 F.3d 217, 221–22 (6th Cir. 2016) (describing “substantial and immediate adverse effects on the daily life and well-being of an eleven-year-old” transgender girl from denial of equal treatment); *Doe*, 2020 WL 5993766, at **1–3 (describing harassment and physical targeting of a gay college student that interfered with the student’s educational opportunity); *Harrington ex rel. Harrington v. City of Attleboro*, No. 15–CV–12769–DJC, 2018

WL 475000, at **6–7 (D. Mass. Jan. 17, 2018) (describing “‘wide-spread peer harassment’ and physical assault [of a lesbian high school student] because of stereotyping animus focused on [the student’s] sex, appearance, and perceived or actual sexual orientation”).

c. The U.S. Department of Justice’s Civil Rights Division has concluded that Bostock’s analysis applies to Title IX.

The U.S. Department of Justice’s Civil Rights Division issued a Memorandum from Principal Deputy Assistant Attorney General for Civil Rights Pamela S. Karlan to Federal Agency Civil Rights Directors and General Counsels regarding Application of *Bostock v. Clayton County* to Title IX of the Education Amendments of 1972 (Mar. 26, 2021), <https://www.justice.gov/crt/page/file/1383026/download>.

The memorandum stated that, after careful consideration, including a review of case law, “the Division has determined that the best reading of Title IX’s prohibition on discrimination ‘on the basis of sex’ is that it includes discrimination on the basis of gender identity and sexual orientation.” Indeed, “the Division ultimately found nothing persuasive in the statutory text, legislative history, or caselaw to justify a departure from *Bostock*’s textual analysis and the Supreme Court’s longstanding directive to interpret Title IX’s text broadly.”

III. Implementing This Interpretation

Consistent with the analysis above, OCR will fully enforce Title IX to prohibit discrimination based on sexual orientation and gender identity in education programs and activities that receive Federal financial assistance from the Department. As with all other Title IX complaints that OCR receives, any complaint alleging discrimination based on sexual orientation or gender identity also must meet jurisdictional requirements as defined in Title IX and the Department’s Title IX regulations, other applicable legal requirements, as well as the standards set forth in OCR’s Case Processing Manual, www.ed.gov/ocr/docs/ocrcpm.pdf.²

Where a complaint meets applicable requirements and standards as just described, OCR will open an investigation of allegations that an individual has been discriminated against because of their sexual orientation or gender identity in education programs or activities. This includes allegations of individuals being

harassed, disciplined in a discriminatory manner, excluded from, denied equal access to, or subjected to sex stereotyping in academic or extracurricular opportunities and other education programs or activities, denied the benefits of such programs or activities, or otherwise treated differently because of their sexual orientation or gender identity. OCR carefully reviews allegations from anyone who files a complaint, including students who identify as male, female or nonbinary; transgender or cisgender; intersex; lesbian, gay, bisexual, queer, heterosexual, or in other ways.

While this interpretation will guide the Department in processing complaints and conducting investigations, it does not determine the outcome in any particular case or set of facts. Where OCR’s investigation reveals that one or more individuals has been discriminated against because of their sexual orientation or gender identity, the resolution of such a complaint will address the specific compliance concerns or violations identified in the course of the investigation.

This interpretation supersedes and replaces any prior inconsistent statements made by the Department regarding the scope of Title IX’s jurisdiction over discrimination based on sexual orientation and gender identity. This interpretation does not reinstate any previously rescinded guidance documents.

Accessible Format: On request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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² Educational institutions that are controlled by a religious organization are exempt from Title IX to the extent that compliance would not be consistent with the organization’s religious tenets. *See* 20 U.S.C. 1681(a)(3).

32640

Federal Register / Vol. 86, No. 117 / Tuesday, June 22, 2021 / Rules and Regulations

your search to documents published by the Department.

Suzanne B. Goldberg,

Acting Assistant Secretary for Civil Rights.

[FR Doc. 2021-13058 Filed 6-21-21; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 11

[Docket No.: PTO-C-2013-0042]

RIN 0651-AC91

Changes to Representation of Others Before the United States Patent and Trademark Office; Correction

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is correcting an earlier final rule, “Changes to the Representation of Others Before the United States Patent and Trademark Office,” that appeared in the **Federal Register** on May 26, 2021 and which takes effect on June 25, 2021. This document corrects a minor error. No other changes are being made to the underlying final rule.

DATES: This rule is effective June 25, 2021.

FOR FURTHER INFORMATION CONTACT:

William R. Covey, Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, at 571-272-4097.

SUPPLEMENTARY INFORMATION: This document corrects an error pertaining to revisions to definitions made in the final rule. Specifically, the Office intended to change the listed definition of “Roster” to “Roster or register.” The Code of Federal Regulations editors informed the Office that the original **Federal Register** instruction to “revise” the definition was incorrect. Rather, the correct instruction should be to “remove and add” the intended definition. This document corrects that instruction.

In FR Doc. 2021-10528, appearing on page 28442 in the **Federal Register** of Wednesday, May 26, 2021, the following correction is made:

§ 11.1 [Corrected]

■ On page 28452, in the first column, in part 11, correct amendatory instruction 4 to read as follows:

■ 4. Amend § 11.1 by:

■ a. Revising the definitions of “Conviction or convicted” and “Practitioner;”

■ b. Removing the entry for “Roster” and adding, in alphabetical order, an entry for “Roster or register;” and

■ c. Revising the definitions for “Serious crime” and “State.”

The revisions and addition read as follows:

Andrew Hirshfeld,

Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2021-13145 Filed 6-21-21; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201, 202, 203, 210, and 370

[Docket No. 2021-3]

Technical Amendments Regarding the Copyright Office’s Organizational Structure

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: This final rule makes technical changes to the U.S. Copyright Office’s regulations pertaining to its organizational structure in light of the agency’s recent reorganization. It reflects recent structural changes, updates certain of the Office’s division names, and adds a new section for the Copyright Claims Board established by the Copyright Alternative in Small-Claims Enforcement Act of 2020.

DATES: Effective July 22, 2021.

FOR FURTHER INFORMATION CONTACT:

Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at regans@copyright.gov, Kevin R. Amer, Deputy General Counsel, by email at kamer@copyright.gov, or Joanna R. Blatchly, Attorney-Advisor, by email at jblatchly@copyright.gov or by telephone at (202) 707-8350.

SUPPLEMENTARY INFORMATION: The Copyright Office is publishing this final rule pursuant to its May 2021 reorganization. This effort is intended to accomplish two goals: (1) Rename divisions and realign certain reporting structures to improve the Office’s effectiveness and efficiency; and (2) reflect the agency structure for the new copyright small-claims tribunal established by the Copyright Alternative

in Small-Claims Enforcement (“CASE”) Act of 2020.¹ The Register has determined that these changes will optimize business processes and aid in the administration of her functions and duties as Director of the Copyright Office.²

Operational reorganization. The reorganization reduces the number of direct reports to the Register of Copyrights and is expected to create administrative and cost efficiencies by consolidating operational organizations currently headed by senior-level positions. The reorganization brings the Office of the Chief Financial Officer (renamed the Financial Management Division) and the Copyright Modernization Office (renamed the Product Management Division) under the supervision of the Chief of Operations (renamed the Assistant Register and Director of Operations (“ARDO”). Realigning these divisions under the ARDO consolidates operational support elements under one senior manager, in line with operational structures across the Library of Congress. This consolidation is expected to facilitate Office coordination with centralized Library services, and with similar functional elements of other service units. It is also expected to allow the Office to increase the effectiveness of communications across areas of operational responsibility, in alignment with strategic objectives.

The reorganization renames certain organizational elements and senior positions for purposes of greater clarity and consistency. The Office of Public Records and Repositories is renamed the Office of Copyright Records. As noted above, the Office of the Chief of Operations is renamed the Office of the Director of Operations. The following subordinate offices are also renamed: The Copyright Acquisitions Division (“CAD”) is renamed Acquisitions and Deposits (“A&D”); the Administrative Services Office (“ASO”) is renamed the Administrative Services Division (“ASD”); and the Receipt Analysis and Control Division (“RAC”) is renamed the Materials Control and Analysis Division (“MCA”). The Copyright Modernization Office (“CMO”) is renamed the Product Management Division (“PMD”).

Further, the Office of the Chief Financial Officer (“CFO”) is renamed the Financial Management Division (“FMD”) and work units under this division are also renamed, including by

¹ Public Law 116-260, sec. 212, 134 Stat. 1182, 2176 (2020).

² See 17 U.S.C. 701(a).



**COMMONWEALTH OF
PENNSYLVANIA
OFFICE OF ATTORNEY
GENERAL
JOSH SHAPIRO
ATTORNEY GENERAL**



**STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY
GENERAL
XAVIER BECERRA
ATTORNEY GENERAL**



**STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY
GENERAL
GURBIR S. GREWAL
ATTORNEY GENERAL**

January 30, 2019

VIA Federal eRulemaking Portal & Mail

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue S.W.
Washington D.C. 20202

Re: Comment on Proposed Rule Regarding Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance—Docket ID ED–2018–OCR–0064 (83 Fed. Reg. 61,462 (Nov. 29, 2018))

Dear Secretary DeVos:

On behalf of the Commonwealths of Pennsylvania and Kentucky, the States of New Jersey, California, Delaware, Hawai‘i, Illinois, Iowa, Maine, Maryland, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia, we write to express our strong opposition to the *Proposed Rule Regarding Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance* (the “proposed rule”), published by the Department of Education (the “Department”) in the Federal Register on November 29, 2018. This rule seeks to impose procedures for the implementation of Title IX of the Education Amendments Act of 1972 (Title IX). Unfortunately, many of these proposed procedures would thwart the very purpose of Title IX—to provide equal access to educational opportunities. For this reason, we urge you to withdraw this rule.

Proper enforcement of Title IX is an issue of immense importance to our states, our resident students and families, our teachers, and our communities. The ability to learn in a safe environment free from violence and discrimination is critical and something that we as states prioritize and value.

Conduct that violates Title IX may also violate criminal laws, and state attorneys general, along with county and local prosecutors, have the responsibility to investigate and prosecute these violations when warranted. Many of our states prohibit discrimination based on sex.¹ We have a strong interest in vigorous enforcement of these laws and in ensuring that our own enforcement efforts are not undermined by a weaker federal regime.

Title IX applies to public K-12 schools as well as public colleges and universities, so the states are regulated entities under the proposal. And the states themselves regulate, and in many cases provide funding for, private educational institutions within their borders, which will be subject to the proposed rule to the extent they receive federal funds. Most importantly, the states have a profound interest in protecting the well-being of their students and in ensuring that they are able to obtain an education free of sexual harassment, violence, and discrimination.

We represent states in which schools² have worked to bring their procedures in line with Title IX's requirements: to provide students an educational environment free from discrimination based on sex, including sexual harassment and violence. The proposed rule imposes new requirements on schools and complainants that would mark a significant departure from that fundamental purpose of Title IX.

In this comment letter, we address aspects of the proposed rule that would be incompatible with Title IX, inappropriate exercises of the Department's authority, and unsupported by the facts. Section I of the comment provides relevant factual and legal background on sexual harassment and violence and its impact on education. Section II addresses the Department's proposal for a general rule to govern schools' obligations to respond to sexual harassment and violence. Section III addresses the proposed definitions of "complainant," "formal complaint," and "supportive measures." Section IV details problems with the Department's proposed formal grievance procedures. Section V requests clarification regarding how the proposed rule will interact with other federal, state, and local laws and policies. Section VI addresses other issues with the proposed rule. Section VII identifies flaws in the

¹ *E.g.*, Cal. Const., art. I, § 7(a) & (b); Cal. Educ. Code § 220; Cal. Gov't Code § 11135; Minn. Stat. § 363A.13; N.J.S.A. 10:5-12; Pa. Const. art. I, § 28.

² For purposes of this letter, "school" is defined consistent with the statute to include "any education program or activity receiving Federal financial assistance," which includes but is not limited to most elementary and secondary schools and institutions of undergraduate and higher graduate education. 20 U.S.C. § 1681, *et. seq.* We use "school" synonymously with the term "recipient" used by the proposed rule.

Department's regulatory impact analysis. And Section VIII speaks to the effective date of any Title IX rule adopted by the Department.

Finally, we are concerned that during the notice and comment process the Department of Education has not proactively released required records under the Administrative Procedure Act (APA). The APA requires federal agencies to reveal "for public evaluation" the "technical studies and data upon which the agency relies" in rulemaking, including reports and information relied on by the agency in reaching its conclusions.³ We understand that studies relied on by the Department in preparing the Regulatory Impact Analysis⁴ have not been made available to the public in contravention of the APA. In addition, tens of thousands of comments already submitted to Regulations.gov are also not available to the public,⁵ even though the Notice of Proposed Rulemaking (NPRM) specifically indicates "all public comments about these proposed regulations" will be available for inspection "[d]uring and after the comment period" by accessing Regulations.gov. 83 Fed. Reg. at 61,463. We ask that the Department promptly make this information public and provide sufficient time for a meaningful response.

³ *American Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 236 (D.C. Cir. 2008) (internal quotations and citations omitted).

⁴ *See, e.g.*, 83 Fed. Reg. at 61,485 (discussing "examin[ation of] public reports of Title IX reports and investigations at 55 [institutions of higher education] nationwide").

⁵ *Compare* <https://www.regulations.gov/document?D=ED-2018-OCR-0064-0001> (stating that approximately 96,800 comments have been submitted as of 2:00 PM ET on January 30, 2019), *with* <https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=ED-2018-OCR-0064&refD=ED-2018-OCR-0064-0001> (allowing the public to access only 8,909 comments as of 2:00 PM ET on January 30, 2019).

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I. Title IX Guarantees Students an Equal Education Free of Sexual Harassment⁶, Which is Pervasive and Deeply Harmful to Students.

Title IX of the Education Amendments Act of 1972 is a civil rights statute that guarantees students equal access to educational programs and activities free of discrimination based on sex.⁷ Since at least 1992, this right has been applied to protect students from sexual harassment and sexual violence that would limit or deny their ability to participate equally in the benefits, services, and opportunities of federally funded educational programs and activities.⁸

Sexual harassment of students occurs far too frequently—at all grade levels and to all types of students. More than 20 percent of girls aged 14 to 18 have been kissed or touched without consent.⁹ In grades 7–12, 56 percent of girls and 40 percent of boys are sexually harassed every year, with nearly a third of the harassment taking place online.¹⁰ In college, nearly two thirds of both men and women will experience sexual harassment.¹¹ More than 1 in 5 women and nearly 1 in 18 men in college were survivors of sexual assault or sexual misconduct due to physical force, threats of force, or incapacitation.¹² The federal government’s own studies reaffirm these statistics: the U.S. Department of Justice’s Bureau of Justice Statistics found that, on average, 20.5 percent of college women had experienced sexual assault since entering college,¹³ while the Centers for Disease Control and Prevention found that one in five women

⁶ Sexual violence and sexual assault can both be forms of sexual harassment. The term “sexual harassment” as used herein includes sexual violence, which courts and the Department have recognized is a subset of actionable conduct under the term “sexual harassment.” *See, e.g.*, U.S. Dep’t of Educ., Off. for Civil Rights, *Dear Colleague Letter*, at 1 (Apr. 4, 2011, withdrawn Sept. 22, 2017) (the “2011 DCL”) (“Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX.”).

⁷ 20 U.S.C. § 1681(a).

⁸ *Franklin v. Gwinnett Cty. Pub. Schs.*, 503 U.S. 60 (1992).

⁹ Nat’l Women’s Law Center, *Let Her Learn: Stopping School Pushout for: Girls Who Have Suffered Harassment and Sexual Violence* 1 (Apr. 2017), <https://nwlc.org/resources/stopping-school-pushout-for-girls-who-have-suffered-harassment-and-sexual-violence>.

¹⁰ Catherine Hill & Holly Kearn, *Crossing the Line: Sexual Harassment at School*, AAUW 11 (2011), <https://www.aauw.org/files/2013/02/Crossing-the-Line-Sexual-Harassment-at-School.pdf>.

¹¹ Catherine Hill & Elena Silva, *Drawing the Line: Sexual Harassment on Campus*, AAUW 17, 19 (2005), <https://history.aauw.org/files/2013/01/DTLFinal.pdf> (noting differences in the types of sexual harassment and reactions to it).

¹² *E.g.*, David Cantor et al., *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct*, Association of American Universities 13-14 (Sept. 2015, reissued Oct. 2017), <https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/AAU-Campus-Climate-Survey-FINAL-10-20-17.pdf>.

¹³ *See generally*, Campus Climate Survey Validation Study, Final Technical Report (Jan. 2016), Appx. E, https://www.bjs.gov/content/pub/pdf/App_E_Sex-Assault-Rape-Battery.pdf; *see also* Sofi Sinozich & Lynn Langton, *Rape and Sexual Assault Victimization Among College-Age Females, 1995–*

have experienced sexual assault in their lifetimes.¹⁴ And harassment is not limited to women: Men and boys are far more likely to be subjected to sexual assault than to be falsely accused of it.¹⁵ Historically marginalized and underrepresented groups—such as girls who are pregnant or raising children, LGBTQ students, and students with disabilities—are more likely to experience sexual harassment than their peers.¹⁶

Despite the frequency of campus sexual harassment and violence, those subjected to it often refrain from reporting it. In 2016, only 20 percent of rape and sexual assault survivors reported these crimes to the police.¹⁷ Only 12 percent of college survivors¹⁸ and two percent of female survivors ages 14–18¹⁹ reported sexual assault to their schools or the police. One national

2013, U.S. DOJ, Office of Justice Programs, Bureau of Justice Statistics (Dec. 2014), <https://www.bjs.gov/content/pub/pdf/rsavcaf9513.pdf>.

¹⁴ Ctrs. for Disease Control & Prevention, *National Intimate Partner and Sexual Violence Survey*, https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf; see also Ctrs. for Disease Control & Prevention, *Understanding Sexual Violence Fact Sheet*, <https://www.cdc.gov/violenceprevention/pdf/sv-factsheet.pdf> (last checked Jan. 21, 2019) (reporting that 1 in 2 women and 1 in 5 men experienced sexual violence other than rape during their lifetimes, about 1 in 5 women have experienced completed or attempted rape, 1 in 21 men have been made to penetrate someone else in their lifetime, and 1 in 3 female rape victims experienced it for the first time between 11-17 years old and 1 in 9 reported that it occurred before age 10).

¹⁵ E.g., Tyler Kingkade, *Males Are More Likely To Suffer Sexual Assault Than To Be Falsely Accused Of It*, Huffington Post (Oct. 16, 2015), https://www.huffingtonpost.com/2014/12/08/false-rape-accusations_n_6290380.html.

¹⁶ Nat'l Women's Law Center, *Let Her Learn: Stopping School Pushout for Girls Who Are Pregnant or Parenting* 12 (2017), <https://nwlc.org/resources/stopping-school-pushout-for-girls-who-are-pregnant-or-parenting> (56 percent of girls aged 14 to 18 who are pregnant or raising children are touched or kissed without consent); Joseph G. Kosciw et al., *The 2017 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools*, GLSEN 26 (2018), <https://www.glsen.org/article/2017-national-school-climate-survey-1>; *AAU Campus Climate Survey*, supra note 12, at 13–14 (nearly 25 percent of transgender or gender non-conforming students are sexually assaulted in college); Nat'l Women's Law Center, *Let Her Learn: Stopping School Pushout for: Girls With Disabilities* 7 (2017), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/04/Final_nwlc_Gates_GirlsWithDisabilities.pdf (“[C]hildren with disabilities were 2.9 times more likely than children without disabilities to be sexually abused.”).

¹⁷ DOJ, Bureau of Justice Stats., *Criminal Victimization, 2016: Revised*, at 7 (Oct. 2018), <https://www.bjs.gov/content/pub/pdf/cv16.pdf>.

¹⁸ *Poll: One in 5 Women Say They Have Been Sexually Assaulted in College*, Wash. Post (June 12, 2015), <https://www.washingtonpost.com/graphics/local/sexual-assault-poll/>; see also *Drawing the Line: Sexual Harassment on Campus*, supra note 11, at 2 (“[L]ess than 10 percent of these students tell a college or university employee about their experiences and an even smaller fraction officially report them to a Title IX officer.”).

¹⁹ *Let Her Learn: Stopping School Pushout for: Girls Who Have Suffered Harassment and Sexual Violence*, supra note 9, at 2.

survey found that of 770 rapes on campus during the 2014–2015 academic year, only 40 were reported to authorities under the Clery Act guidelines.²⁰ Students often choose not to report for fear of reprisal, because they believe their abuse was not important enough, or because they think that no one would do anything to help.²¹ Reporting is even less likely among students of color,²² undocumented students,²³ LGBTQ students,²⁴ and students with disabilities.²⁵

When not addressed properly, sexual harassment can have a debilitating impact on a student's access to education.²⁶ For example, 34 percent of college survivors of sexual assault drop out of college,²⁷ often because they no longer feel safe on campus.²⁸

This is why effective Title IX enforcement is crucial: Protecting students from the devastating effects of sexual harassment is a necessary component of an equal education free

²⁰ N.J. Task Force on Campus Sexual Assault, *2017 Report and Recommendations*, <https://www.nj.gov/highereducation/documents/pdf/index/sexualassaulttaskforcereport2017.pdf>.

²¹ RAINN, *Campus Sexual Violence: Statistics*, <https://www.rainn.org/statistics/campus-sexual-violence>.

²² Colleen Murphy, *Another Challenge on Campus Sexual Assault: Getting Minority Students to Report It*, *The Chronicle of Higher Education* (June 18, 2015) (discussing underreporting by student of color), <https://www.chronicle.com/article/Another-Challenge-on-Campus/230977>; see also Kathryn Casteel, Julie Wolfe & Mai Nguyen, *What We Know About Victims of Sexual Assault in America*, *Five Thirty Eight Projects* (last checked Jan. 21, 2019), <https://projects.fivethirtyeight.com/sexual-assault-victims> (reporting results of the 2017 National Crime Victimization Survey (NCVS), finding that 77 percent of incidents of rape and sexual assault were not reported to the police and that 15 percent of the incidents of rape and sexual assault in the NCVS were reported by Hispanic respondents and 13 percent by non-Hispanic black respondent).

²³ See Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation*, *N.Y. Times* (Apr. 30, 2017), <https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html?mcubz=3>.

²⁴ National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey: Executive Summary* 12 (Dec. 2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Executive-Summary-Dec17.pdf>.

²⁵ Nat'l Women's Law Center, *Let Her Learn: Stopping School Pushout for: Girls with Disabilities* 7 (2017), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/04/Final_nwlc_Gates_GirlsWithDisabilities.pdf.

²⁶ E.g., Audrey Chu, *I Dropped Out of College Because I Couldn't Bear to See My Rapist on Campus*, *Vice* (Sept. 26, 2017), https://broadly.vice.com/en_us/article/qvjzpd/i-dropped-out-of-college-because-i-couldnt-bear-to-see-my-rapist-on-campus.

²⁷ Cecilia Mengo & Beverly M. Black, *Violence Victimization on a College Campus: Impact on GPA and School Dropout*, 18(2) *J.C. Student Retention: Res., Theory & Prac.* 234, 244 (2015), <https://doi.org/10.1177/1521025115584750>.

²⁸ E.g., Alexandra Brodsky, *How Much Does Sexual Assault Cost College Students Every Year?*, *Wash. Post* (Nov. 18, 2014), <https://www.washingtonpost.com/posteverything/wp/2014/11/18/how-much-does-sexual-assault-cost-college-students-every-year/>.

from discrimination. In enacting Title IX, Congress intended to ensure that all students, regardless of sex, have equal access to education. Title IX places the obligation on schools—not students—to provide educational programs and activities free from sex discrimination, sexual harassment, and sexual violence. A school’s compliance with Title IX is not limited to responding appropriately to individual reports or formal complaints filed by students. Instead, schools have an affirmative legal obligation to stop harassment, eliminate hostile educational environments, prevent recurrence of harassment, and remedy its effects not only on those subjected to sexual harassment, but on the entire student body.²⁹

Consistent with the purpose of the law, any Title IX regulation should focus on maximizing student access to an education free of sexual discrimination, harassment, assault, stalking, and domestic violence.³⁰ Yet the proposed rule does the opposite. It prioritizes reducing the number of Title IX investigations a school conducts, flipping Title IX on its head. It narrows the scope of schools’ responsibility, contrary to decades of established law and practice, and ignores the reality of how sexual harassment affects a student’s access to education. It will chill reporting of sexual harassment—which is already severely underreported—by imposing onerous burdens on students who seek to report sexual harassment and to vindicate their right to an equal education. It will make the standard for non-compliance so high that only schools who deliberately and intentionally flout the law will be required to take even the most basic remedial and preventative action, leaving many students without recourse or help from their school. And it will allow systemic harassment and toxic campus cultures to flourish by removing schools’ well-established obligation to seek out and remedy such violations.

Equally concerning, the proposal blurs the lines between the procedures governing criminal proceedings and those applicable to non-criminal proceedings under Title IX. As a civil rights statute, Title IX is focused on ensuring equal access to educational programs and activities, not denying life and liberty to the guilty. In non-criminal proceedings, both parties are treated equally, with neither side receiving greater procedural protections than the other and with procedures designed to find the truth when the parties dispute the facts. But the proposed rule provides greater protections to respondents, and imposes significant and inappropriate burdens on complainants. Criminal procedures and protections do not apply in the Title IX context.

²⁹ See generally *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 288 (1998) (“In the event of a violation, [under OCR’s administrative enforcement scheme] a funding recipient may be required to take ‘such remedial action as [is] deem[ed] necessary to overcome the effects of [the] discrimination.’ §106.3.”); U.S. Dep’t of Educ., Off. for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, at 20 (66 Fed. Reg. 5512, Jan. 19 2001) (the “2001 Guidance”).

³⁰ The Violence Against Women Act, 42 U.S.C. 12291, recognizes the need to protect against domestic violence, assault, and stalking. Similarly, it is appropriate for the implementation of Title IX to recognize that domestic violence, assault, and stalking may impermissibly restrict access to educational opportunities on the basis of sexual discrimination.

At the end of the day, Title IX sets the floor—not the ceiling—on what schools must do to provide non-discriminatory education to all their students. Any Title IX regulation should encourage schools to uncover and prevent any harassment that negatively affects a student’s access to education—not incentivize schools towards willful ignorance. And any Title IX regulations certainly cannot bar state and local governments and schools from responding more robustly to campus sexual harassment, or interfere with schools’ compliance with other applicable federal, state, and local laws and policies that require such a response. Schools must continue to enjoy a right to establish codes of conduct and protections for students that go beyond what Title IX requires.

Working with the Department’s Office for Civil Rights (OCR), many schools across the country have developed Title IX procedures that are fair to all parties, that reflect each school’s unique circumstances, and that further the statute’s anti-discrimination mandate. In many places, the proposed rule subverts these carefully refined policies. The Department’s proposal is based on the misguided belief that schools are facing a torrent of frivolous Title IX complaints, but the effect will be to reduce the filing of bona fide complaints. The proposed rule introduces new biases into the process, imposes uniform requirements ill-suited to many schools’ circumstances, and undermines the goal of a discrimination-free campus. The Department’s proposal would reverse practices endorsed by both Democratic and Republican administrations;³¹ contravene Supreme Court and other legal precedent and requirements, including the mandates of the APA; ignore the reality of where campus sexual assault occurs; impose onerous burdens on complainants; and run contrary to Title IX itself and other federal laws. The result will chill reporting of sexual harassment and prevent schools from effectively addressing its insidious effects.

It is vital that the Department’s regulations support schools in fulfilling their Title IX obligations. As the Department noted in 2001, a “grievance procedure applicable to sexual harassment complaints cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint.”³² But the Department lacks statutory authority to issue regulations, such as the proposed rule, that would impede enforcement of Title IX and limit schools’ ability to rid their programs and activities of sex discrimination. Title IX mandates that no student “be excluded from participation in, denied benefits of, or be subjected to discrimination under any education program or activity” on the basis of sex.³³ And the Department’s instruction from Congress is to “effectuate” this anti-discrimination mandate.³⁴ By effectively mandating ceilings to schools’ Title IX investigations and tilting grievance

³¹ *E.g.*, 2001 Guidance; U.S. Dep’t of Educ., Off. for Civil Rights, *Dear Colleague Letter* (Jan. 25, 2006) (the “2006 DCL”); 2011 DCL.

³² *E.g.*, 2001 Guidance at 20.

³³ 20 U.S.C. § 1681(a).

³⁴ 20 U.S.C. § 1682.

procedures against complainants, the rule undermines Title IX under the guise of enforcing it. The Department may not promulgate regulations that limit the effectiveness of the statutory mandate or hinder schools' efforts to combat discrimination even more vigorously than the statute requires.

II. The Department of Education's Title IX Standards Are Contrary to Title IX and Weaken Students' Protections Against Sexual Harassment and Violence.

The Department has proposed a general standard for the sufficiency of a school's response to sexual harassment that would mark a significant retreat from decades-long, bipartisan efforts to combat sexual harassment and its impact on equal access to education. Proposed § 106.44(a) would provide that “[a] recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States must respond in a manner that is not deliberately indifferent.” This proposed standard—as well as the proposed definitions of “sexual harassment,” “actual knowledge,” “program or activity,” and “deliberate indifference”—depart from current law and policy without any sound justification. As a result, the proposed rule does not effectuate the anti-discrimination mandate of Title IX as it applies to sexual harassment; rather, the rule would undermine it.

The Department's stated reason for proposing this rule is that “the administrative standards governing recipients' responses to sexual harassment should be generally aligned with the standards developed by the Supreme Court in cases assessing liability under Title IX for money damages in private litigation.” 83 Fed. Reg. at 61,466. But the Department's “alignment” of the proposed rule with Supreme Court precedent is only partial and arbitrarily selective, incorrect as a matter of law, and unreasonable as a matter of policy. This proposal is ill-advised and should be withdrawn.

The Department does not point to any unfairness in the previous definition of sexual harassment, the application of constructive knowledge or agency principles, the requirement that schools address off-campus conduct, or the reasonableness standard—all of which have been in place for decades (and many of which continue to apply under Title VII³⁵). The Department reverses course and removes protection for student subject to sexual assault based on an unreasoned desire to equate Title IX government investigations with private civil actions for money damages.

The Supreme Court distinguishes between the Department's administrative enforcement of Title IX and its decisions involving monetary damages actions. Unlike private civil money damages cases, the risk of significant monetary damages resulting from an OCR Title IX investigation is substantially reduced. This is because “Title IX requires OCR to attempt to

³⁵ Title VII of the 1964 Civil Rights Act prohibits employment discrimination based on race, color, religion, sex and national origin. 42 U.S.C. § 2000e *et seq.*

secure voluntary compliance” in the first instance.³⁶ In contrast, the Court’s fear in *Gebser*³⁷ was allowing private parties “unlimited recovery of damages under Title IX” without actual notice to the schools.³⁸ In the Department’s administrative enforcement scheme, a school is obligated to take corrective action, and rarely, if ever, loses its Title IX funding.³⁹ This does not raise the possibility of large damages awards or significant risk of losing federal funding, which the *Gebser* court acknowledged as its “central concern.”⁴⁰ The Court was concerned that because Title IX was adopted under the Spending Clause, by simply accepting federal funds schools would make themselves liable for monetary damages for conduct that they were not only unaware of, but also that they would have remedied had they been made aware.⁴¹ Conversely, “OCR always provides the school with actual notice and the opportunity to take appropriate corrective action before issuing a finding of violation.”⁴² The Department’s application of the standards for private civil suit damages to Title IX enforcement actions ignores the distinctions the Supreme Court has drawn between administrative enforcement actions and cases seeking monetary damages.

A. The Proposed Rule Would Narrow the Definition of “Sexual Harassment” In Ways that Would Undermine the Objectives of Title IX.

1. The Proposed Definition of “Sexual Harassment” Would Significantly Depart from Previous Title IX Policy.

In § 106.44(e)(1), the Department has proposed a narrow definition of “sexual harassment” that represents a significant departure from its longstanding understanding of the term. The Department has done so without providing any meaningful justification for the abrupt change in decades’ worth of consistent policy—which went through a notice and comment making process—and practice. Proposed § 106.45(b)(3) also requires schools to cease investigating any complaint of sexual harassment that does not meet the definition.

In its 1997 Guidance, the Department recognized that sexual harassment results from conduct that is “sufficiently severe, persistent, **or** pervasive that it adversely affects a student’s

³⁶ 2001 Guidance at 15.

³⁷ *Gebser*, 524 U.S. 274.

³⁸ *Gebser* 524 U.S. at 286.

³⁹ 2001 Guidance at 14–15.

⁴⁰ *Gebser*, 524 U.S. at 287. *See also Davis Next Friend LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 639 (1999); 20 U.S.C. §§ 1682 & 1683 (identifying that among other things, prior to termination of funds the department shall provide notice of the failure to comply, determine that compliance cannot be secured by voluntary means, file a written report with the committees of the House and Senate and wait thirty days, and provide for judicial review of the decision); 2001 Guidance at 14–15.

⁴¹ *Gebser* 524 U.S. at 287; *See also Davis* 526 U.S. at 639; 2001 Guidance at iii–iv.

⁴² 20 U.S.C. §§ 1682 & 1683; 2001 Guidance at iv.

education or creates a hostile or abusive educational environment.”⁴³ After the Supreme Court in *Davis*⁴⁴ established a narrower definition of harassment for money damages actions, the Department in its 2001 guidance reinforced its interpretation that Title IX prohibits conduct of a sexual nature that is “severe, persistent, **or** pervasive.”⁴⁵ It also reinforced the notion that the question of whether sexual harassment occurred requires a flexible analysis.⁴⁶ In 2001, the Department further recognized sexual harassment includes “unwelcome sexual advances” and “physical conduct of a sexual nature.”⁴⁷ The Department has repeatedly emphasized in its guidance that the prohibition on sexual harassment requires schools to investigate “hostile environment” harassment⁴⁸ and to “eliminate discrimination based on sex in education programs and activities.”⁴⁹ A prudential assessment is used to determine whether conduct is sufficiently severe or pervasive.⁵⁰ According to the Department, “the more severe the conduct, the less the need to show a repetitive series of incidents.”⁵¹ Thus, a single severe incident, or for example, repeated unwelcome sexual comments and solicitations, could create a hostile environment.

The Department now seeks to abandon its long-standing policy, backed by case law, in favor of a definition more restrictive than the Title IX statute and more restrictive than what is set forth in *Gebser* and *Davis*, which was created for the very different context of civil actions involving money damages. In § 106.44(e)(1), it proposes to require that harassment be severe,

⁴³ See U.S. Dep’t of Educ., Off. for Civil Rights, *Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, 62 Fed. Reg. 12,034 (Mar. 13, 1997) (the “1997 Guidance”). As the Supreme Court recognized in *Cannon v. University of Chicago*, Title IX is patterned after Title VI, except for the substitution of the word “sex.” 441 U.S. 677, 694-95 (1979). The Department’s 1994 “Racial Incidents and Harassment Against Students at Educational Institutions” is another example of this consistent policy, as it sets forth the same definition of harassment for Title VI claims on the basis of race, color, or national origin. 59 Fed. Reg. 11,448, 11,449 (Mar. 10, 1994) (“A violation of Title VI may also be found if a recipient has created or is responsible for a racially hostile environment --- i.e., harassing conduct (e.g., physical, verbal, graphic, or written) that is sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in our benefit from the services, activities or privileges provided by a recipient.”).

⁴⁴ 526 U.S. 629 (1999).

⁴⁵ 2001 Guidance at v.

⁴⁶ 2001 Guidance at vi (“We also believe that the factors described in both the 1997 guidance and the revised guidance to determine whether sexual harassment has occurred provide the necessary flexibility for taking into consideration the age and maturity of the students involved and the nature of the school environment.”).

⁴⁷ 2001 Guidance at 2.

⁴⁸ 2001 Guidance at 5–7.

⁴⁹ 2001 Guidance at i.

⁵⁰ 2001 Guidance at 6.

⁵¹ 2001 Guidance at 6.

pervasive, **and** objectively offensive for administrative enforcement of Title IX claims, thus adding a requirement that the conduct be objectively offensive and removing the possibility that a violation could be found on any one of three bases—the severity, the persistence, or the pervasiveness of the misconduct. In this part, it adopts part of the definition from the Court’s requirements for sexual harassment in money damages actions. However, the Department also proposes to require that the harassment “effectively den[y]” the individual access to the school’s education program or activity. Proposed § 106.44(e)(1)(ii). This is a sea change from the statute, which states that victims should not “be excluded from” or “denied” the benefits of an educational program or activity and from the Supreme Court’s definition, which requires the harassment to “deprive” a victim of access to educational opportunities or benefits to be actionable.⁵² By requiring that the harassment “effectively deny” the victim of equal access to educational programs or activities, the Department deviates significantly from its Title IX authority.

In its NPRM, the Department states its belief, without justification, that “responses to sexual harassment should be generally aligned with the standards developed by the Supreme Court” in private litigation for damages. 83 Fed. Reg. at 61,466. The Department extols the virtue of a uniform standard and states that the Court’s decisions are rooted in textual interpretation of Title IX. *Id.* However, in doing so, the Department ignores both the uniformity with which sexual harassment has long been defined and enforced under both Title IX and Title VII, as well as the Supreme Court’s own acknowledgment that administrative enforcement of Title IX can be more flexible than the Court’s decisions regarding private money damages.⁵³

The Department also ignores the prudential considerations that the Supreme Court identified in developing the standard for a civil suit for damages where Congress has not spoken on an issue, which are inapplicable in the administrative enforcement context. The *Gebser* court identified that while Congress expressly authorized administrative enforcement of Title IX, it did not expressly authorize either civil actions or the right for individual parties to obtain damages in court. Rather, the Supreme Court identified these rights by implication.⁵⁴ The Department cannot

⁵² *Davis*, 526 U.S. at 650.

⁵³ *Davis*, 526 U.S. at 639 (“Federal Departments or agencies . . . may rely on any . . . means authorized by law . . . to give effect to the statute’s restrictions.”) (internal quotations omitted); *Gebser* 524 U.S. at 292 (stating that the Department of Education could administratively require the school to promulgate a grievance procedure because “[a]gencies generally have authority to promulgate and enforce requirements that effectuate the statute’s non-discrimination mandate . . . even if those requirements do not purport to represent a definition of discrimination under the statute.”) (internal quotations and citations omitted). *See supra* Section II.

⁵⁴ *See Gebser* 524 U.S. at 292 (acknowledging the power of the Department to “promulgate and enforce requirements that effectuate [Title IX’s] nondiscrimination mandate, which are distinct from circumstances giving rise to a civil action for monetary damages); *id.* at 289 (discussing the difference between the “statute’s *express* system of enforcement to require notice to the recipient and an opportunity to come into voluntary compliance” and a “judicially *implied* system of enforcement” that “permits

lawfully improperly restrict the enforcement and application of Title IX based on its misapplication of Supreme Court precedent.

Moreover, although Title VII does not provide a perfect analogy to Title IX, in this instance, it is instructive. Title VII regulations describe workplace harassment as “[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.”⁵⁵ The Supreme Court has reaffirmed the unwelcome component of harassment stating that “[t]he gravamen of any sexual harassment claim is that the alleged sexual advances were unwelcome.”⁵⁶ The Supreme Court has also reaffirmed that to create a hostile environment the harassment can be either severe or pervasive, such that it either limits or alters the conditions of employment. In adopting the broader definition of sexual harassment for Title VII, the Court recognized that Congress had explicitly authorized a civil action in damages. The Court thereby further reinforced that its decisions in *Gebser* and *Davis* are limited to civil actions in damages, where Congress has not spoken, but do not extend to Federal agency enforcement of the statute, where Congress’ clear mandate is to affirmatively “‘protect’ individuals from discriminatory practices carried out by recipients of federal funds.”⁵⁷

We are also concerned because Title VII prohibits gender-based harassment that is not sexual, which the Department has also consistently recognized under Title IX in its policy guidance and its enforcement practices.⁵⁸ This interpretation is consistent with the text and purpose of Title IX and Supreme Court cases interpreting Title VII in the employment context.⁵⁹ Despite this, the proposed regulations do not specifically address the prohibition against gender-based harassment. Thus, we recommend that, in issuing the final rule, the Department state explicitly that “unwelcome conduct on the basis of sex,” in § 106.44(e)(1)(ii), covers all sex-based conduct.

Once again, by disregarding Supreme Court precedent and Title VII in its formulation of the proposed rule, the Department has embraced the notion that students in a school environment

substantial liability without regard to the recipient’s knowledge or its corrective actions upon receiving notice”).

⁵⁵ 29 C.F.R. § 1604.11(a).

⁵⁶ *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 68 (1986) (internal quotation marks omitted).

⁵⁷ *Gebser*, 524 U.S. at 287.

⁵⁸ 2001 Guidance at v; U.S. Dep’t of Educ., Off. for Civil Rights, *Dear Colleague Letter Re: Title IX Coordinators* (Apr. 24, 2015), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf> (“In addition, a recipient should provide Title IX coordinators with access to information regarding . . . incidents of sex-based harassment. Granting Title IX coordinators the appropriate authority will allow them to identify and proactively address issues related to possible sex discrimination as they arise.”).

⁵⁹ See, e.g., *Oncale v. Sundowner Offshore Serv., Inc.*, 523 U.S. 75, 81–82 (1998); EEOC, *Sex-Based Discrimination*, <https://www.eeoc.gov/laws/types/sex.cfm> (“Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person’s sex.”).

should be unprotected from sex-based harassment, even though they would be protected in the employee-employer context. The Department lacks authority to carve out exclusions to this landmark civil rights legislation not drafted in statute and inconsistent with courts' precedent.

2. The Proposed Definition of “Sexual Harassment” Would Fail to Account for the Context in Which Sexual Harassment Occurs.

The Department's proposed definition of “sexual harassment” is drafted to preclude schools, in many circumstances, from addressing hostile environment harassment, an important component of the schools' educational responsibilities and the Department's enforcement responsibilities. The requirement that harassment be severe, pervasive, **and** objectively offensive fails to take into account how harassment in a school setting frequently arises in a gradually escalating manner. Isolated and infrequent harassing behavior can become pervasive over time if left uncorrected, but the definition in the proposed rule does not require any remedial action until smaller problems have become larger, more significant ones. Failure to promptly address potential hostile environments could engender distrust in the institutions' ability to address sexual harassment on campus and create situations where the conduct that could have been prevented has exploded into something much more severe and potentially dangerous. This could increase liability under other legal theories, where a school could have stopped the conduct from escalating much sooner. Many schools are concerned that if they are not permitted to address conduct under Title IX until it becomes sufficiently severe, pervasive, and objectively offensive, they will fail to proactively avoid potential liability and fail to respond adequately to many harassing behaviors and will therefore be unsuccessful in establishing a welcome educational environment, free from gender discrimination.

Likewise, the severity requirement may exclude, for example, a situation in which the same group of students repeatedly makes unwelcome sexual comments or derogatory sex-based comments at multiple women walking by a fraternity house, thereby causing each of those women to alter their walking path. Even though the conduct is persistent, the school might not consider the offensive behavior severe enough or pervasive enough to warrant remedial action, given the one-time nature of the act as experienced by each of the women. But under Title IX, a school should address sexual harassment affecting multiple students before the harassing behavior escalates to the point where it is severe, pervasive, **and** objectively offensive for an individual student.⁶⁰

Finally, the Department acknowledges that employee-on-student harassment includes instances where the provision of some aid or benefit is made contingent upon an individual's participation in unwelcome sexual conduct. However, the proposed rule improperly restricts this type of misconduct to employee-on-student conduct only. Students may engage in *quid pro quo*

⁶⁰ 2001 Guidance at 13–14 (“In other cases, the pervasiveness of the harassment may be enough to conclude that the school should have known of the hostile environment—if the harassment is widespread, openly practiced, or well-known to students and staff.”).

harassment as well. There are circumstances in which, for example, a student conditions assistance with studying on unwelcome sexual conduct. Likewise, students in positions of authority, such as teaching assistants or resident advisors, as well as students serving on boards, student government, clubs, or other activities, may condition the provision of aid or a school benefit on engaging in unwelcome sexual conduct. Conduct of this type contributes to a hostile sexual environment for students, and is undoubtedly a type of sexual harassment against which Title IX should protect.

3. The Proposed Definition of “Sexual Harassment” Would Chill Reporting.

The rate of student reporting of incidents of sexual harassment in grades K-12 and on college campuses is already exceedingly low.⁶¹ Survivors often fail to report sexual harassment as a result of trauma (13 percent of female sexual assault survivors attempt suicide⁶² and 34 percent of college survivors drop out of college),⁶³ lack of confidence in the institution’s protection and procedures, and lack of knowledge in the processes offered.⁶⁴

A heightened requirement for sexual harassment will exacerbate the factors that prevent students from reporting the harassment they experience. Many students would question whether institutions will take their experiences seriously. Some will wonder whether their harassment will be seen as sufficiently severe by the school to warrant a response. And in many cases, individuals subjected to sexual harassment will not know whether the offensive conduct that they experienced was pervasive or an isolated event. The complicated definition of sexual harassment may also confuse students, many of whom already report a lack knowledge about or understanding of the Title IX grievance processes.⁶⁵ This restrictive definition turns the purpose of Title IX—to prevent and combat sexual violence—on its head. It fosters confusion and distrust among students and will likely chill reporting of sexual harassment, thus restricting

⁶¹ *See supra* Section I.

⁶² RAINN, *Victims of Sexual Violence Statistics*, <https://www.rainn.org/statistics/victims-sexual-violence>. By comparison, a national survey estimated that 0.5 percent of adults 18 years or over attempted suicide nationally. *See* American Foundation for Suicide Prevention, *Suicide Statistics*, <https://afsp.org/about-suicide/suicide-statistics/>.

⁶³ Senate Health, Education, Labor & Pensions Committee, Letter from Senators Murray and Hassan, Advocates and Survivors of Sexual Assault Urge Secretary DeVos to Withdraw Title IX Rule, Urge Students and Survivors to Make Their Voices Heard (Nov. 28, 2018), <https://www.help.senate.gov/ranking/newsroom/press/murray-hassan-advocates-and-survivors-of-sexual-assault-urge-secretary-devos-to-withdraw-title-ix-rule-urge-students-and-survivors-to-make-their-voices-heard>.

⁶⁴ Rutgers, The State University of New Jersey, Center on Violence Against Women and Children, *#iSpeak Student Experience, Attitudes and Beliefs about Sexual Violence Results, New Brunswick*, 1, 31 (2015) (hereinafter “Rutgers Survey”), <https://socialwork.rutgers.edu/centers/center-violence-against-women-and-children/research-and-evaluation/campus-climate-project/reports-findings>.

⁶⁵ Rutgers Survey, *supra* note 64, at 31–32.

schools' knowledge of harassment on campus and hampering their ability to address and prevent it.

B. The Proposed Rule Would Inappropriately Limit Schools' Obligation to Respond to Sexual Harassment and Violence by Excusing Failures to Respond to Conduct that Does Not Occur "In an Education Program or Activity."

Proposed § 106.44(a) requires a response only to "sexual harassment *in* an education program or activity." Proposed § 106.45(b)(3) similarly requires dismissal of Title IX complaints, even when the conduct alleged would constitute sexual harassment, if the conduct "did not occur *within* the recipient's program or activity." The proposed regulations thereby improperly narrow the scope of Title IX and sexual harassment complaints that will be investigated by focusing on whether the alleged *incident(s)* occurred in an education program or activity, rather than focusing on whether the incident(s) gave rise to *discrimination* in an educational institution's program or activity.

This change in focus directly contradicts the plain language of Title IX. Regardless of whether an incident giving rise to an alleged Title IX violation itself occurs in an education program or activity, Title IX protects students who, based on sex, are "excluded from participation in [or] . . . denied the benefits of . . . any education program or activity receiving Federal financial assistance."⁶⁶

In keeping with the clear statutory text, both courts and the Justice Department have concluded a school may violate Title IX by failing to respond adequately to alleged misconduct that occurred in a location outside the control of the school if that conduct causes a hostile environment in the education setting. As the U.S. Justice Department itself has explained: "When assessing whether off-campus rape creates a hostile environment on campus, courts have recognized that the pernicious effects of rape by another student are not limited to the event itself and can permeate the educational environment. This is due to the daily potential of the victim student encountering her assailant as they both live and learn at the college."⁶⁷

The Department's proposed change is also an unjustified departure from preexisting and continuously repeated Department policy in effect since at least 2001. In 2001, the Department published guidance after engaging in a notice and comment process, stating that in determining whether a hostile environment exists, the educational institution must determine whether "the conduct denies or limits a student's ability to participate in or benefit from the program based on

⁶⁶ 20 U.S.C. § 1681(a).

⁶⁷ Statement of Interest of the United States 12–13, *Weckhorst v. Kan. State Univ.*, No. 16-2255 (D. Kan. filed July 1, 2016), ECF 26 (citations omitted) (collecting cases); *see also id.* at 11–14; Statement of Interest of the United States 12–21, *Farmer v. Kan. State Univ.*, No. 16-2256 (D. Kan. filed July 1, 2016), ECF 32; *Doe 12 v. Baylor Univ.*, 336 F. Supp. 3d 763, 780-81 (W.D. Tex. 2018).

sex.”⁶⁸ On January 25, 2006, the Department reiterated its support for existing policy by directing educational institutions to rely on the 2001 Guidance for their obligations regarding preventing and remedying sexual harassment.⁶⁹

In 2011, the Department reiterated that schools have an obligation to assess whether there is a nexus between alleged off-campus harassment and the denial of access to an education program or activity. In this regard, the Department stated that “[s]chools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school’s education program or activity . . . [b]ecause students often experience the continuing effects of off-campus sexual harassment in the educational setting [and, therefore] schools should consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus.”⁷⁰ Then on September 22, 2017—in this current administration—the Department stated that, “schools are responsible for redressing a hostile environment that occurs on campus even if it relates to off-campus activities.”⁷¹ This longstanding policy is also consistent with the Supreme Court’s interpretation of Title IX.⁷² By confining Title IX’s jurisdiction to only sexual harassment and assault that occurred in the first instance “within” an education program or activity, § 106.45(b)(3), the proposed regulation ignores this precedent and is flatly inconsistent with the statutory text.⁷³

Furthermore, there are a number of situations that underscore the need to evaluate the effect of conduct that occurs off-campus or outside an education program or activity to be consistent with Title IX protections. For example, a student forced to perform a sex act by students from his or her school at an off-campus location should be able to pursue Title IX remedies to protect her or him from further harassment on campus. Similarly, a student who is sexually abused by a teacher or professor near campus or off-campus should be protected by Title IX. In addition, an athlete who was sexually assaulted by a school trainer or doctor at any

⁶⁸ 2001 Guidance at 5.

⁶⁹ 2006 DCL at 6.

⁷⁰ 2011 DCL at 4.

⁷¹ U.S. Dep’t of Educ., Off. for Civil Rights, *Q&A on Campus Sexual Misconduct*, 1 n.3 (Sept. 22, 2017).

⁷² *See, e.g., Davis*, 526 U.S. at 644 (the statute “confines the scope of prohibited conduct based on the recipient’s degree of control over the harasser and the environment in which the harassment occurs.”); *Gebser*, 524 U.S. at 278, 279 (assuming sexual harassment of the student complainant by the teacher under Title IX, even where sexual contact occurred in her home while giving her a book and “never on school property” but during school time).

⁷³ Requiring a recipient to only respond “to conduct that occurs *within* its ‘education program or activity,’” 83 Fed. Reg. at 61,468 (emphasis added), is also directly contradictory to proposed § 106.44(a), which requires a response from “[a] recipient with actual knowledge of sexual harassment *in* an education program or activity.” *Id.* (emphasis added).

time should be protected by Title IX. This is so even where the sexual assault occurred off campus—in the homes of the athletes who used the University’s facilities, as well as other locations not operated or controlled by the University, such as hotels during events. If the proposed rule becomes final, school districts and Universities would be required to dismiss similarly egregious Title IX complaints simply because they occurred off-campus, even if they result in a hostile educational environment.

The Department’s focus on the context in which sexual misconduct itself occurs also contradicts studies showing that off-campus conduct may create a hostile environment on campus, thus leading a student to be denied the benefits of an educational program or activity.⁷⁴ Even the studies relied on by the Department to justify the current policy changes, which are used to highlight the costs of sexual assault, do not distinguish between on- and off-campus assault.⁷⁵ Universities themselves acknowledge the effect off-campus activities can have on a student’s on-campus learning.⁷⁶ It is arbitrary to assume that only harassment that occurs *in* an educational program or activity affects a student’s access to the educational program or activity.

It is similarly arbitrary to limit Title IX’s protections to activity occurring only in an educational program or activity when the Clery Act, 20 U.S.C. § 1092 (f), specifically recognizes that information regarding crimes occurring on “[p]ublic property . . . immediately adjacent to and accessible from the campus” is relevant to understand the crime statistics for the campus.⁷⁷ The Department attempts to clarify that “Title IX’s ‘education program or activity’ language should not be conflated with Clery Act geography [because] these are distinct jurisdictional schemes,” but this is a distinction without any obvious or appropriate purpose. It does not make sense to alert potential students to, for example, a rape that may occur outside the specific confines of an educational program or activity if that same incident would never affect the student’s access to the educational program or activity.

In sum, the inquiry as to whether conduct that occurs off-campus or outside a school’s program and activities creates a hostile environment under an education program or activity on the basis of sex is fact-specific and requires a school’s careful assessment. The language of the

⁷⁴ See, e.g., Christopher P. Krebs, Ph.D., et al., *The Campus Sexual Assault (CSA) Study*, National Institute of Justice 5–19 (Oct. 2007), <https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf> (finding two-thirds of campus sexual assaults occur off-campus but can still severely impact a student’s access to the educational program).

⁷⁵ 83 Fed. Reg. at 61,485 (citing Cora Peterson et al, *Lifetime Economic Burden of Rape Among U.S. Adults*, 52 AM. J. of Preventative Med. 691 (2017)).

⁷⁶ See, e.g., Isa Gonzalez, *Title IX Coordinator Discusses How Proposed Education Dept. Reforms Could Impact UD*, Flyer News (Dec. 17, 2018) (quoting University of Dayton’s Title IX coordinator as explaining “[e]ven [for] students who live in landlord housing or near the campus footprint, their experience is often as if they are a residential student.”), <https://tinyurl.com/ybboqxn2>.

⁷⁷ 34 C.F.R. § 668.46.

proposed regulation ignores this, in contravention of existing and long-held Department policy, as well as judicial, OCR, and Justice Department interpretations.

C. The “Actual Knowledge” Standard is Too Restrictive.

1. The Proposed Rule Undermines the Purpose of Title IX and Creates an Improper Incentive to Willfully Ignore Sexual Harassment Because it Requires Schools to Respond Only if They Have “Actual Knowledge” of the Harassment.

Previous Department policy required schools to address all student-on-student sexual harassment allegations if the school knew or reasonably should have known about them.⁷⁸ The Department has also long-imputed notice to a school when “any employee with authority to take action to redress the harassment, who has the duty to report to appropriate school officials . . . or an individual who a student could reasonably believe has this authority or responsibility” has notice of the harassment.⁷⁹ Finally, the Department has required agency principles (i.e., vicarious liability) to apply to most instances of employee-on-student harassment.⁸⁰ As the Department has previously recognized, including the “good judgment and common sense of teachers and school administrators” is key to judging compliance with Title IX.⁸¹

Now, absent adequate justification, the Department proposes to eliminate these elements of notice. Under proposed § 106.44(e)(6), a school lacks actual knowledge unless allegations are brought to the attention of an employee with the authority to institute corrective measures (or when a formal complaint is filed with the Title IX Coordinator). Teachers at the K-12 level are deemed officials with the authority to institute corrective measures, but not at the university level. Furthermore, the proposed rule eliminates vicarious liability for employee-on-student sexual harassment, requiring the “actual knowledge” standard in this context as well. In all contexts, if the respondent is the only one with notice, actual knowledge is not imputed to the school.

By defining “actual knowledge” narrowly and ignoring situations in which a school clearly ought to have known of sexual harassment, the proposed rule virtually abandons Title IX’s overriding goal of addressing hostile environments, eliminating sexual harassment, and creating an educational environment free from discrimination on the basis of sex. The actual knowledge requirement shifts the burden from schools to students. Instead of requiring schools to address instances of sexual harassment of which they are aware because an employee who a student would reasonably believe has the authority to report or assist has received notice, the proposed rule would flip Title IX on its head and require students to report sexual harassment to

⁷⁸ 2001 Guidance at 13.

⁷⁹ *Id.*

⁸⁰ 2001 Guidance at 10.

⁸¹ 2001 Guidance at ii.

authority figures whom they are generally hesitant to seek out or of whom they may not be aware.

The proposed rule creates an improper incentive structure for schools that discourages them from uncovering allegations and instead incentivizes them to shield themselves from learning about wrongdoing. In the very different context of civil suits for damages, the dissent in *Gebser* warned specifically about this phenomenon, stating that as long as schools “can insulate themselves from knowledge about this sort of conduct, they can claim immunity from damages liability.”⁸² The ongoing prospect of administrative enforcement of Title IX, even in the absence of “actual knowledge” of harassment, has deterred schools from ignoring problems. The Department now proposes to do away with that incentive. Instead, the proposed rule could create a situation where multiple employees, such as teachers (at the university level), resident advisors, campus medical personnel, school resource officers, or guidance counselors are fully aware of allegations of sexual harassment, but absent an explicit obligation to report to an official with authority to institute corrective measures, the school would not have a responsibility to investigate or take remedial action.

It is clear that in crafting the proposed rule, the Department ignored the evidence that students subjected to sexual harassment hesitate to report to officials with authority to take corrective action, due to various barriers, including lack of knowledge of reporting procedures, fear of being disbelieved, or fear of facing negative repercussions and additional harassment.⁸³ Campus climate surveys demonstrate that those subjected to sexual harassment often report to close acquaintances, and officials may find students reluctant to formally report.⁸⁴ Only 17 percent of students in one survey reported disclosing sexual harassment incidents to formal campus resources, while 77 percent disclosed to close friends and 52 percent reported to roommates.⁸⁵ However, the Department now requires students to directly report to specific authorities or file formal complaints. The proposed rule should not disregard such clear evidence that reporting on campus is complex and requires schools to be more vigilant in addressing sexual harassment.

⁸² *Gebser* 524 U.S. at 298.

⁸³ Rutgers Survey, *supra* note 64, at 32.

⁸⁴ *Id.*

⁸⁵ Rutgers Survey, *supra* note 64, at 31–32.

2. Constructive Knowledge and Agency Principles Should Apply to the School's Notice of Sexual Harassment and Violence.

The Department has not demonstrated any unfairness with the constructive knowledge or agency principles it has long implemented, and there is no adequate justification for reversing course now.⁸⁶

The Department has long required that a school should investigate, if a school knew or reasonably should have known of sexual harassment, whether by employees, students, or third parties.⁸⁷ This standard provides the required flexibility for universities since a constructive knowledge standard considers the school's size, its available resources, the public nature of the harassment, and the status of the individuals to whom the harassment was reported. Importantly, the "should have known" standard does not impute knowledge for isolated instances that a school, taking reasonable care, would not be aware of. However, a constructive notice standard prevents schools from willfully ignoring obvious signs of harassment, such as graffiti in public places,⁸⁸ systemic abuse of power by a teacher, constant unwelcome cat-calling, or other abusive behavior of a sex-based nature at known locations. Requiring schools to act on constructive knowledge ensures investigations into a hostile environment or culture of harassment, which is a primary purpose of Title IX. Constructive knowledge has been the Department's long-standing position in Title IX cases, and the Department has put forward no convincing rationale for abandoning this eminently sound approach.⁸⁹

In the proposed rule, the Department also reverses course on agency principles, upending years of federal government positions on this important issue and even flouting Supreme Court

⁸⁶ If the Department nevertheless adopts the proposed "actual knowledge" standard, it should adopt mandatory, prompt reporting requirements for all non-confidential employees, so that Title IX Coordinators and other officials with authority to institute corrective measures are notified of sexual harassment more quickly. Mandatory reporters should include those individuals are considered "responsible employees" under current policy. *See* 2001 Guidance at 13. At the same time, students should have people to confide in, while knowing that their discussions will be kept confidential. Following best practices and prior Department guidance and practice schools should be required to make public (1) the individuals to whom students can report confidentially with no fear of being required to file a formal complaint and (2) the individuals who are required to report harassment to officials with corrective authority. *E.g.*, U.S. Dep't of Educ., Off. for Civil Rights, *Questions and Answers on Title IX and Sexual Violence*, at D-4, E-13, 16, 22 (Apr. 29, 2014, withdrawn Sept. 22, 2017) (the "2014 Q&A"). Converting Department policy into a proposed rule could help to mitigate (but not resolve) the problems with the proposed "actual knowledge" standard.

⁸⁷ 2001 Guidance at 13–14.

⁸⁸ 2001 Guidance at 14

⁸⁹ *See* 2001 Guidance at 14 ("If a school otherwise knows or reasonably should know of a hostile environment and fails to take prompt and effective corrective action, a school has violated Title IX even if the student has failed to use the school's existing grievance procedure or otherwise inform the school of the harassment.")

guidance.⁹⁰ Agency principles should continue to apply to employee-on-student harassment, just as they do to supervisor-on-employee harassment. The Department previously explained that notice to a school is triggered when the employee is or appears to be acting in the context of carrying out his or her responsibility to students.⁹¹ In *Gebser*, the U.S. Department of Justice stated that it is appropriate to hold a school responsible in such instances because “the teacher was aided in accomplishing the harassment by his agency relationship with the recipient or his apparent authority.”⁹² In light of this, it is particularly disturbing that the proposed rule exempts the school from actual knowledge when the only person with actual knowledge is also the respondent. This requirement would apply to the K-12 context as well. It sets up a scenario in which a student would have no valid Title IX claim when any school employee, including a school leader such as a superintendent, principal, or vice principal, repeatedly harasses or sexually assaults them in class or during school-related activities, unless the misconduct was known by another responsible school official.⁹³ This proposed rule must be stricken. As indicated in prior guidance, a school should be required to address conduct by an individual taking advantage of the position of authority and concomitant access to students afforded to them by the education institution, regardless of the school’s notice.⁹⁴

The 2001 guidance articulated the standards and possible scenarios for applying agency principles in situations involving employee-on-student harassment.⁹⁵ The guidance appropriately recognized that the application of vicarious liability to schools would require a determination that the employee was acting or appearing to act in the context of the employee’s duties, and it set out multiple potential factors to consider before imposing liability.⁹⁶ That careful approach, based on evidence and experience, should not be reversed without ample justification. Requiring schools to take action based on constructive knowledge and agency principles also provides an opportunity to protect schools from later dealing with situations that could have been resolved with much less damage had the school acted more quickly to alleviate the problems.

⁹⁰ *Franklin*, 503 U.S. 60 (implying that agency principles may be appropriate in the Title IX context).

⁹¹ 2001 Guidance at 10.

⁹² *Gebser*, 524 U.S. 274, No. 96-1866, Statement of Interest of the United States, 9 (filed Jan. 16, 1998).

⁹³ See, e.g. *Salazar v. South San Antonio Independent Sch. District*, 2017 WL 2590551 (5th Circuit), cert. denied, 138 S. Ct. 369 (holding that district could not be liable under Title IX for principal of elementary schools repeated sexual molestation of an elementary school student, because the principal who engaged in the molestation was the only one aware of the conduct).

⁹⁴ 2001 Guidance at 10.

⁹⁵ 2001 Guidance at 10-12.

⁹⁶ 2001 Guidance at 10-11.

Once again, Title VII is instructive. Under Title VII, the definition of “employer” includes any “agent of the employer,”⁹⁷ and courts routinely look to agency principles to determine employer liability for employee harassment.⁹⁸ Here, as in other areas of the proposed regulations, the Department sets up a scenario in which school employees are afforded better protection from harassment than students, who are far more vulnerable due to their age and experience. If a school can be held liable for monetary damages for supervisor-on-employee harassment under Title VII, then surely the Department of Education should require schools to at least respond to employee-on-student harassment under Title IX. Furthermore, schools arguably have more responsibility to protect their K-12 students, because they act *in loco parentis* while students are in attendance.⁹⁹

The Department has failed to articulate intervening circumstances, facts, or evidence that would justify a reversal from the application of consistent agency policy and decisions to employee-on-student harassment. The proposed rule change should not be adopted.

D. The Proposed Rule Would Adopt a “Deliberative Indifference” Standard That Is Not Appropriate for Administrative Enforcement of Title IX.

Since at least 1997, the Department has understood Title IX to require schools to act reasonably in taking steps to end sexual harassment and prevent its recurrence.¹⁰⁰ Specifically, schools are required to act in a “reasonable, commonsense” manner in addressing sexual harassment and to take “prompt and effective” steps once they have knowledge of harassment.¹⁰¹ Moreover, the existing regulations, in effect since 1975, have required schools to have procedures that provide a “prompt and equitable” response to any complaint of sex discrimination, a requirement that the Department has consistently enforced for decades and applied to all forms of sex discrimination, including sexual harassment.¹⁰²

Under the proposed rule, even a school that responds unreasonably, untimely, and ineffectively to sexual harassment may avoid repercussions, so long as the school’s response is not “deliberately indifferent.” Proposed § 106.44(a). And “only” a “response to sexual harassment” that is “intentionally” and “clearly unreasonable in light of the known circumstances” will be considered “deliberately indifferent.” *Id.*

⁹⁷ 42 U.S.C. § 2000e(b).

⁹⁸ *Vinson* at 72 (“[W]e do agree with the EEOC that Congress wanted court to look to agency principles for guidance in this area.”)

⁹⁹ *Veronia School District 47J v. Acton*, 515 U.S. 646, 656 (1995) (discussing that the duty is both “custodial and tutelary”).

¹⁰⁰ 1997 Guidance.

¹⁰¹ 2001 Guidance at iii, 15

¹⁰² 34 C.F.R. 106.8(b).

The Department has failed to justify such a policy change. The NPRM does not point to any instances in which schools were burdened or unfairly penalized as a result of the reasonableness standard. To the contrary, the proposed rule neglects the purpose of the Department’s administrative enforcement of Title IX, which is to provide schools with an opportunity to correct prior actions in response to sexual harassment and address a hostile environment moving forward (before they incur liability for damages).¹⁰³ Rarely does administrative enforcement lead to the dramatic step of withholding Title IX funding; rather, the Department’s role is to “make schools aware of potential Title IX violations and to seek voluntary corrective action.”¹⁰⁴ Without some basis for demonstrating that the reasonable care standard was inadequate or overly burdensome for schools, it is inconsistent with the intent of Title IX to adopt a standard that is less protective of students who experience discrimination.

Although the Department purports to draw its “deliberately indifferent” standard from case law, it misses the mark. Courts have concluded that “[r]esponses that are not reasonably calculated to end harassment are inadequate.”¹⁰⁵ And a failure to investigate alleged sexual harassment can be unreasonable in light of the circumstances, even absent a formal complaint.¹⁰⁶ Again, the requirement that schools not act with deliberate indifference in response to complaints, as adopted by the courts for money damages actions, is immaterial to the Department’s administrative enforcement of Title IX.¹⁰⁷ The Department should intervene to ensure schools are responding appropriately to sexual harassment allegations well before the school would be liable for money damages in a civil suit for its failure to act.

In addition, students should receive protection from sexual harassment at least equal to the protection afforded employees in the workplace. Under Title VII, employers (including schools) are liable for acts of sexual harassment in the workplace unless the employer “can show that it took immediate and appropriate corrective action.”¹⁰⁸ Students are generally more vulnerable to sexual harassment than adult employees, particularly in grades K-12, since they are both minors and subject to compulsory school attendance requirements.¹⁰⁹ Under the proposed

¹⁰³ See *North Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 521 (1982) (reiterating that the text of Title IX should be accorded “a sweep as broad as its language.”).

¹⁰⁴ 2001 Guidance at iii–iv (stating that if OCR finds violations of Title IX, it must first “attempt to secure compliance by voluntary means.”).

¹⁰⁵ See *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 669 (2d Cir. 2012) (holding that a university did not engage in efforts that were “reasonably calculated to end [the] harassment”).

¹⁰⁶ E.g., *Feminist Majority Found. v. Hurley*, 911 F.3d 674, 696 (4th Cir. 2018) (holding a school administrator responsible for a claim of retaliation under Title IX, and stating that the retaliation spanned a sufficient period that the University should have taken “reasonable steps to address it”).

¹⁰⁷ See *supra* Section II.

¹⁰⁸ 29 C.F.R. §§ 1604.11

¹⁰⁹ See *supra* Section I.

rule, an employee who is sexually harassed can sue a school *for money damages* if the school fails to take immediate and appropriate corrective action, but the Department of Education cannot take even non-monetary enforcement action against a school that fails to protect a student from sexual harassment unless the school's response failed the much higher "deliberate indifference" standard. Furthermore, graduate students who teach and other student employees of a school may fall under a complicated enforcement scheme, depending on whether they are considered "employees" or "students." The Department should not create this artificial disparity in the enforcement of sexual harassment prohibitions, which would indicate to students that the Government takes student safety less seriously than employee safety. If anything, the Department should afford students greater protection from sexual harassment due to their vulnerabilities.

E. Safe Harbor Provisions Are Inappropriate and Schools Must Investigate Any Potential Hostile Environment.

The proposed rule provides several safe harbor provisions for schools. Taken together with the deliberate indifference standard, the safe harbor provisions severely curtail the Department's ability to meaningfully enforce Title IX's anti-discrimination objectives. Curtailing OCR's ability to independently review comprehensively how schools handle sexual harassment complaints is contrary to its mandate to investigate compliance with Title IX. The new rule would incentivize schools to do the bare minimum in enforcement of Title IX, contrary to the statutory mandate to provide educational programs and activities that are free from harassment.

The safe harbor provisions take various forms. The first, proposed § 106.44(b)(1), provides schools a safe harbor from a finding of deliberate indifference if they carry out grievance procedures consistent with those outlined in the rule in response to a formal complaint. 83 Fed. Reg. at 61,469. Any failure to fairly and adequately implement those procedures in a manner that is equitable, timely, or effective is seemingly irrelevant. Such a safe harbor erodes schools' responsibility to investigate hostile educational environments. This is of particular concern in the K-12 context where most complaints are taken verbally and informally by a dean, vice principal or other administrator who plays multiple roles.

The other safe harbors are equally untenable. Proposed § 106.44(b)(2) provides a safe harbor to a school where, upon actual knowledge of multiple complaints against the same respondent, the Title IX coordinator files a complaint on the complainant's behalf and the school follows the proposed grievance procedures. The proposed rule, in § 106.44(b)(3), also provides a safe harbor from a finding of deliberate indifference if a school that has actual knowledge of sexual harassment, absent a formal complaint, merely offers the complainant supportive measures. 83 Fed. Reg. at 61,469. Finally, in proposed § 106.44(b)(5), the Department also prevents OCR from a finding of deliberate indifference solely because OCR would have come to a different responsibility conclusion. 83 Fed. Reg. at 61,470.

Title IX imposes an affirmative obligation on schools to ensure that students are not subject to discrimination on the basis of sex. As a result, the Department has long recognized that

schools have an obligation to take reasonable steps to prevent harassment “whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.”¹¹⁰ Consistent with this recognition, the 2001 Guidance made it clear that a school’s obligation to investigate and respond to a report of harassment does not depend on the filing of a formal complaint: “Once a school has notice of possible sexual harassment of students—whether carried out by employees, other students, or third parties—it should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again.”¹¹¹ Federal courts have reaffirmed schools’ affirmative obligation to protect their students from harassment.¹¹²

The proposed rule fails to recognize the obligation of schools to address harassment in the absence of a formal complaint (unless, of course, a complainant receives written notice of the available resolution options and, voluntarily and without coercion, decides not to pursue the complaint). By implication, therefore, it suggests that a school’s Title IX responsibilities are triggered only when a student begins the formal complaint process. This, of course, is false: nothing in the language of Title IX supports such a narrow view of a school’s obligations. To the contrary, Title IX prohibits discrimination on the basis of sex in education programs receiving federal funds, period. So at a minimum, a school that is put on notice of evidence of harassment, through whatever means, has an obligation to investigate and, if it determines that harassment is occurring, take steps to address it and provide notice of the outcome of its process. Any rule purporting to implement Title IX must make this fact clear: once a school has actual knowledge of harassment, it must investigate—even if the student has not reported it to the school.

Any final rule must also make clear that schools are obligated to investigate and address systemic problems of which they are made aware. The Department has regrettably stepped away from its own obligation to identify systemic violations of Title IX.¹¹³ It should not compound this error by limiting the obligations of schools to investigate such violations. Incidents of harassment rarely occur in a vacuum: too often, they are fueled by the presence of a toxic culture or hostile environment that enables such abuses. Title IX’s prohibition on discrimination on the basis of

¹¹⁰ 2001 Guidance at 15.

¹¹¹ *Id.*

¹¹² *Feminist Majority Found.*, 911 F.3d at 692 (“We are satisfied that the University was obliged to investigate and seek to identify those students who posted the threats and to report the threats to appropriate law enforcement agencies.”); *see also Abbott v. Pastides*, 900 F.3d 160, 173 (4th Cir. 2018) (observing that “universities have obligations not only to protect their students’ free expression, but also to protect their students”).

¹¹³ *E.g.*, Adam Harris, *Memo Outlines Education Dept. Plans to Scale Back Civil-Rights Efforts*, *The Chronicle of Higher Education* (June 15, 2017), <https://www.chronicle.com/blogs/ticker/memo-outlines-education-dept-plans-to-scale-back-civil-rights-efforts/118937>.

sex thus requires schools that are made aware of systemic discrimination to respond, and to do so in a manner commensurate to the scope of the problem. By failing to affirmatively state that schools have such an obligation, the proposed rule rewrites Title IX in a way that is inconsistent with its plain language and clear purpose.

In the same vein, creating a safe harbor for merely providing supportive measures to a student subjected to sexual harassment (or a parent complainant) who was not informed of or was otherwise unaware of the procedural step of filing a formal written and signed complaint is particularly unjust. Under the proposed rule, a school with knowledge of sexual assault against a student cannot be found to have responded inadequately as long as it offered the survivor a change of class schedule or some other similarly meager support. Deeming a school to have fully satisfied its Title IX obligations by providing only supportive measures to individuals subjected to sexual harassment who do not file formal complaints is likely to chill reporting and reduce investigations into a hostile educational environment, as individuals subjected to sexual harassment will find the process inadequate and will likely lose trust in the institution's processes.

Additionally, any provision on supportive measures must ban schools from pressuring students subjected to sexual harassment into accepting supportive measures in lieu of an investigation or grievance mechanism. The Department should prohibit even subtle incentives to accept supportive measures over formal adjudications. Any indication of students being steered or pressured into accepting only supportive measures or being discouraged from pursuing other options (such as local law enforcement) should be thoroughly investigated by OCR and remediated by the school.

Finally, the safe harbors remove OCR's discretion in Title IX enforcement. OCR's independent weighing of the evidence surely is a relevant factor in determining whether a school has been or is being deliberately indifferent (or unreasonable). Suppose, for example, OCR finds that, despite adopting the proper procedures for addressing formal complaints, the school's decision-makers always find in favor of complainants, or always find in favor of respondents. Absolute safe harbors remove OCR's ability to determine a school's liability if there is a pattern or practice of shielding respondents or favoring complainants. The Assistant Secretary, after a thorough investigation, should have the discretion to decide whether a school's determination of responsibility was discriminatory, or whether a school's overall climate is a discriminatory one.

The Department should remove the safe harbor provisions from the proposed rule.¹¹⁴

¹¹⁴ While we strongly oppose the existence of any safe harbor in any final rule, if the Department nevertheless continues to include them, we strongly recommend any safe harbor incentivize schools to provide additional protections.

III. The Department Should Adopt Policies for Complaints that Maximize Reporting.

A. The Department's Proposed Definition of "Complainant" Is Too Restrictive.

Proposed § 106.44(e)(2) defines "complainant" as "an individual who has reported being the victim of conduct that could constitute sexual harassment, or on whose behalf the Title IX Coordinator has filed a formal complaint."¹¹⁵ This definition raises many problems.

Importantly, the proposed definition of "complainant," in conjunction with the proposed definition of "formal complaint" (which must be "a document signed by a complainant or by the Title IX Coordinator"), effectively preclude third parties from filing formal complaints of sexual harassment, which triggers the recipient's obligation under the proposed rule to initiate an investigation or proceedings to address the allegations.¹¹⁶ This is a departure from prior guidance, which recognized that a school must investigate and take appropriate remedial action "regardless of whether the student [subjected to sexual harassment], student's parent, or a third party files a formal complaint."¹¹⁷

The proposed shift in policy regarding who may file a formal complaint of sexual harassment ignores the realities of how sexual harassment is reported on campus. Only a small percentage of campus sexual violence is formally reported, for reasons previously articulated.¹¹⁸ And instances of sexual harassment are often communicated to close confidants, who may report such incidences to appropriate officials. In K-12 schools, instances of sexual harassment or violence are often reported by a parent or guardian on behalf of a student or another student or employee witness to the sexual harassment. By eliminating the requirement that schools initiate investigations in response to information reported by third parties, the Department's proposal will result in more harassment going unacknowledged and unaddressed. The proposed definition

¹¹⁵ "For purposes of this definition, the person to whom the individual has reported must be the Title IX Coordinator or another person to whom notice of sexual harassment results in the recipient's actual knowledge under [the proposed rule]." These comments address this part of the definition of "complainant" in their discussion of the "actual knowledge" standard.

¹¹⁶ In some States, a parent or guardian could file a formal complaint on behalf of a minor child, but on this issue, the Department's proposed rule would defer to state law and local educational practice. *See* 83 Fed. Reg. at 61,482.

¹¹⁷ 2014 Q&A at D-2, 15–16. Existing Department guidance also recognizes that, in some instances, the survivor may not want the school to proceed with an investigation and appropriately established several factors for a school to weigh in balancing whether to move forward over a survivor's objections. The factors to weigh include the survivor's wishes along with the school's duty to provide a safe and nondiscriminatory environment for all students, the seriousness of the alleged harassment, the age of the student harassed, whether there have been other reports of harassment against the alleged harasser, and the rights of the accused individual to receive information about the accuser and the allegations, where a formal proceeding with sanctions may result. 2001 Guidance at 17-18.

¹¹⁸ *See supra* Section I & Section II.C.

should be modified to clarify that a third party, such as a witness, parent, guardian, or school employee, may file a formal complaint.¹¹⁹

More broadly, the proposed rule will yield results that cannot be squared with schools' obligations under Title IX and the case law applying it. Schools have a legal obligation to take reasonable steps to prevent and eliminate sexual harassment, including hostile environment harassment.¹²⁰ Yet the proposed rule places the burden on individuals subjected to sexual harassment to report harassment in a particular manner. In addition, a hostile environment "can occur even if the harassment is not targeted specifically at the individual complainant. For example, if a student, group of students, or a teacher regularly directs sexual comments toward a particular student, a hostile environment may be created not only for the targeted student, but also for others who witness the conduct."¹²¹ Similarly, a school's repeated failure to respond appropriately to allegations of sexual assault may contribute to a hostile environment for students who have not themselves been the subject of an assault. It is not clear from the Department's proposal whether students who have witnessed but who have not been "targeted" by harassment may qualify as individuals who may file a formal complaint. Consistent with existing policy, the Department should clarify that these individuals may file formal complaints.

B. The Definition of "Formal Complaint" Creates a Barrier to Filing for Complainants, Particularly Underage Students, and Does Not Provide for Reasonable Accommodation.

Proposed § 106.44(e)(5) defines the "formal complaint," which must be filed to trigger most of the protections set forth in the remainder of the regulation, as "a document signed by a complainant or by the Title IX Coordinator alleging sexual harassment . . . and requesting initiation of the recipient's grievance procedure." *Id.* This requirement is inconsistent with the objective of the statute because it creates an unnecessary barrier to obtaining the protections against discrimination promised unequivocally by Title IX's text. It is also a departure from the existing regulations, which require a recipient to establish procedures for addressing "any action which would be prohibited by" the regulation.¹²² As applied, a recipient could dismiss a meritorious complaint of which it has notice or fail to take action solely for immaterial technical reasons, such as the complaint not being signed or failing to include specific language "requesting initiation" of the grievance procedures.

¹¹⁹ We recognize that schools reasonably may respond differently to complaints filed by those subjected to sexual harassment and complaints filed by third parties, but the appropriateness of a school's response should be fact-specific. *See* 2001 Guidance at 18 (identifying "factors" that "will affect the school's response" when "information about harassment is received from a third party (such as from a witness to an incident or an anonymous letter or telephone call)").

¹²⁰ *E.g.*, 2001 Guidance at 5–14.

¹²¹ 2001 Guidance at 6 & n. 43 (collecting cases).

¹²² 34 C.F.R. § 106.8(b) (emphasis added).

Furthermore, the proposed regulation ignores the reality in elementary and secondary schools throughout the nation that complaints of sexual harassment are most often brought to the attention of administrators verbally by children, many of whom will be unaware of the proposed regulation's prescriptions. As such, the proposed regulation will too often result in K-12 students being deprived of their rights under Title IX based on the mere technicality of not filling out and signing a written document. In this regard, we note that the Department has included no cost estimate for training students (or their parents and guardians) on the new sweeping changes in the regulations. They will nonetheless be responsible for meeting these procedural requirements to obtain any relief.

In addition, the proposed rule runs afoul of other federal civil rights laws because it fails to specify that reasonable accommodations in the grievance process shall be provided for individuals whose disabilities may inhibit their ability to read, write, and sign a complaint.¹²³ Moreover, for a complainant who is under 18, as many in the schools affected by this regulation are, the proposed regulations do not address how schools will implement this requirement if a parent later disagrees with a child complainant's decision to file or is not consulted prior to filing. The change also creates unnecessary administrative costs, paperwork, and delay because schools must create or receive a signed document before executing their clear responsibilities under the law to investigate and, as necessary, stop the harassment, prevent its recurrence, and remedy its effects.

C. "Supportive Measures" Should be Responsive to a Complainant's Needs.

Under prior guidance, the Department acknowledged that Title IX may require a school to take "interim measures" to protect a complainant and other students before the conclusion of an investigation.¹²⁴ In § 106.44(e)(4), the proposed rule would introduce the new term "supportive measures" and would provide that implementing supportive measures may itself be an adequate response in some cases of sexual harassment.

The proposed rule provides a safe harbor to a school that "offers and implements supportive measures *designed to* effectively restore or preserve the complainant's access to the recipient's education program or activity," without regard to whether the supportive measures are actually (or even reasonably) effective in accomplishing that objective. Further, for supportive measures to be effective, a school must acknowledge the crucial role of the complainant and, as needed, the respondent in crafting such measures and work with the parties to design appropriate measures after assessing what is needed to stop the harassment, prevent its recurrence, and address its effects. The Department should clarify that although schools should not be required to provide every measure the student requests, they should give due

¹²³ See generally Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; Americans with Disabilities Act of 1990 as amended, 42 U.S.C. § 12131, *et. seq.*

¹²⁴ 2001 Guidance at 16, 18 ("It may be appropriate for a school to take interim measures during the investigation of a complaint.")

consideration to what the student who was harassed deems appropriate supportive measures in light of the circumstances, so that access to programs and activities can be assured.

The proposed rule would provide that supportive measures offered to a complainant or respondent should be designed to avoid “unreasonably burdening the other party.” 83 Fed. Reg. at 61,496. By comparison, Department policy issued between 2001 and 2014 consistently emphasized that, in adopting interim measures, schools should minimize the burden on the student who was harassed. For example, the 2001 Guidance stated that such measures should “be designed to minimize, as much as possible, the burden on the student who was harassed.”¹²⁵ The 2014 Guidance stated that schools should minimize the burden on the complainant. For example, if the complainant and alleged perpetrator share the same class or residence hall, the school should not, as a matter of course, remove the complainant from the class or housing while allowing the alleged perpetrator to remain without carefully considering the facts of the case.”¹²⁶

We agree that schools should endeavor to avoid “unreasonably burdening” alleged perpetrators, but we believe this principle requires elaboration. The Department should clarify that, consistent with prior policy, there should be a presumption against imposing unnecessary burdens on the complaining student when devising supportive measures. By crafting appropriate and individualized measures, this can be done even while protecting the due process rights of the respondent during the pendency of the investigation.

And the Department should likewise make clear that schools retain their local flexibility to deal immediately with potentially predatory or violent situations, even in ways that significantly burden one or more students, and even before a formal complaint has been filed or there has been an adjudication of responsibility, when necessary to meet their responsibilities for student safety and well-being. In such situations, to ensure the safety and well-being of its students, a school may need to impose a temporary and immediate suspension on a student, subject to the right for that student to have a prompt hearing with a right to return to the educational environment.

IV. The Proposed Grievance Procedure Fails to Provide a Fair and Equitable Process for Resolving Formal Title IX Complaints.

In 2001, the Department recognized that “[s]trong policies and effective grievance procedures are essential to let students and employees know that sexual harassment will not be tolerated and to ensure that they know how to report it.”¹²⁷ This is why the Department has consistently required school grievance procedures to provide for “prompt and equitable resolution of sex discrimination complaints.”¹²⁸ In many places, the proposed rule fails to meet

¹²⁵ 2001 Guidance at 16.

¹²⁶ 2014 Q&A at G-2, 33.

¹²⁷ 2001 Guidance at iii.

¹²⁸ 2001 Guidance at 14.

this standard: it improperly tilts the proceedings in favor of the respondent, it prevents schools from imposing reasonable controls that protect confidentiality and ensure fair proceedings, and it burdens schools and students alike with untenable hearing requirements. In other places, the proposed rule requires clarification to ensure a truly equitable process. As such, the proposed grievance procedures must be substantially revised in order to comply with Title IX.

A. Credibility Determinations Should Not Be Based Solely on Person’s Status.

To ensure that all evidence is evaluated objectively, the proposed rule states that “credibility determinations may not be based on a person’s status as a complainant, respondent, or witness.” Proposed § 106.45(b)(1)(ii). We agree that all evidence must be considered fairly and objectively by recipient schools. But fact-finders should not be categorically prohibited from considering any factor—including the person’s status and motivations for offering their testimony—when determining credibility. As the EEOC has recognized in the employment context, no single factor is determinative of credibility.¹²⁹ Instead, the final rule should state that “credibility determinations may not be based solely on a person’s status as a complainant, respondent, or witness.”

B. The Presumption of Non-Responsibility Improperly Tilts the Process in Favor of the Respondent.

The proposed rule states that there is a “presumption” that the respondent is “not responsible” for the alleged sexual harassment. §§ 106.45(b)(1)(iv) & (b)(2)(i)(B). The presumption appears aimed at protecting respondents in a manner akin to the presumption of innocence in criminal cases. But the grievance procedures are non-criminal in nature, so a criminal presumption by another name is not appropriate. Relatedly, but more fundamentally, the presumption contradicts the regulation’s stated goal of promoting impartiality by inherently favoring the respondent’s denial over the complainant’s allegation. Instead the allegation and the denial must be treated neutrally, as competing assertions of fact whose truth can only be determined after an investigation. The problem would be even starker if any final regulation were to retain recipients’ ability to choose a “clear and convincing” evidence standard (which we contend is not appropriate). The presumption of non-responsibility and the “clear and convincing” standard of evidence likely would, in practice, compound one another and raise an exceedingly high bar to any finding of responsibility for sexual harassment.

Accordingly, there should be no presumption regarding the respondent’s responsibility.

¹²⁹ EEOC, Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors (June 18, 1999), <https://www.eeoc.gov/policy/docs/harassment.html>.

C. The Department Should Provide Prompt Timeframes and Should Not Encourage Good Cause Delay for Concurrent Law Enforcement Proceedings.

Since 1980, the regulations have required that schools provide a “prompt” resolution to any allegation of discrimination prohibited by this part.¹³⁰ Department policy interpreting the regulations has also required grievance procedures for resolving allegations of sexual harassment to be completed “promptly.”¹³¹ Proposed § 106.45(b)(1)(v) would require schools to establish “reasonably prompt timeframes for conclusion of the grievance process.” According to the preamble, the Department has selected the language “reasonably prompt” to track “the language in the Clery Act regulations at 34 C.F.R. § 668.46(k)(3)(i)(A).” 83 Fed. Reg. at 61,473. We are concerned that schools will likely construe “reasonably prompt” as imposing a more relaxed timeliness obligation than “promptly.” Other than a desire to provide consistency with the Clery Act, the Department does not provide an adequate justification for a change that may result in further delays in completion of the resolution process for both parties to a sexual harassment investigation, each of whom have a significant interest in a prompt resolution. The Department should strike “reasonably,” so that change in wording does not constitute a departure from its long-established guidance without adequate justification.

In addition, we urge the Department to reaffirm, in issuing any final rule, the goal of completing investigations of formal complaints in a 60-day timeframe,¹³² subject to the institutions’ need for flexibility for practical concerns and to protect due process rights. Timely resolution of grievance procedures is vital for complainants who may be re-victimized as the process drags on without resolution or relief. As the Department has recognized, “OCR experience” had shown that “a typical investigation takes approximately 60 calendar days following receipt of the complaint,” although “the complexity of the investigation and the severity and extent of the harassment” can necessitate a longer process.¹³³ In the proposed rule, the Department notes that “[s]ome recipients felt pressure in light of prior Department guidance to resolve the grievance process within 60 days.” But nowhere does the Department claim that OCR’s experience has changed. Rather than abandon this timeline, the Department should provide schools with guidelines for timeliness that continue to recognize that grievance procedures can vary in length based on the complexity of the investigation, the severity of the harassment, and factors outside of the schools’ control, such as the unavailability of witnesses.¹³⁴

¹³⁰ See current 34 C.F.R. § 106.8(b), proposed § 106(c).

¹³¹ *E.g.*, 2001 Guidance at 19; 2011 DCL at 8.

¹³² Of course, other stages such as appeals will have a separate prompt timeframe, as OCR has consistently recognized.

¹³³ 2011 DCL at 12; *see also* 2014 Q&A at 31.

¹³⁴ *E.g.*, state administrative procedures that require multiple stages but are still completed within a prompt timeframe.

Such a definition will also provide clear notice to schools of the Department’s expectations for a prompt resolution.

Finally, the Department provides in proposed § 106.45(b)(1)(v) that schools may temporarily delay the process for good cause, which can include “concurrent law enforcement activity.” For several reasons, any final rule should be clear that concurrent law enforcement activity, without more, is not good cause to delay Title IX proceedings. First, “because legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively.”¹³⁵ Conduct may restrict a student’s access to education even though it does not rise to the level of a criminal violation. Second, as we discuss more fully elsewhere, schools generally have an independent obligation under Title IX to investigate and resolve complaints of sexual harassment—regardless of any parallel criminal investigation.

Generally, school and law enforcement officials should de-conflict their investigations to avoid prejudicing each other’s investigation. Although concurrent law enforcement activity should not be considered sufficient grounds for delaying Title IX proceedings, some limited circumstances would support good cause for a temporary delay. For example, a school may find good cause to delay a portion of a Title IX investigation at the request of a prosecutor to protect the integrity of a criminal investigation, or “a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence.”¹³⁶ But “once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any charges), the school must promptly resume and complete its fact-finding for the Title IX investigation.”¹³⁷ And schools should not refrain from providing supportive measures in the interim.

Therefore, if the Department finalizes its proposal, § 106.45(b)(1)(v) should be revised to reflect that “concurrent law enforcement activity” may be grounds for delaying Title IX proceedings only when there is good cause beyond the mere existence of concurrent law enforcement activity. That said, any final rule should also clarify that schools must tell complainants of their right to file a concurrent criminal complaint and not dissuade them from doing so.

¹³⁵ 2001 Guidance at 21 & n.110 (citing *Academy School Dist. No 20*, OCR Case No. 08-93-1023 (school’s response determined to be insufficient in a case in which it stopped its investigation after complaint filed with police); *Mills Public School Dist.*, OCR Case No. 01-93-1123 (not sufficient for school to wait until end of police investigation)).

¹³⁶ 2011 DCL at 10 & n.25.

¹³⁷ *Id.* (noting that in “one recent OCR sexual violence case, the prosecutor’s office informed OCR that the police department’s evidence gathering stage typically takes three to ten calendar days, although the delay in the school’s investigation may be longer in certain instances”).

D. When Issuing a Notice Upon Receipt of a Formal Complaint, Schools Should be Required to Protect Confidentiality and Preserve the Integrity of the Investigation.

In § 106.45(b)(2)(i)(B), the proposed rule defines the notice a school must provide upon receipt of a formal complaint. We agree that due process requires that a respondent have access to information about the complained-of conduct in order to have a meaningful opportunity to prepare an effective response. But by requiring schools in all circumstances to send written notices that identify the complainant and detail the allegations, the proposed rule fails to address the potential confidentiality concerns of both the complainant and the respondent. For example, a written notice sent to the parties that names the complainant and details the allegations could be leaked or forwarded to unrelated third parties. This could damage the respondent's reputation,¹³⁸ invite retaliation against the complainant, threaten both parties' access to education, and, depending on the information disclosed regarding the complainant's medical information related to sexual violence, violate state and federal health care privacy laws.¹³⁹

We are also concerned by the proposal's mandate that the required notice be provided "[u]pon receipt of a formal complaint," proposed § 106.45(b)(2)(i)(B), and then supplemented on an "ongoing" basis, "[i]f, in the course of an investigation, the recipient decides to investigate allegations not included in the notice provided pursuant to paragraph (b)(2)(i)(B)."

§ 106.45(b)(2)(ii). As long as the respondent receives the necessary information early enough to have a meaningful opportunity to prepare a response, schools should retain some discretion as to when they provide a respondent information about allegations being investigated. For example, a school may wish to conduct a preliminary investigation to determine whether the new allegations are credible or whether alleged systemic conduct is occurring. Schools may also need to delay notice to avoid prejudicing the investigation.

To avoid these problems, any final rule should instead advise schools to provide the respondent with prompt written notice of the filing of a formal Title IX complaint, including the specific allegations against her or him, the applicable grievance procedures and conduct code sections, a prompt timeframe for providing access to relevant information about the allegations, and an opportunity to respond. This would allow schools to continue to protect both parties by, for example, sending respondents only an initial written notice about the existence of a complaint and specific allegations, and then providing him or her with relevant information in person, including additional details about the alleged conduct and the identity of the complainant. Any final rule should also allow schools to protect respondents and complaints in other ways, such as by barring them from disclosing personally identifiable information except as necessary to prepare a response.

¹³⁸ *E.g.*, 2001 Guidance at 18 ("Publicized accusations of sexual harassment, if ultimately found to be false, may nevertheless irreparably damage the reputation of the accused.").

¹³⁹ *E.g.*, 2001 Guidance at 17–18.

Any final rule should also allow schools to withhold the identity of the complainant in certain circumstances. We agree that in many circumstances, the respondent must be informed of the complainant's identity to prepare an adequate response. But there are circumstances in which a school may not need to identify a complainant who has requested confidentiality, such as when the complaint involves harassment in a public setting (e.g., a teacher saying something to a whole class or systemic problems at a fraternity). In addition, when a school moves forward with a complaint on behalf of a student who has requested confidentiality, the school can still provide prospective relief, such as sexual harassment training and guidance that can meet its obligations to prevent harassment and address its effects. Students who have declined to pursue a formal investigation should not be identified against their will if appropriate corrective measures can still be pursued.

Finally, any final rule should require any notice to include a warning that retaliation against the complainant, including by making statements or spreading rumors intended to intimidate or dissuade him/her from filing or pursuing a Title IX complaint, constitutes an independent Title IX violation.

E. Schools Should be Allowed to Place Limited, Reasonable Restrictions on Discussions by the Parties.

In § 106.45(b)(3)(iii), the proposed rule bars schools from restricting the parties from discussing the allegations under investigation. We agree that parties cannot be barred from disclosing information needed to prepare a response or prepare for an interview or hearing. But there are several circumstances in which a school may need to place reasonable limitations on the ability of both parties to discuss the allegations. For example, a school may be able to respect a complainant's request for confidentiality by requiring the respondent to not disclose the complainant's identity unless necessary to prepare his or her response. In addition, schools should be allowed to limit (in the short term) discussions to preserve the integrity of the investigation, such as limiting conversations between parties and witnesses to prevent witness tampering. Finally, effective interim supportive measures should continue to include a school's ability to restrict the respondent from contacting the complainant or otherwise harassing or retaliating against him or her during the pendency of the investigation. Therefore, any final rule should state that the school must not restrict the ability of either party to discuss the allegations under investigation as necessary to prepare a response or prepare for an interview or hearing.

F. The Proposed Hearing Procedures Will Chill Reporting, Burden Schools, and Harm Both Complainants and Respondents.

Proposed § 106.45(b)(3)(vi) allows K-12 institutions to conduct live hearings at their discretion. Live hearings place a sharp spotlight on both parties. K-12 students—particularly those in elementary and middle school—will typically lack the maturity necessary to participate. They also have greater vulnerability to potential traumatization or re-traumatization. In addition, allowing live hearings raises serious privacy concerns for children, particularly with respect to

student witnesses. The final rule should not allow live hearings in the K-12 context unless otherwise required by state law.

If live hearings do take place in K-12 schools, the final rule should include minimum protections for student parties and witnesses who testify, and require schools to protect the confidentiality of the participants and the process. Given the privacy considerations for underage minors and potential for re-traumatization, the complaining and responding student should never be required to testify in the same room or to face each other in any cross-examination. The regulation should also provide exceptions for student testimony and participation where the student's maturity level would make in-person participation inappropriate.

In § 106.45(b)(3)(vii), the proposed rule requires all institutions of higher education to conduct live hearings at which each party's advisor must be allowed to conduct cross-examination of the other party. As we discuss below, any final rule should not mandate live hearings, return advisors to a supporting role only, and only allow party questioning via neutral third parties.

First, although some states require them, live hearings can pose problems. Schools may have a legitimate interest in avoiding circumstances that may subject the complainant to further harassment. Particularly in cases of sexual violence, requiring the complainant to face the respondent risks re-traumatizing a survivor. In addition, live hearings can be burdensome on institutions. They are typically overseen by faculty members or school staff who, no matter how dedicated they are to a fair process, are not professional mediators or judges. Months or even years can pass between hearings, which can undermine the efficacy of training, while the presence of attorneys for either party risks intimidating the panel and overtaking the proceedings. And finding a time when the panel members, the parties, and all witnesses are available can delay proceedings. To avoid these problems, some schools instead have the fact-finder or investigator conduct hearings with, or take sequential evidence from, all parties and witnesses, with the parties able to submit questions in advance. This allows for the solicitation of live testimony and enables the fact-finder to personally evaluate the speaker's credibility.¹⁴⁰

Therefore, the final rule should permit investigations via methods other than live hearings, subject to constitutional due process protections.

Second, requiring cross-examination by a party's advisor during a live hearing will create serious problems to both the school and the parties. The opportunity for the parties to pose questions is an important element of fact-finding. Indeed, the ability to pose questions of witnesses and the other party protects both respondents and complainants. But the Department's shift to cross-examination by advisors has created even greater problems—problems that will

¹⁴⁰ *E.g., Doe v. Univ. of S. California*, 241 Cal. Rptr. 3d 146, 163 (Cal. Ct. App. 2018) (holding that “[w]here a university’s determination turns on witness credibility, the adjudicator must have an opportunity to assess personally the credibility of critical witnesses,” but not finding due process violation in the university’s decision to not hold a live hearing).

inhibit the Department’s stated goals of discovering the truth and reducing the burden on schools. 83 Fed. Reg. at 61,476.

Advisor-led cross-examination will be untenable. Some parties may choose to bring in attorney advisors. This risks disparate treatment if, for example, the complainant has an attorney advisor and the respondent has an institution-provided faculty member advisor. In cases in which the school is required to provide the advisor, schools are concerned that they could later be challenged for failing to provide an adequate advisor. Attorney-advisor cross-examination also risks intimidating the non-lawyer faculty or staff member(s) who typically oversee Title IX hearings. To ensure that the fact-finder can run a fair and effective hearing, schools may feel the need to hire attorneys to serve as dedicated Title IX fact-finders, which would impose an even greater expense and burden on institutions. In addition, cross-examination by an advisor of the party’s choice—which could be an attorney, a family member, or a fellow student—risks harassing the respondent, retraumatizing the complainant, and further deterring survivors from filing formal complaints.¹⁴¹

To avoid these problems, any final rule should permit the practice already widely used in schools that hold live hearings. Each party should be allowed to bring to a hearing or interview an advisor of his or her choice who serves only a supportive function. The complainant and respondent should be allowed to pose questions through a neutral third party, such as the fact-finder overseeing the hearing. This would balance the need for each party to ask questions of the other party, the need for the fact-finder to evaluate how the parties respond to live questions, and the need to protect all parties from trauma, intimidation, and further harassment. The Department must also ensure that adjudicators are sufficiently empowered to control the proceedings and place some reasonable limitations on the questioning of the parties and witnesses. By making relevance the only ground for excluding questions, 83 Fed. Reg. at 61,476, the Department’s proposal would result in protracted and unwieldy hearings that would impose additional costs on schools and parties (costs not reflected in the Department’s regulatory impact analysis). Such hearings may not ultimately protect respondents and complainants from abusive or harassing questioning or, most importantly, facilitate the discovery of truth.

¹⁴¹ See, e.g., Tom Lininger, *Bearing the Cross*, 74 Fordham L. Rev. 1353, 1357 (2005) (“As a general matter, victims willingness to report crimes varies inversely with their fear of embarrassment during cross-examination.”); Anoosha Rouhanian, *A Call for Change: The Detrimental Impacts of Crawford v. Washington on Domestic Violence and Rape Prosecutions*, 37 B.C.J.L. & Soc. Just. 1, 35 (2017); William J. Migler, *An Accused Student’s Right to Cross-Examination in University Sexual Assault Adjudicatory Proceedings*, 20 Chap. L. Rev. 357, 370 (2017); H. Hunter Bruton, *Cross-Examination, College Sexual-Assault Adjudications, and the Opportunity for Tuning Up the “Greatest Legal Engine Ever Invented”*, 27 Cornell J.L. & Pub. Pol’y 145, 176 (2017).

G. Schools Should Not be Required to Provide Parties With Access to All Collected Evidence.

In § 106.45(b)(3)(viii), the proposed rule details how institutions must prepare investigative reports and provide the parties with access to evidence. These provisions raise several serious concerns.¹⁴²

First, no platform exists that is wholly immune from “downloading or copying the evidence.” Among many other vulnerabilities, the relevant evidence could easily be photographed using a smartphone camera. The final rule should not require schools to provide such sensitive information in a way that exposes both the respondent and the complainant.

Second, providing all parties access to “any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility” is overbroad. Schools should not be required to provide the parties with access to evidence that is privileged and confidential, such as “communications between the complainant and a counselor or information regarding the complainant’s sexual history.”¹⁴³ Schools also cannot provide parties with access to evidence that it itself cannot use, such as an illegal voice recording in a state such as Pennsylvania that requires two-party consent.¹⁴⁴ Nor should a school provide either party with evidence that was collected as part of the investigation but which is irrelevant.

Nor can schools be required to provide access to information where doing so is barred by the Family Educational Rights and Privacy Act (FERPA). The Department mischaracterizes the law when it asserted in the preamble that this provision “is consistent” FERPA, “under which a student has a right to inspect and review records that directly relate to that student.” 83 Fed. Reg. at 61,475. FERPA does not allow one student to review information about other students. 34 C.F.R. § 99.12(a). And not every piece of evidence obtained as part of an investigation is necessarily “directly related to” *each* student who is a party to an investigation for the purposes of FERPA.¹⁴⁵ For example, a complainant’s full medical history, even if obtained as part of an investigation to ascertain the extent of alleged physical injuries, is both irrelevant to the specific

¹⁴² See, e.g., Richard Reed, *Feds concerned about loophole that may have enabled UO to get alleged rape victim’s records*, The Oregonian (June 13, 2015), https://www.oregonlive.com/education/index.ssf/2015/06/feds_voice_concern_about_looph.html (discussing disclosure of student’s confidential counseling records regarding an alleged rape on campus and the impact on the survivor and other legal liability).

¹⁴³ 2011 DCL at 11 n.29.

¹⁴⁴ Digital Media Law Project, *Recording Phone Calls and Conversations*, <http://www.dmlp.org/legal-guide/recording-phone-calls-and-conversations> (last checked Jan. 18, 2019).

¹⁴⁵ 20 U.S.C. § 1232g(a)(4)(A)(i).

allegation at issue and not at all “directly related” to the respondent. Likewise, “if a school introduces an alleged perpetrator’s prior disciplinary records to support a tougher disciplinary penalty, the complainant would not be allowed access to those records.”¹⁴⁶

Therefore, any final rule should permit schools to place reasonable limitations on a respondent’s access to information.

H. The Standard of Proof Should Remain Preponderance of the Evidence.

Proposed regulation § 106.45(b)(4)(i) requires the recipient to:

[A]pply either the preponderance of the evidence standard or the clear and convincing evidence standard, although the recipient may employ the preponderance of the evidence standard only if the recipient uses that standard for conduct code violations that do not involve sexual harassment but carry the same maximum disciplinary sanction. The recipient must also apply the same standard of evidence for complaints against students as it does for complaints against employees, including faculty.

Although the proposed regulation expressly provides an “option” regarding the standard that may be used, requiring that the preponderance of the evidence standard only be used if it is also used in other specific contexts could effectively eliminate the preponderance of the evidence standard in Title IX proceedings. This proposal is presented under a veneer of treating complaints equitably, but would, in fact, often create an inequitable situation at odds with Title IX’s text and intent, exceed the Department’s authority under Title IX, and be strikingly unfair to those subjected to sexual harassment and sexual violence.

First, the idea that a heightened standard of proof should apply to claims of sexual harassment and violence in school disciplinary processes misapprehends these proceedings’ fundamental purpose. While of great consequence to all parties involved, these are not criminal proceedings. In criminal proceedings, a heightened standard of proof is constitutionally mandated and appropriate given the retributive nature of criminal sanctions, as well as the potential of loss of life or liberty. In contrast, student disciplinary proceedings must be viewed in light of the institutions’ educational missions. As stated in a publication by the Association for Student Conduct Administration, “[t]he goal is to protect the academic environment.”¹⁴⁷ That goal is undermined by a standard that “says to the victim/survivor, ‘Your word is not worth as

¹⁴⁶ 2011 DCL at 11.

¹⁴⁷ Chris Loschiavo & Jennifer Waller, PhD, *Preponderance of the Evidence Standard: Use in Higher Education Campus Conduct Processes*, 1, 3, Association for Student Conduct Administration, <https://www.theasca.org/files/The%20Preponderance%20of%20Evidence%20Standard.pdf>.

much to the institution as the word of accused’ or, even worse, that the institution prefers that the accused student remain a member of the campus community over the complainant.”¹⁴⁸

Second, the “preponderance of the evidence” standard in this context is widespread and has been in use for decades. In fact, the Department has required schools to employ this standard since at least 1995, under both Democratic and Republican administrations.¹⁴⁹ Further, contemporaneous surveys showed that the majority of colleges and universities employed this standard even before the Department’s 2011 guidance.¹⁵⁰ Tellingly, multiple rounds of comments on Title IX guidance in the past 20 years yielded no complaints about, or even mention of, the preponderance of evidence standard.¹⁵¹

While the proposed rule pushes back on the analogy to civil litigation as one of its rationales for employing the clear and convincing standard, 83 Fed. Reg. at 61,477, the Department cannot dispute that the preponderance of the evidence standard is typical in civil lawsuits, including ones in which civil rights violations—such as Title IX and Title VII—are alleged.¹⁵² The 2001 Guidance noted that “[w]hile *Gebser* and *Davis* made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the *Davis* Court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX.”¹⁵³ The Department’s proposed rule turns Title IX on its head, making it harder for a victim of sex discrimination to obtain relief than a respondent. In this regard, a respondent will now be able to sue a school for a “due process” violation of Title IX and only have to prove the

¹⁴⁸ *Id.* at 4.

¹⁴⁹ Katherine K. Baker, et al., *Title IX & the Preponderance of the Evidence: A White Paper*, Feminist Law Professors 1, 10 (Aug. 7, 2016), <http://www.feministlawprofessors.com/wp-content/uploads/2017/07/Title-IX-Preponderance-White-Paper-signed-7.18.17-2.pdf> (citing Letter from Gary D. Jackson, Reg’l Civil Rights Dir., Off. for Civil Rights, U.S. Dep’t of Educ., to Jane Jervis, President, The Evergreen St. Coll. (Apr. 4, 1995) (Clinton Administration); Letter from Howard Kallem, Chief Att’y, D.C. Enforcement Off., Off. for Civil Rights, U.S. Dep’t of Educ., to Jane Genster, Vice President and General Counsel, Georgetown Univ. (Oct. 16, 2003) (George W. Bush Administration)).

¹⁵⁰ *Id.* at 7 (citing two studies showing that shortly before 2011 DCL, (1) 80 percent of schools with a standard of evidence used the preponderance standard and (2) 61 percent of college and university administrators surveyed used the preponderance standard).

¹⁵¹ *Id.* at 9–10.

¹⁵² See, e.g., *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99 (2003) (noting that under the “conventional rule of civil litigation,” the preponderance of the evidence standard generally applies in cases under Title VII); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 252–55 (1989) (approving preponderance standard in Title VII sex discrimination case) (plurality opinion); *id.* at 260 (White, J., concurring in the judgment); *id.* at 261 (O’Connor, J., concurring in the judgment).

¹⁵³ 2001 Guidance at vi; see also *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007) (“We look to case law interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX.”).

case by a preponderance of the evidence, whereas the complainant would have to prove sexual harassment in the first instance by the higher clear and convincing standard.

Further, as acknowledged in the NPRM, the Department’s own OCR uses a preponderance of the evidence standard. 83 Fed. Reg. at 61,477. OCR’s Case Processing Manual requires that a noncompliance determination be supported by the preponderance of the evidence when resolving allegations of discrimination under all the statutes enforced by OCR, including Title IX.¹⁵⁴

The “preponderance of the evidence” standard is the only standard of proof that can provide for an “equitable resolution” of student harassment complaints,¹⁵⁵ as required under Title IX.¹⁵⁶ Absent a statutory instruction to the contrary, the Department has no authority to depart from the usual allocation of risk between parties to grievance proceedings. In discussing appellate rights, the Department recognizes that each party in grievance proceedings is equally deserving of an accurate outcome. 83 Fed. Reg. at 61,478–79. This recognition makes the Department’s proposal to use a standard other than preponderance of the evidence—which privileges one party’s interests over others’ and the search for truth—all the more inexplicable.

To be sure, this proposed regulation applies by its terms to complaints against employees as well, and some colleges and universities have policies for faculty under which a higher standard of proof is used. But schools have a qualitatively different relationship with their employees than their students. In the modern university context, courts “have increasingly recognized a college’s duty to provide a safe learning environment both on and off campus.”¹⁵⁷ This most obviously manifests itself in the student housing context, where students are almost entirely dependent on the university for security, and have little to no power to enhance their security themselves.¹⁵⁸ The proposed regulation’s requirement that schools can only use a preponderance of the evidence standard for student complaints if they use that same standard for

¹⁵⁴ U.S. Dep’t of Educ., *Case Processing Manual*, Art. III, § 303, <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>. Notably, this Manual was updated under this Administration (in November 2018) and retained the preponderance of the evidence standard.

¹⁵⁵ *Herman & Maclean v. Huddleston*, 459 U.S. 375, 390 (1983) (“A preponderance-of-the-evidence standard allows both parties to ‘share the risk of error in roughly equal fashion.’ Any other standard expresses a preference for one side’s interests.”) (internal quotation marks omitted). *See also Steadman v. SEC*, 450 U.S. 91, 96 (1981) (same).

¹⁵⁶ *See* 34 C.F.R. §106.8(c) (construing Title IX to require equitable resolution of grievances).

¹⁵⁷ Kristen Peters, *Protecting the Millennial College Student*, 16 S. Cal. Rev. L. & Soc. Just. 431, 448 (2007); *see also Duarte v. State*, 88 Cal. App. 3d 473 (Cal. 1979) (noting that students “in many substantial respects surrender[] the control of [their] person[s], control of [their] own security to the university”); *Mullins v. Pine Manor Coll.*, 449 N.E.2d 331, 335–36 (Mass. 1983) (holding that “[p]arents, students, and the general community . . . have a reasonable expectation, fostered in part by colleges themselves, that reasonable care will be exercised to protect resident students from foreseeable harm.”).

¹⁵⁸ *See Mullins*, 449 N.E.2d at 335.

complaints against employees ignores the fundamental fact that schools are obliged to protect their students in different ways than their employees, which is especially true for students who are minors.¹⁵⁹

The proposed rule prohibits schools from having a different standard of proof for allegations of sexual harassment than it does for other infractions that carry the same potential sanctions. The reasons provided for this change further highlight the inherent one-sidedness underlying the proposal to alter the standard of proof. Here, the Department only discusses the “heightened stigma often associated with a complaint regarding sexual harassment,” 83 Fed. Reg. 61,477, but fails to recognize the trauma associated with being subjected to sexual harassment or violence, and how this could be exacerbated by applying an evidentiary standard of proof favoring the accused over the individual subjected to sexual harassment or violence.

The proposed rule will have the effect of deterring complainants from filing administrative school complaints and instead encourage additional costly civil litigation, an additional cost impact for which the Department fails to account. Assuming that the Department’s proposed regulations are adopted, a complainant filing a civil lawsuit under Title IX would now be required to meet the same extremely high burdens—e.g., standards for deliberate indifference, actual knowledge, and sexual harassment—in school as in court. But the court case would be adjudicated under the preponderance of the evidence standard, a lower burden of proof than would be available in many school grievance proceedings under the proposed rule. In addition, the complainant would be able to obtain damages in court, something that the Department’s proposed rule explicitly prohibits in the administrative context.

The problem is that civil adjudication is only an alternative for students with means to pursue it. Students without the financial means would be uniformly disadvantaged in pursuing sexual harassment complaints. Additionally, where school proceedings are perceived unfair or unduly burdensome, some students may choose to pursue criminal actions, which can be re-traumatizing for a person subjected to sexual harassment and more stigmatizing for the accused.

Finally, the proposed rule may also prove unworkable for many institutions that will be unable to meet two masters. To meet the second requirement of consistency between faculty and student complaints, colleges and universities will most frequently be required to adopt the higher standard of proof, clear and convincing, since tenured faculty often are entitled by law and contract to an application of the higher standard. But to meet the first requirement of consistency between conduct code violations with similar maximum penalties, many colleges and universities that handle all conduct code violations using a preponderance of the evidence standard would be required to adopt the higher standard of proof. The Department’s rule will thus likely require colleges and university to enact far reaching changes to conduct violation policies and practices that extend well beyond the scope of the Department’s authority to regulate under Title IX, inappropriately reaching conduct that has nothing to do with

¹⁵⁹ See *supra* note 99.

discrimination on the basis of sex—for example, cheating and simple battery. Further, the Department provides no explanation for why these proceedings—faculty disciplinary standards and code of conduct complaints—are more appropriate analogues to Title IX’s disciplinary proceedings than Title VII or sexual harassment civil proceedings in court.

I. The Written Determination Must Include Steps to Eliminate Any Hostile Environment.

Proposed § 106.45(b)(4)(ii) provides a summary of what the final written determination must include. Any final rule should confirm that the written determination must also include assurances that the school will take steps to prevent recurrence of harassment, correct its discriminatory effects, and prevent any retaliation against the complainant.¹⁶⁰ As we have discussed, the effects of harassment can go beyond the complainant and the respondent. The Department has long recognized that Title IX requires schools to “eliminate any hostile environment that has been created,” which may require implementing corrective measures throughout the education community.¹⁶¹

J. The Department Should Clarify that both Complainants and Respondents Have Equal Access to the Appeal Process.

As currently written, § 106.45(b)(5) states that “[i]n cases where there has been a finding of responsibility, although a complainant may appeal on the ground that the remedies are not designed to restore or preserve the complainant’s access to the recipient’s education program or activity, a complainant is not entitled to a particular sanction against the respondent.” This could be read to suggest that a complainant can only appeal the remedies provided and not the substantive findings. To avoid a rule that could be read to favor one party over another, any final rule should clarify that both complainant and respondent should be given equal grounds for appeal. In addition, the final rule should clarify that even if a complainant is not entitled to a particular sanction, complainant can still appeal and seek a different sanction than the one imposed.

K. Any Informal Resolution Must Empower Complainants and Seek Restorative Justice.

In § 106.45(b)(6), the Department proposes to allow informal resolution of any sexual harassment complaint. The use of informal resolution has been shown to have powerful remedial benefits in the criminal justice system.¹⁶² But any use of informal resolution under Title IX must be voluntary and only initiated after the parties have full notice of their options, including the right to proceed with a formal resolution process. In addition, informal resolution should allow

¹⁶⁰ 2001 Guidance at 17.

¹⁶¹ 2001 Guidance at 16.

¹⁶² *E.g.*, Common Justice, *Common Justice Model*, https://www.commonjustice.org/common_justice_model (last checked Jan. 29, 2019).

for an option to access voluntary restorative justice. And schools should have the option not to offer informal resolution in cases of sexual violence or assault, which may raise more difficult issues that some schools may not have the resources to adequately address.

To that end, any final rule that allows schools to offer an informal resolution process must require them to provide complainants and respondents with written notice of the options for informal resolution at the outset, but not pressure students to pursue an informal resolution. Confirmation that the parties received written notice of the availability of informal resolution should be maintained by the school. Any final rule should also state that any informal resolution process must involve a trained staff member. With voluntary written consent of both parties, a face-to-face meeting may be part of an informal process, but at no point should a complainant be required to resolve the problem alone with the respondent.¹⁶³ Both parties must receive written notice of the outcome of the informal resolution process, including any remedies and sanctions. Finally, both parties must be informed of the right to discontinue the informal process at any time and file a formal complaint.¹⁶⁴

L. The Recordkeeping Retention Period Should Be Extended.

Sections 106.45(b)(7)(i)–(ii) of the proposed rule set forth a requirement that all recipients “create, make available to the complainant and respondent, and maintain for a period of three years records of” any sexual harassment investigation, the results of that investigation, any appeal from that investigation, and all training materials relating to sexual harassment. The explicit requirement to retain such records is a positive step that will help improve consistency in investigations and allow the Department to assess compliance with Title IX.

But the Clery Act requirement to report all crimes that occurred within the last three years has little to do, as a matter of policy or law, with how long recipients should *retain records* of sexual harassment and sexual assault after they have been reported. It does not follow that the period of *retention* for such records should be tied to the Clery Act’s limitation period for *reporting* specific campus crimes.¹⁶⁵

In fact, when interpreting the Clery Act’s requirement to “Retain Records,” the Department has explicitly held that all three years of records relied upon for annual reporting must be kept for another three years *after* the publication of that year-end report—or “in effect,

¹⁶³ 2001 Guidance at 21.

¹⁶⁴ *Id.* In some cases, informal resolution may also require the existence of a safety guardrail to ensure that the school has made a sufficient inquiry to determine the scope of likely harm to the complainant and others in the school community and the extent of the injuries to fashion appropriate redress.

¹⁶⁵ *See* The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”), 20 U.S.C. § 1092(f); 34 C.F.R. 668.46(c)(1) (requiring schools to annually report all crimes which occurred in the prior three calendar years by the end of the following year).

seven years.”¹⁶⁶ The proposed regulation asserts that it “tracks the language in the Clery Act,” thereby implying that this proposed change is consistent with current law. 83 Fed. Reg. at 61,471, 61,473, 61,475, 61,476, 61,478. However, as demonstrated above, the proposed three-year retention requirement is inconsistent with the Clery Act’s seven-year retention requirements. The retention period in the proposed regulations therefore should be, at minimum, seven years.

In addition, as a practical matter, a three-year recordkeeping requirement could undermine criminal prosecutions related to the incidents at issue. For example, several states have no statute of limitations for rape or certain other serious sexual offenses.¹⁶⁷ In other states, the statutes of limitations for sexual offenses far exceed the three-year recordkeeping requirement.¹⁶⁸ And sexual offenses against minors are often subject to significantly lengthened statutes of limitations.¹⁶⁹

The proposed regulations therefore would permit recipients to discard vital records that could help the criminal prosecution of sexual assault and rape well before the statute of limitations for such crimes has run, thereby potentially letting the perpetrators of these serious crimes go free. Given that so many related crimes have statutes of limitations substantially longer than the three-year requirement in the proposed regulations, the retention policy is inadequate, and should be extended in any final rule.

V. The Department Should Not Adopt a Title IX Rule that Adversely Affects Schools’ Ability to Go Beyond Title IX’s Requirements in Addressing Sexual Harassment and Violence, Including Their Ability to Comply with Other Applicable Laws.

A. Title IX Cannot, And Does Not, Restrict The Ability of States and Schools To Provide Broader Protections Against Sex Discrimination.

The proposed rule’s new general standard and definitions of terms, as discussed above,¹⁷⁰ would narrow schools’ obligations to respond to sexual harassment and assaults and decrease the

¹⁶⁶ U.S. Dep’t of Educ., *The Handbook for Campus Safety and Security Reporting* 9–11 (2016 Ed.); *see also id.* at 6–11 (“As with all other Clery Act-related documentation, your institution is required to keep emergency test documentation for seven years.”).

¹⁶⁷ *See, e.g.*, Cal. Penal Code §§ 261, 799; N.J.S.A. 2C:1-6a(1).

¹⁶⁸ Any “major sexual offense” committed in the state of Pennsylvania can be prosecuted within twelve years of its occurrence. 42 Pa.C.S.A. § 5552(b)(1).

¹⁶⁹ In California, for example, assaults against minors can be prosecuted at any point up until the victim’s 40th birthday. Cal. Penal Code § 801.1(a)(2). In Pennsylvania, assaults against minors can be prosecuted until the victim’s 50th birthday. 42 Pa.C.S.A. § 5552(c)(3). In New Jersey, “criminal sexual contact” involving minor victims may be prosecuted up to five years after the victim turns 18. N.J.S.A. 2C:1-6b(4).

¹⁷⁰ *See supra* Section II.

protections afforded to those subjected to sexual harassment and assault. In addition, this newly-narrowed definition of sexual harassment could potentially have negative consequences in other contexts. Section 106.45(b)(3) of the proposed regulation holds that whenever “the conduct alleged by the complainant would not constitute sexual harassment as defined in section 106.44(e) . . . , the recipient *must dismiss* the formal complaint with regard to that conduct.” (emphasis added). One reading of this requirement would dictate that no recipient could attempt to address sexual harassment or assault if the basis of those claims did not fit within the newly-narrowed federal definition provided in the proposed regulations, even where the recipient’s own policy or state law would nevertheless prohibit the actions alleged by the complainant. We believe that the proposed rule at § 106.45(b)(3), if finalized, must be revised to state, consistent with other parts of the proposed regulation,¹⁷¹ that Title IX cannot, and does not, restrict the ability of states and schools to provide broader protections against sex discrimination. Further, we believe that the Department should ensure that schools can continue to enforce additional civil rights protections.

Even if the proposed rule allows broader protections against sex discrimination, mandating that schools dismiss Title IX complaints that fall outside of the regulations’ scope will still burden schools by requiring them to create two separate procedures: one for Title IX sexual harassment and one for conduct that may constitute sexual harassment under other applicable law or policies but not under the Department’s interpretation of Title IX. 83 Fed. Reg. at 61,475 (noting that “a recipient remains free to respond to conduct that does not meet the Title IX definition of sexual harassment”). Yet the Department has long held that Title IX does not require a school “to provide separate grievance procedures for sexual harassment complaints.”¹⁷² Indeed, many schools prohibit sexual harassment in the school’s code of student conduct.¹⁷³

¹⁷¹ Other sections of the proposed regulation accurately reflect that Title IX does not preempt the field of sex discrimination. *See, e.g.*, 83 Fed. Reg. at 61,475 (“a recipient remains free to respond to conduct that does not meet the Title IX definition of sexual harassment”); (responses could include “responding with supportive measures for the affected student or investigating the allegations through the recipient’s student conduct code” and that “such decisions are left to the recipient’s discretion in situations that do not involve conduct falling under Title IX’s purview”).

¹⁷² 2001 Guidance at 19.

¹⁷³ *E.g.*, Uni. of Pittsburgh, *Title IX—Policies and Procedures*, <https://www.titleix.pitt.edu/policies-procedures> (Jan. 17, 2019); San Francisco Unified School District (SFUSD), *Administrative Regulation 5145.3* (Aug. 8, 2016), [http://www.sfusd.edu/en/assets/sfusd-staff/Equity/Nondiscrimination,%20Harassment%20-%20AR%205145.3%20-%20English%20\(8.8.16\).pdf](http://www.sfusd.edu/en/assets/sfusd-staff/Equity/Nondiscrimination,%20Harassment%20-%20AR%205145.3%20-%20English%20(8.8.16).pdf) (defining harassment on the basis of sex as “[a]cts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, gender identity, or gender expression, regardless of whether they are sexual in nature, where the act has the purpose or effect of having a negative impact on the student’s academic performance or of creating an intimidating, hostile, or offensive educational environment”); Rutgers, the State University of New Jersey, *Policy Prohibiting Discrimination and Harassment*, Section 60.1.12 (rev. Jul. 5, 2016), http://catalogs.rutgers.edu/generated/ejbppp_current/pg67.html (including indirect harassment and hostile environment created by generalized harassing behaviors); The George Washington Univ., *The Sexual and*

Moreover, it's unclear what a school would do differently when considering a non-Title IX sexual harassment complaint, given that the Department purports to believe that its grievance proposals constitute the floor of fair and equitable proceedings.

If the Department were, however, to impose regulations that inhibit state laws or recipient codes of conduct that are more protective of those subjected to sexual harassment for behavior that falls outside of the Department's narrowed definition of sexual harassment under Title IX, those regulations would be inconsistent with civil rights law and Title IX generally. In creating the Department of Education, Congress explicitly announced its intention "to protect the rights of State and local governments and public and private educational institutions in the areas of educational policies and administration of programs," and specifically not to "to increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and the local school systems and other instrumentalities of the

Gender-Based Harassment and Interpersonal Violence Policy (July 1, 2018), <https://my.gwu.edu/files/policies/SexualHarassmentFINAL.pdf> (defining gender-based harassment to include "harassment based on gender, sexual orientation, gender identity or gender expression, which may include acts of aggression, intimidation or hostility, whether verbal or non-verbal, graphic, physical or otherwise ..."); Georgetown Univ., *Code of Student Conduct 2018-2019*, Section 33, <https://studentconduct.georgetown.edu/code-of-student-conduct> (defining sexual harassment "as any unwelcome conduct of a sexual nature, including sexual advances, request for sexual favors, or other verbal or physical conduct of a sexual or gender-based nature when: [1] Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment or academic relationship; or [2] Submission to or rejection of such conduct is used as a basis for making an employment or academic decision affecting an individual; or [3] Such conduct has the purpose or effect of interfering with an individual's work or academic performance, denying or limiting an individual's ability to participate in or benefit from the University's education programs, or creating an intimidating, hostile, or offensive environment for work or academic pursuit"); Howard Univ., *Code of Student Conduct* (Apr. 18, 2015), Section VI.23, <http://www.howard.edu/secretary/documents/StudentCodeofConductApprovedApril182015.pdf> (same); D.C. Code § 38-1802.04(C)(1A)(5) ("title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) ... shall apply to a public charter school"); District of Columbia Public Charter School Board, *Resources for Transgender and Gender-Nonconforming Students* (last checked Jan. 24, 2019), <https://www.dcpsb.org/resources-transgender-and-gender-nonconforming-students> ("Title IX protects all students, including transgender and gender-nonconforming students, from sex discrimination. Title IX encompasses discrimination based on a student's nonconformity with sex stereotypes and gender identity, including a student's transgender status"); Office of the State Superintendent of Education, *Civil Rights and Gender Equity Methods of Administration (MOA) Coordination*, <https://osse.dc.gov/service/civil-rights-and-gender-equity-methods-administration-moa-coordination> ("Under federal law, all students in the District are protected against discriminatory actions based upon a student's sex, race, ethnic origin or disability. [Career and Technical Education] [(CTE)] students and families should expect the following: ... Your school and school district must post the federal laws that explicitly note your rights that protect you against any type of discrimination that would prevent deter you from equal access to enrolling and completing CTE courses; ... [and] Your school and school district must draft grievance policies, let you know how to file a grievance, and who the contact person is"); Wash. Admin. Code § 478-121-155 (2017) (prohibiting, in the Student Conduct Code for the University of Washington, sexual harassment).

States.¹⁷⁴ Moreover, federal laws that are designed to protect citizens are presumed to allow for the enactment of state and local legislation that is more protective, barring explicit *congressional* intent to the contrary.¹⁷⁵ For example, Title VII, which prohibits discrimination in employment in certain contexts, does not bar states from prohibiting discrimination in employment in other contexts that are not covered by Title VII.

Nothing within Title IX’s text or history suggests Congress intended the unusual result of impeding state and local efforts to protect those subjected to sexual harassment more broadly than Title IX or preventing schools from proactively avoiding Title IX liability (or for that matter, impeding their efforts to comply with other federal laws that may apply, such as Title VII).

B. State Laws Provide Greater Protections for Students In Their States.

As might be expected, states already have enacted laws that provide greater protections than those required by Title IX.

For example, California defines sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting,” so long as the conduct would have “the purpose or effect of having *a negative impact* upon the individual’s work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.”¹⁷⁶ This definition goes beyond the definition in the proposed regulation, which would require that the objectionable conduct “effectively den[y]” the complainant of equal access to the educational program or activity. 83 Fed. Reg. at 61,496. California also provides clear protection against discrimination for sex-based and gender-based harassment, including harassment on the basis of gender identity and sexual orientation. Sexual harassment can be proved based on a showing of severity or pervasiveness, which, as discussed provides additional protections not in the proposed rule.

¹⁷⁴ 20 U.S.C. § 3403(a).

¹⁷⁵ See *Ferebee v. Chevron Chem. Co.*, 736 F.2d 1529, 1543 (D.C. Cir. 1984) (“[F]ederal legislation has traditionally occupied a limited role as the floor of safe conduct; before transforming such legislation into a ceiling on the ability of states to protect their citizens, and thereby radically adjusting the historic federal-state balance, . . . courts should wait for a clear statement of congressional intent.”); *Home Builders Ass’n of Greater Chicago v. U.S. Army Corps of Engineers*, 335 F.3d 607, 617 (7th Cir. 2003) (“[M]any federal regulatory laws, establish a floor, but not a ceiling, on state and local regulation.”).

¹⁷⁶ Cal. Ed. Code § 212.5(c); see also Cal. Educ. Code 48900.2 (sexual harassment must “be sufficiently severe **or** pervasive to have a negative impact upon the individual’s academic performance or to create an intimidating, hostile, or offensive environment”).

Another example is the state of Oregon, which has a number of laws that protect the civil rights of students.¹⁷⁷ By statute and regulation, Oregon prohibits discrimination on the basis of sex,¹⁷⁸ and also prohibits sexual harassment of students by staff and other students.¹⁷⁹ Higher

¹⁷⁷ The Oregon Attorney General represents both the Oregon Department of Education and the Higher Education Coordinating Commission, which have roles in addressing discrimination in Oregon's colleges and universities.

¹⁷⁸ Oregon Revised Statute (ORS) 659.850(1) prohibits discrimination defined as: "... any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on race, color, religion, sex, sexual orientation, national origin, marital status, age or disability. "Discrimination" does not include enforcement of an otherwise valid dress code or policy, as long as the code or policy provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual." It further provides in (2) that: "A person may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly."

¹⁷⁹ Oregon Administrative Rule (OAR), Chapters 589-021; ORS 342.704. The latter provides in relevant part:

- (1) (b) Sexual harassment of students includes:
 - (A) A demand for sexual favors in exchange for benefits; and
 - (B) Unwelcome conduct of a sexual nature that has the purpose or effect of unreasonably interfering with a student's educational performance or that creates an intimidating, offensive or hostile educational environment; ...
 - (c) All complaints about behavior that may violate the policy shall be investigated;
 - (d) The initiation of a complaint in good faith about behavior that may violate the policy shall not adversely affect the educational assignments or study environment of the student; and
 - (e) The student who initiated the complaint and the student's parents shall be notified when the investigation is concluded.
- (2) The State Board of Education shall adopt by rule minimum requirements for school district policies on sexual harassment of staff by students and other staff including, but not limited to, requirements that:
 - (a) All staff and students are subject to the policies;
 - (b) Sexual harassment of staff includes:
 - (A) A demand for sexual favors in exchange for benefits; and
 - (B) Unwelcome conduct of a sexual nature that has the purpose or effect of unreasonably interfering with a staff person's ability to perform the job or that creates an intimidating, offensive or hostile work environment;
 - (c) All complaints about behavior that may violate the policy shall be investigated;

Education Coordinating Commission (HECC) regulations, which apply to both private career schools and post-secondary universities, prohibit schools from “otherwise limiting any student in their enjoyment of a right, privilege or opportunity,” which likely includes harassment claims.¹⁸⁰ Aggrieved students can file a complaint with HECC, which then reviews the complaint and determines whether it is valid.¹⁸¹ Once HECC issues its order, such order would be subject to a contested case hearing through the Oregon Office of Administrative Hearings.¹⁸²

All universities in Oregon are also required to have a written sexual assault protocol,¹⁸³ but many of the proposed rule’s provisions would create inconsistencies. The protocol applies to

(d) The initiation of a complaint in good faith about behavior that may violate the policy shall not adversely affect any terms or conditions of employment or work environment of the staff complainant; and

(e) The staff member who initiated the complaint shall be notified when the investigation is concluded.

¹⁸⁰ OAR 715-011-0050(8).

¹⁸¹ OAR 715-011-0075

¹⁸² OAR 715-011-0085.

¹⁸³ ORS 350.255 provides:

(1) Each public university listed in ORS 352.002 (Public universities), community college and Oregon-based private university or college shall adopt a written protocol to ensure that victims of sexual assault receive necessary services and assistance in situations where:

(a) The alleged victim of the sexual assault is a student at the university or college and the alleged sexual assault occurred on the grounds or at the facilities of the university or college; or

(b) The alleged perpetrator of the sexual assault is a student at the university or college, or a member of the faculty or staff of the university or college, regardless of where the alleged sexual assault occurred.

(2) A written protocol adopted under subsection (1) of this section must ensure that each victim who reports a sexual assault is provided with a written notification setting forth:

(a) The victim’s rights;

(b) Information about what legal options are available to the victim, including but not limited to:

(A) The various civil and criminal options the victim may pursue following an assault; and

(B) Any campus-based disciplinary processes the victim may pursue;

(c) Information about campus-based services available to the victim;

(d) Information about the victim’s privacy rights, including but not limited to information about the limitations of privacy that exist if the victim visits a campus health or counseling center; and

(e) Information about and contact information for state and community-based services and resources that are available to victims of sexual assault.

(3) A written notification provided under subsection (2) of this section must:

situations in which the alleged victim is a student and the assault occurred on the grounds or at the facilities of the university or if the alleged perpetrator is a student or member of faculty of the university, regardless of the location. As such, under Oregon law, universities have the ability to regulate activities of students that occur off-campus.¹⁸⁴ Under Oregon law, the complainant may provide notice to the university generally in order to trigger a review required by state standards; the complainant need not inform an official with authority to take corrective action as required under the proposed rule. Under Oregon law, public universities, including community colleges, and Oregon-based private universities and colleges, regardless of religious affiliation, are required to follow the sexual harassment and assault protocol.¹⁸⁵ Accordingly, in Oregon, the Department's proposed rule will drastically narrow the scope of Title IX investigations by imposing bottlenecks on almost every phase of the process, including the physical locations subject to the law, the level of formality of the notice required to initiate a grievance process, the applicable definition of "harassment," and the standard by which culpability must be determined. As a result, the proposed rule conflicts with Oregon's multiple discrimination statutes.

Another example is the state of Washington, which provides broad civil rights protections to individuals subjected to harassment and violence on the basis of sex and sexual orientation through its Law Against Discrimination (WLAD).¹⁸⁶ Because the Department's proposed Title IX regulation does not mention sexual orientation, Washington's law arguably provides greater civil rights protections. Further, because the purpose of the law is to deter and to eradicate discrimination in Washington, it requires liberal construction, and "nothing contained in the law shall 'be construed to deny the right to any person to institute any action or pursue any civil or criminal remedy based upon an alleged violation of his or her civil rights[.]'"¹⁸⁷

Similarly, the state of Nevada, like California, defines sexual harassment more broadly than the proposed rule contemplates. Nevada's sexual harassment codes and guidelines are

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- (a) Be written in plain language that is easy to understand;
 - (b) Use print that is of a color, size and font that allow the notification to be easily read; and
 - (c) Be made available to students:
 - (A) When a sexual assault is reported;
 - (B) During student orientation; and
 - (C) On the Internet website of the university or college.

¹⁸⁴ ORS 350.255.

¹⁸⁵ *Id.*

¹⁸⁶ Wash. Rev. Code § 49.60; Wash. Rev. Code § 49.60.030(1) ("The right to be free from discrimination because of ... sex, ... sexual orientation, is recognized as and declared to be a civil right."); *see also* Const. art. XXXI, §§ 1–2 (amend. 61) (equality of right shall not be denied or abridged on account of sex).

¹⁸⁷ *Marquis v. City of Spokane*, 922 P.2d 43, 49 (Wash. 1996).

designed to permit State agencies and organizations to be proactive and discipline or remove an employee before his/her actions subject the State to liability.¹⁸⁸ Further, Nevada’s Clark County School District, like California, includes a broader definition of sexual harassment than the proposed regulation, identifying prohibited conduct as “sufficiently severe, persistent, **or** pervasive to limit a student’s ability to participate in or benefit from an educational program or to create an intimidating, hostile, or offensive educational or work environment.”¹⁸⁹

Likewise, the University of Nevada, in Las Vegas and Reno, defines sexual harassment more broadly than the proposed rule, explaining sexual harassment includes “sexual advancements, requests for sexual favors, and other visual, verbal or physical conduct of a sexual or gender bias nature” in situations including when “[t]he conduct has the purpose or effect of substantially interfering with an individual’s academic or work performance, or of creating an intimidating, hostile or offensive environment in which to work or learn.”¹⁹⁰

The proposed rule’s conflict with a number of current proactive laws and policies that deal with sexual harassment in many of our states, together with the decreased protections the proposed rule would afford to victims of sexual harassment, is yet another reason we oppose the proposed rule.

VI. Other Areas That Should Be Addressed Before Any Final Rule is Adopted.

A. Any Final Rule Should Reinstate the Longstanding Prohibition of Policies That “Suggest” Sex Discrimination.

Section 106.8(b)(2)(ii) of the proposed regulation unnecessarily, and without adequate justification, narrows the types of discriminatory publications that a recipient is prohibited from using and distributing to its applicants, students, and employees. The current regulation states that a recipient cannot “use or distribute a publication . . . which *suggests*, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex.”¹⁹¹ For many years, this section has addressed the use and distribution of materials by recipient

¹⁸⁸ *E.g.*, Nevada Admin. Code 284.0995.

¹⁸⁹ Clark County School District Regulation, *Discipline: Harassment*, https://ccsd.net/district/policies-regulations/pdf/5141.2_R.pdf; *see also* Washoe County School District’s policy, <https://www.washeschools.net/site/default.aspx?PageType=3&ModuleInstanceID=1853&ViewID=7b97f7ed-8e5e-4120-848f-a8b4987d588f&RenderLoc=0&FlexDataID=6800&PageID=1189> (“Sexual Harassment is a form of sexual discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance or creates an intimidating, hostile or offensive educational or work environment. The term sexual harassment includes sexual violence under Title IX of the Educational Amendments.”).

¹⁹⁰ *See* University of Nevada, Las Vegas, *Policy Against Sexual Harassment*, § 4(c), <https://www.unlv.edu/hr/policies/harassment#7> (last checked Jan. 28, 2019).

¹⁹¹ 34 C.F.R. 106.9(b)(2) (emphasis added).

educational institutions that promote and perpetuate sex stereotypes through images or pictures, thereby discouraging applicants of one sex or another from applying or participating in a career path or type of class or program. The proposed change limits the prohibition to only publications that explicitly “state” a school’s policy of engaging in different treatment on the basis of sex. This change is fundamentally inconsistent with Title IX’s goals, for at least two reasons.

First, the proposed change is contrary to clearly established Supreme Court precedent that explicitly recognizes the right to be protected from discrimination and harassment based on sex, including sex stereotyping.¹⁹² The Department has provided no statistical or other evidence to show that the rationale for this important provision has changed, or that sex-stereotyping no longer needs to be remedied in our educational institutions.¹⁹³ Nor has it provided any justification for retreating from clearly-established Supreme Court law on this issue.

¹⁹² See *Price Waterhouse*, 490 U.S. at 251 (“As for the legal relevance of sex stereotyping, we are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype of their group . . .”); *Oncale*, 523 U.S. at 80 (recognizing that harassment on the basis of sex can include harassment of a female in “sex-specific and derogatory terms” motivated by “general hostility to the presence of women”); see also 2001 Guidance at 3 (recognizing that “gender-based harassment, which may include acts of verbal . . . hostility based on sex or sex-stereotyping . . . is also a form of sex discrimination to which a school must respond, if it rises to a level that denies or limits a student’s ability to participate in or benefit from the educational program.”).

¹⁹³ The published policies and other distributed materials of a school can be particularly susceptible to “suggestions” of sex stereotyping, even where they do not “state” discriminatory rules. A prospective student is often introduced to an educational institution and its course offerings through the visual images in its publications issued by mail or posted on its website. Both male and female students continue to be subjected to sex stereotyping in the forms of visual images, statements, and conduct that discourages them from engaging in, limits, or denies their access to vocational and education career paths based on sex. This includes male students discouraged from engaging in dance or theater because these occupations are not sufficiently “masculine,” and female students discouraged from participating in science or engineering based on stereotypical conceptions of a woman’s ability to do math and science. See, e.g., Rachael Pells, *Sexism in schools: 57% of teachers admit to stereotyping girls and boys*, Independent (Feb. 8, 2017), <https://www.independent.co.uk/news/education/education-news/sexism-schools-poll-teachers-stereotypes-boys-girls-stem-subjects-sciences-maths-tech-a7567896.html> (also noting that female employees in the US account for less than a quarter of STEM workers, despite making up almost half the overall workforce); Daniel Reynolds, *You Throw Like a Girl: Gender Stereotypes Ruin Sports for Young Women*, Healthline (July 2, 2018) (girls receive less encouragement from teachers and family members to be physically active and participate in sports; as a result, girls ages 8 to 12 are 19 percent less active, according to 2016 study), <https://www.healthline.com/health-news/gender-stereotypes-ruin-sports-for-young-women#1>; Claire Cain Miller, *Many Ways to Be a Girl, but One Way to Be a Boy: The New Gender Rules*, N.Y. Times (Sept. 14, 2018) (three quarters of girls 14 to 19 said they felt judged as a sexual object or unsafe as a girl, and three-quarters of boys said strength and toughness were the male character traits most valued by society), <https://www.nytimes.com/2018/09/14/upshot/gender-stereotypes-survey-girls-boys.html>; Suzanne Vranica, *Stereotypes of Women Persist in Ads*, Wall St. J. (Oct. 17, 2003).

Second, the proposed change is fundamentally inconsistent with the plain language of § 1681(a), which states that no person shall be “excluded from participation in [or] be denied the benefits of . . . any education program or activity receiving Federal financial assistance.”¹⁹⁴ As the Supreme Court has recognized, Title IX protects students “not only . . . from discrimination, but also . . . from being ‘excluded from participation in’ or ‘denied the benefits of’ any ‘education program or activity receiving federal financial assistance’.”¹⁹⁵ Therefore, a school can violate Title IX where a student is denied access to educational benefits and opportunities on the basis of gender, even in the absence of a facially discriminatory policy.¹⁹⁶

The proposed change is inconsistent with and unsupported by the plain language of Title IX because it only prohibits explicit intentional discrimination while allowing implicit discrimination, which can nevertheless deny students a fair and equal education. Courts have consistently recognized and upheld Title IX regulations that prohibit policies found to have a discriminatory effect on one sex.¹⁹⁷ Indeed, this proposed change itself constitutes a discriminatory policy in violation of Title IX.

Moreover, prohibiting policies that “suggest” discrimination is not unique to the Title IX context; the Fair Housing Act and its implementing regulations have similarly been interpreted to prohibit publications advertising housing that “suggests” that a particular race would be disadvantaged.¹⁹⁸

Finally, the proposed regulation’s stated justification—that it would “remove subjective determination” from evaluating violations and make the requirement “more clear”—cannot excuse a result that harms the intended beneficiaries of Title IX—those subjected to discrimination on the basis of sex. 83 Fed. Reg. at 61,482. The justification also rings hollow, since, for more than thirty years, courts and administrators of Title IX have applied this regulation and others to address sex-stereotyping without apparent difficulty. The Department

¹⁹⁴ 20 U.S.C. § 1681(a).

¹⁹⁵ *Davis*, 526 U.S. at 650; *see also Vinson*, 477 U.S. at 64 (stating in the employment context that Title VII’s arguably narrower discriminatory prohibitions “evinced[] a congressional intent to strike at the entire spectrum of disparate treatment of men and women”).

¹⁹⁶ *See Davis*, 526 U.S. at 650 (“The statute makes clear that . . . students must not be denied access to educational benefits and opportunities on the basis of gender.”).

¹⁹⁷ *See Mabry v. State Bd. of Cmty. Colleges & Occupational Educ.*, 813 F.2d 311, 317 n.6 (10th Cir. 1987) (compiling “regulations implementing Title IX [that] prohibit some facially neutral policies.”); *Sharif by Salahuddin v. New York State Educ. Dep’t*, 709 F. Supp. 345, 361 (S.D.N.Y. 1989) (“Several Title IX regulations specifically prohibit facially neutral policies. . . . with a discriminatory effect on one sex.”).

¹⁹⁸ *See, e.g., Corey v. Sec’y, U.S. Dep’t of Hous. & Urban Dev. ex rel. Walker*, 719 F.3d 322, 326 (4th Cir. 2013) (interpreting Fair Housing Act, 42 U.S.C. 3604(c) (prohibiting any publication which “indicates” discrimination); *Ragin v. New York Times Co.*, 923 F.2d 995, 999 (2d Cir. 1991) (same).

provides no support, empirical or otherwise, for its position that schools or courts have been hampered by a lack of clarity in this rule.

In sum, the stated basis for such a dramatic change is unsupported and inconsistent with Title IX's plain statutory language and objectives, established case law, and congressional intent.

B. The Proposal to Eliminate the Requirement that Institutions Invoke the Statute's Religious Exemption in Writing Raises Concerns of Fair Notice to Students.

The Department proposes to amend § 106.12 to eliminate the current requirement that an educational institution "shall" advise OCR "in writing" if it wishes to invoke Title IX's statutory exemption for educational institutions controlled by religious organizations to the extent application of Title IX "would not be consistent with the religious tenets of such organization."¹⁹⁹ The proposed amendment is unnecessary and raises a concern that students at some institutions will not know their rights under Title IX until it is too late.

The proposed amendment is unwarranted because schools' burden in notifying the Department regarding religious exemptions is minimal. The Department characterizes the current rule as "confusing," 83 Fed. Reg. at 61,482, but identifies no basis for confusion. And schools have successfully asserted religious exemption in letters to the Department hundreds of times over the past several decades.

In addition, we are concerned that the proposed amendment will lead to more students unknowingly enrolling in schools that believe themselves to be exempted from Title IX but do not claim the exemption publically, only to learn of their school's position after they seek to assert their Title IX rights. Students should know before they matriculate whether (and to what extent) their school intends to comply with Title IX, and they should be able to assume that they will enjoy Title IX's full protections unless the school has informed them otherwise. No student should learn, only after becoming a victim of discrimination, that their school considered itself exempt from the relevant requirements of Title IX. Even worse, under the proposal, a school seemingly could wait to assert its exemption from Title IX until after it initiates grievance procedures and a complainant undergoes cross-examination and has personal information shared with the respondent and others.

If the Department eliminates the current rule's letter requirement, the Department should require schools to disclose their Title IX exemption status to current and prospective students in writing and bar schools from claiming an exemption after the fact if they have affirmatively represented that they comply with Title IX.

¹⁹⁹ 20 U.S.C. § 1681(a)(3).

C. Restriction of Remedies to Exclude “Damages” and Lack of Definition Inconsistently Limits Remedial Scheme Which Was Intended to Strike at the Entire Spectrum of Discrimination on the Basis of Sex.

Even in circumstances where an egregious violation of Title IX might warrant relief to an individual subjected to sexual violence and assault, proposed § 106.3(a) removes the ability of the Department to assess “damages,” a remedy long available under common law. 83 Fed. Reg. at 61,495. In addition, the proposed regulation fails to define “damages,” potentially leaving it open to an overly broad interpretation with a great impact on the intended beneficiaries of the statute, those subjected to sex discrimination. Therefore, the scope and impact of the change proposed by the Department on intended beneficiaries of the statute, and on the Department’s ability to address and remedy noncompliance has not been adequately explained.

Specifically, the proposed change is contrary to the plain language of the statute, which authorizes the use of “any other means authorized by law.”²⁰⁰ The change inconsistently limits the Department’s authority to provide remedies for noncompliance to only those means authorized in equity. The statutory enforcement language in Title IX mirrors language from the Civil Rights Act of 1964. But there, the drafters identified precisely where remedies would be limited.²⁰¹ Congress did not provide such a limit here. Yet the Department would impose one for the first time, more than 45 years after the passage of Title IX. This undermines Title IX’s purpose and improperly usurps Congress’s role.

Furthermore, OCR’s public resolution agreements reflect that where noncompliance is found, the Department has historically provided compensatory or remedial services (e.g., counseling, tutoring, and academic support) to overcome or remedy the effects of harassment on the student, including, as warranted, funding for tuition where a student withdraws from the institution because a recipient has created, encouraged or permitted a hostile environment on the basis of sex.²⁰² Without a definition of damages, we are concerned that the proposed change may

²⁰⁰ 20 U.S.C. § 1682.

²⁰¹ 42 U.S.C. 2000a-3 (limiting relief to “preventative relief” only).

²⁰² *Southern Methodist University*, OCR Complaint Nos. 06-11-2126; 06-13-2081; 06-13-2088, <https://www2.ed.gov/documents/press-releases/southern-methodist-university-agreement.pdf> (in sexual harassment/sexual violence matter, requiring University to reimburse complainant for all university-related expenses (tuition/fees, housing/food, and books) incurred for the fall semester minus any scholarship and grant assistance received, and all counseling expenses incurred over a two-year period); *Tufts University*, OCR Complaint No. 01-10-2089, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/01102089-b.html> (in sexual harassment/sexual violence matter, voluntary resolution agreement includes reimbursement to the student complainant for educational and other reasonable expenses, incurred during a year time period, and a complaint review which, as appropriate, would provide remedies, such as referrals to counseling); *Princeton University*, OCR Complaint No. 02-11-2025, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/02112025.html> (in sexual harassment/sexual violence matter, voluntary resolution agreement includes reimbursement for appropriate University-related expenses, as well as expenses for counseling, that Students 1-3 incurred

be used to impermissibly limit the authority granted by Congress to the Department to utilize “any other means authorized by law,” thereby resulting in remedies and regulations that are inconsistent with the statute and its objectives, which include providing “individual citizens effective protection against [discriminatory] practices” and “overcom[ing] the effects” of such discrimination.²⁰³

D. Any Final Rule Should Include Guidelines for Confidentiality.

Issues relating to the confidentiality of information are critical to any discussion of how to effectively investigate and remedy sexual harassment and assault. As a result, any rule implementing Title IX should separately address schools’ obligations with respect to requests by complainants to keep information confidential.²⁰⁴ A school must, for instance, take all reasonable steps to honor a request from a complainant to keep his or her identity confidential. They should, however, notify the complainant that maintaining confidentiality may limit the schools’ ability to effectively investigate and respond to allegations of harassment and that, depending on the nature of the complaint, certain information—including the identity of the complainant—must be disclosed if the student wishes to file a Title IX complaint. The school should inform the student of the actions it will take regardless of whether the student wishes to go forward with a formal complaint, including that it will take reasonable steps to prevent retaliation.

Furthermore, any final rule should make clear that a request by a student to maintain confidentiality does not free the school of its obligation to investigate and respond to the allegation. Rather, the school must still “investigat[e] the complaint to the extent possible,”²⁰⁵ and it must also take reasonable actions to prevent recurrences of the conduct alleged by the complainant.

As discussed in Section IV.D, it may be possible to conduct a full investigation without revealing the name of the complainant. In other matters, a complete investigation may not be possible, but the school can nonetheless take certain actions, including seeking to identify whether there have been other complaints regarding the same individual and implementing measures that reiterate and reinforce Title IX prohibitions and provide remedies for the complainant that do not impact the due process rights of the respondent. And under all

from the date each first reported alleged sexual assault/violence to the date of the resolution); *City University of New York, Hunter College*, OCR Complaint No. 02-13-2052, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/02132052.html> (in sexual harassment/sexual violence matter, voluntary resolution agreement includes assessing whether complainant in case 1-3 and 5-7 and 9-12 suffered effects as a consequence of College not offering counseling or other interim measures or from any hostile environment created and take steps to address these effects).

²⁰³ 20 U.S.C. § 1682; *Gebser*, 524 U.S. at 286, 288.

²⁰⁴ See 2001 Guidance at 17–18.

²⁰⁵ 2001 Guidance at 18.

circumstances, a school should consider whether other corrective action short of disciplining the accused individual may be appropriate.²⁰⁶

Finally, any final rule should make clear that, independent of specific requests by individuals to maintain confidentiality, schools have an affirmative obligation to preserve the confidentiality of all documents and evidence utilized in investigations of Title IX complaints.

E. Schools Have Continuing Obligations Following a Finding of Responsibility or Following an Independent Investigation.

The proposed regulations fail to explain the obligations Title IX imposes on schools following a finding of responsibility. Rather, the proposed regulations seem to imply that a school's duties upon such a determination extend no further than disciplining the students determined to be responsible, and then only if the determination was made through a formal proceeding. *E.g.*, Proposed § 106.45(b)(4). But schools' obligations go much further.

First, as discussed in Section II.E, a school has an independent obligation to protect its students by preventing and remedying harassment, even in the absence of a formal report. A school must take steps to end the harassment, if it is ongoing, and to prevent future harassment by the same individual. If the conduct was enabled by or reflects a toxic culture or other systemic problems, the school must address such systemic issues.

Furthermore, schools must address the effects of the harassment, which may include appropriate remedial actions for the complainant or the broader community.²⁰⁷ It is for this reason that the safe harbor provisions addressed above²⁰⁸ are inconsistent with Title IX to the extent that they erode schools' continued responsibilities to their students.

Critically, any regulations should also specify that a school's obligation to respond following a determination of harassment is not time-limited, and that the school must take steps to ensure that its remedial efforts are successful and to identify whether further efforts are necessary. The full extent of this obligation will depend in part on the nature and severity of the conduct at issue, but in all circumstances the school should understand that it maintains an obligation to take reasonable steps to address the ongoing impact of a violation of Title IX.

²⁰⁶ See 2001 Guidance at 18 (“Examples include conducting sexual harassment training for the school site or academic department where the problem occurred, taking a student survey concerning any problems with harassment, or implementing other systemic measures at the site or department where the alleged harassment has occurred.”).

²⁰⁷ See, *e.g.*, *Gebser*, 524 U.S. at 288–89; *Feminist Majority Found.*, 911 F.3d at 696.

²⁰⁸ See *supra* Section II.E.

F. The Proposed Rule Fails to Sufficiently Address the Family Educational Rights and Privacy Act (FERPA).

As noted in Part IV.G, the proposed regulations do not adequately address the Family Educational Rights and Privacy Act (FERPA).²⁰⁹ For example, FERPA generally forbids disclosure of information from a student’s “education record” without consent of the student (or the student’s parent).²¹⁰ The regulations need to address whether proposed regulation § 106.45(b)(3)(v)’s requirements that recipients provide each “party whose participation is invited or expected [at a hearing] written notice of the date, time, location, participants, purpose of all hearings, investigative interviews, or other meetings with a party” can include information about the sanction that will be implemented. Additionally, the proposed regulations and their accompanying justification focus only on the rights of respondents to have access to their educational records. *See, e.g.*, 83 Fed. Reg. at 61,475 (citing a student’s “right to inspect and review records that directly relate to that student” pursuant to FERPA); 83 Fed. Reg. at 61,476 (“[t]he scope of the parties’ right to inspect and review evidence collected by the recipient is consistent with students’ privacy rights under FERPA, under which a student has a right to inspect and review records that directly relate to that student.”). Equally important, however, and completely unaddressed by the proposed regulations, is the right of the complainant to have their educational records kept private.²¹¹ The interplay of these competing rights should be addressed in any final regulations, particularly in light of Title IX’s mandate that grievance procedures be equitable.²¹²

VII. The Regulatory Impact Assessment Fails to Accurately Assess the Effect of the Proposed Rule.

The Department asserts the proposed regulations were issued “only on a reasoned determination that their benefits justify their costs,” 83 Fed. Reg. at 61,484. However, even a cursory review of the Department’s costs analysis reveals its inadequacy. The Department acknowledges that it “cannot estimate the likely effects of these proposed regulations with absolute precision.” 83 Fed. Reg. at 61,484. While we agree it is difficult to precisely estimate the costs of the proposed regulations, a minimal review of the Department’s analysis shows the costs of the proposed regulations are much higher than it estimates.

A. Ignored Costs.

The Department states the economic analysis explicitly excludes economic consequences of sexual assault incidents themselves, stating that it is “only intended to capture the economic

²⁰⁹ 20 U.S.C. § 1232g.

²¹⁰ 20 U.S.C. § 1232g (b)(1).

²¹¹ 20 U.S.C. § 1232g (b)(1).

²¹² *See* 34 C.F.R. § 106.8(c) (requiring grievance procedures adopted pursuant to Title IX provide for “equitable resolution” of student complaints).

impacts of this proposed regulatory action.” 83 Fed. Reg. at 61,485. The Department’s statement is self-contradictory. The proposed regulatory action is exclusively aimed at changing the laws and regulations governing sexual assault and harassment, which have concrete and obvious economic costs. The analysis cannot possibly capture the economic impacts of the proposed regulatory action if it excludes from any analysis the actual economic costs incurred by students subjected to sexual harassment and violence—the very students the regulations govern. To provide a cost estimate that even marginally reflects the realities of the regulation, the costs of sexual assault and harassment must be considered. For example, the cost of rape in the United States has been estimated to be \$122,461 per survivor, or \$3.1 trillion over all survivor’s lifetimes, and these costs are borne by survivors, society, and the government.²¹³ In addition to considering the costs of sexual assault and harassment, the Department should consider the economic impact on students who will lose access to their education as a result of being denied justice under these proposed regulations.

However, even setting aside the rippling costs of students subjected to sexual harassment whose sexual assaults would be excluded from Title IX’s purview, there are additional costs that the proposed regulation ignored.

1. Allegations that Do Not Meet the Proposed Stringent Requirements May Still Resurface as Costly Lawsuits.

While the Department finds savings in narrowing Title IX’s scope, it ignores the costs stemming from the exclusion of allegations that would no longer fall within that scope. The Department anticipates a decreased number of investigations under the drastically scaled-down requirements in covered conduct/location, as well as the reduction in “responsible employees” to whom conduct may be reported. However, in order to seek justice for themselves, students will be forced file their allegations in court or with law enforcement. It is unreasonable to assume that the proposed changes will simply make these allegations disappear, especially amidst nationwide trends of increasing filings of sexual harassment and assault claims.²¹⁴

The Department has the ability to assess, based on a review of prior and existing cases, how many will not be addressed or resolved under the proposed regulations. But it failed to undertake this task or provide the public with accurate and adequate information about the

²¹³ Peterson et al., *Lifetime Economic Burden of Rape Among US Adults*, 52 Am. J. of Preventative Med. 691 (2017). These costs were not unknown to the Department, as the Department cited this study in their analysis. 83 Fed. Reg. at 61,485 n.16. The Department nevertheless disregarded these costs by assuming they would be unaffected by the proposed regulations. *Id.* at 61,485.

²¹⁴ See Jamie D. Halper, *In Wake of #MeToo, Harvard Title IX Office Saw 56 Percent Increase in Disclosures in 2018, Per Annual Report*, The Harvard Crimson (Dec. 14, 2018), <https://www.thecrimson.com/article/2018/12/14/2018-title-ix-report>; U.S. Equal Employment Opportunity Commission, *EEOC Releases Preliminary FY 2018 Sexual Harassment Data*, (Oct. 4, 2018), <https://www.eeoc.gov/eeoc/newsroom/release/10-4-18.cfm> (stating “charges filed with the EEOC alleging sexual harassment increased by more than 12 percent from fiscal year 2017”).

impact. Nevertheless, it is reasonable to anticipate that because the Department has narrowed its jurisdiction, the nation will see both an increase in Title IX complaints in civil and criminal courts, as well as an increase in costly lawsuits alleging non-Title IX causes of action.

2. The Department Should Consider the Relationship Between Uninvestigated Allegations and Short- and Long-Term Absences.

Complainants whose Title IX allegations are not investigated may also have increased absences, which would decrease receipt of tuition and attendance-related funding by institutions of higher education (IHEs) and local educational agencies (LEAs). The Department did not include lost tuition costs for complainants who drop out or take a leave of absence from colleges or universities, or any decrease in attendance-related funding for LEAs, despite such absences being clearly contemplated as possible supportive measures for sexual misconduct complainants.²¹⁵ According to the Campus Climate Survey Validation Study, over 8 percent of rape victims and 1.6 percent of sexual battery victims dropped classes and changed their schedule, and over 21 percent of rape victims and 5.9 percent of sexual battery victims considered taking time off school, transferring, or dropping out.²¹⁶ These absences may have direct and indirect costs, which warrant the Department’s consideration.²¹⁷

3. Costs to Transgender Students.

Finally, the Department fails to even mention the term “transgender” in the proposed regulations.²¹⁸ This overt exclusion may make transgender students less likely to report on-campus sexual harassment or sexual assault to the designated “coordinator.” According to a recent survey of transgender people, 17 percent of K-12 students and 16 percent of college or

²¹⁵ *Sample Language for Interim and Supportive Measures to Protect Students Following an Allegation of Sexual Misconduct*, White House Task Force to Protect Students from Sexual Assault 1, 6 (Sept. 2014), <https://www.justice.gov/archives/ovw/page/file/910296/download>.

²¹⁶ Krebs et al, *Campus Climate Survey Validation Study Final Technical Report*, Bureau of Justice Statistics Research and Development Series 1, 114 (Jan. 2016), <https://www.bjs.gov/content/pub/pdf/ccsvsfr.pdf>.

²¹⁷ U.S. Dep’t of Educ., et al., *Dear Colleague Letter Regarding Chronic Absenteeism* at 1 (Oct. 7, 2015), <https://www2.ed.gov/policy/elsec/guid/secletter/151007.html> (“A growing and compelling body of research demonstrates that chronic absence from school . . . is a primary cause of low academic achievement and a powerful predictor of which students will eventually drop out of school.”).

²¹⁸ The Department withdrew its May 13, 2016 Dear Colleague Letter on Transgender Students less than a year after its joint issuance with the U.S. Department of Justice’s Civil Rights Division (U.S. Dep’t of Educ., Office for Civil Rights, & U.S. DOJ, Civil Rights Division, *Dear Colleague Letter*, 1 (Feb. 22, 2017)).

vocational school students who were out or perceived as transgender reported leaving school because of mistreatment.²¹⁹

B. Unreasonably Low Estimate of Percentage of Title IX Complaints Based on Sexual Harassment or Sexual Violence.

The Department's assumption that sexual harassment and sexual assault make up only 50 percent of Title IX complaints (83 Fed. Reg. at 61,488) is unreasonably low, relies on an unclear baseline, and ignores the nationwide uptick in sexual harassment complaints discussed above. As we have explained, sexual harassment is pervasive.

In addition to the low initial baseline, studies show there is an upward trend of sexual harassment-related Title IX complaints.²²⁰ The Department's own OCR reported that there was a 277 percent increase and an 831 percent increase in its receipt of sexual violence complaints at the K-12 and postsecondary levels, respectively, since Fiscal Year 2011.²²¹ This upward trend means, at a minimum, that averaging prior years' complaints is not a fair extrapolation of sexual harassment-related Title IX claims.

C. The Department Provides Unreasonably Low Cost Estimates for Implementing the Proposed Rule.

The Department significantly underestimates the amount of time that will be required by Title IX coordinators to review any final rule and to revise local grievance procedures accordingly. The Department estimates that for LEAs, the Title IX Coordinator and a lawyer will spend 4 hours and 8 hours, respectively, reviewing any final regulations. 83 Fed. Reg. at 61,486. For IHEs, the Department estimates review would take 8 and 16 hours, respectively. 83 Fed. Reg. at 61,487. Given the dramatic nature of the changes contained in the proposed regulations, and the extensive and nuanced changes that will be required of recipients' own policies, it is unreasonable to assume that Title IX coordinators will require only a day or less to review, and that educational institutions' attorneys will only take two days or less to review. Further, the Department severely underestimates the time that will be required to revise grievance procedures to comply with any new regulations. The Department assumes that for LEAs, Title IX Coordinators will spend 4 hours and lawyers will spend 16 hours on revising grievance procedures. 83 Fed. Reg. at 61,486. The Department estimates these times will be doubled for IHEs. *Id.* This includes no time for stakeholder input on grievance procedure revisions and

²¹⁹ S.E. James, et al, *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality 1, 11 & 136 (Dec. 2016), <http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

²²⁰ Celene Reynolds, *The Mobilization of Title IX across U.S. Colleges and Universities, 1994-2014*, 00 Social Problems 1 (Mar. 2018), <https://doi.org/10.1093/socpro/spy005>.

²²¹ U.S. Dep't of Educ., Off. for Civil Rights, *Securing Equal Educational Opportunity: Report to the President and Secretary of Education* (Dec. 2016), <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2016.pdf>.

underestimates the amount of time required to revise procedures. Finally, the Department anticipates it will only take a single hour for Title IX coordinators to create or modify a “safe harbor” form for complainants who report sexual harassment but who do not want to file a formal complaint. 83 Fed. Reg. at 61,494. It is unreasonable to assume that a significant document intended to serve as a “safe harbor” would be created in only one (1) hour by a Title IX Coordinator, and that an attorney would not even review it. These cost estimates are arbitrary and unreasonably low.

The Department also assumes the Title IX Coordinator, investigator, and a decision maker will each spend 16 hours in training. 83 Fed. Reg. at 62,486. It is concerning that the Department would contemplate only that a single investigator and a single decision-maker would or should attend the training. 83 Fed. Reg. at 61,486. Especially since the Department is anticipating limiting the number of people who can accept formal complaints, it will be essential to provide training to all staff who interact with students regarding how to counsel students on the appropriate channels for instigating formal complaints. It will also be essential to provide training for students, parents and guardian on how to properly file complaints, so that they do not lose their rights due to an inconsequential procedural mistake. Further, the Department does not accurately represent the costs for training hearing officers and panels during live hearings, where they will need to be versed in evidentiary procedure and taking examination and cross-examination. In addition, the Department “do[es] not calculate additional costs in future years as [it] assume[s] that recipients will resume training of staff one[sic] their prior schedule after Year 1.” 83 Fed. Reg. at 61,487. This limitation to one year of training costs and to training only individuals who can receive formal complaints underscores the Department’s inappropriate focus away from the protection of students who are meant to be protected by Title IX.

There are also several ways in which the Department inappropriately underestimates the costs of investigations. First, the Department estimates “a reduction in the average number of investigations per IHE per year of 0.75.” 83 Fed. Reg. at 61,487. It is unreasonable to assume this reduction, given that reports are, as described above, increasing, and the proposed regulations create significant additional avenues for complaints filed by respondents. Second, while the Department assumes an approximate reduction of 0.18 of the number of IHE investigations by disregarding off-campus sexual harassment (83 Fed. Reg. at 61,487), the Department fails to allocate time for the investigation that would need to occur for the jurisdictional analysis to establish where the incident occurs.

In addition to underestimating the time it will take for a recipient to investigate Title IX complaints, the Department underestimates the cost for the parties’ representation in the investigative process. For responses to a formal complaint at the LEA level, the Department assumed that both parties would obtain legal counsel who would work for one hour and, in the alternative, estimated an average cost non-attorney advisor cost would be two attorney hours. 83 Fed. Reg. at 61,487. The calculated cost the Department associated with the representation is flawed in two respect. First, the Department assumes a rate of \$90.71 per hour. 83 Fed. Reg. at

61,486. The Department provides no basis for this assumed rate for an attorney, which is significantly lower than the average hourly rate of attorneys.²²² Second, it is unreasonable to assume adequate representation could occur with representation by an attorney for only one hour (or two hours for a non-attorney) for a hearing, particularly one involving a complex investigation of a sexual assault.

Finally, the Department fails to appropriately estimate the costs of the live hearings required under the proposed regulations. The Department will require live hearings at IHEs, but fails to consider many of the increased costs this requirement will entail. For example, the Department does not estimate any costs for transcription and translation services that may be needed. Further, the Department estimates that in 60 percent of IHEs, the Title IX Coordinator also serves as the decision-maker. 83 Fed. Reg. at 61,488. Only allowing costs for an additional adjudicator in 40 percent of hearings is arbitrary and in direct contradiction to proposed regulation § 106.45(b)(4) which precludes the decision-maker from being the same person as the Title IX Coordinator of the investigation.

VIII. The Department Should Delay the Effective Date of the Rule.

If the Department adopts a final rule along the lines of its proposal, it should give schools adequate time to respond before the rule takes effect. We believe that an effective date no earlier than three years from the date of the final rule would be appropriate.

A compliance window of three years or more is warranted because the proposed rule represents a stark departure from the substantive and procedural standards that educational institutions have been applying for years. Schools will need time to overhaul their procedures, hire new staff, train employees, and disseminate information to students. Smaller schools in particular will require an extended period to come into compliance. For reasons discussed above, the Department's new rule will cause confusion among students, staff, and other stakeholders however quickly they are implemented, but the confusion will only be compounded if the Department does not allow schools enough time to respond appropriately.

Adopting an earlier effective date would be inconsistent with the Department's recent approach to other regulations that would apply to fewer schools than the proposed Title IX rule, and that would not require such significant programmatic changes. For instance, the Department has seen fit to allow schools until July 2019 to comply with provisions of its 2014 Gainful

²²² See, e.g., Jay Reeves, *Top 10 Hourly Rates by City*, Lawyers Mutual Byte of Prevention Blog, (Apr. 6, 2018), <https://www.lawyersmutualnc.com/blog/top-10-lawyer-hourly-rates-by-city> (listing lawyer rates by practice area ranging from \$86/hour to \$340/hour); Hugh A. Simons, *Read This Before You Set Your 2018 Billing Rates*, Law Journal Newsletters (Nov. 2017), <http://www.lawjournalnewsletters.com/2017/11/01/read-this-before-you-set-your-2018-billing-rates/> (indicating first year associates cost their employers approximately \$111/hour). Further, it is unreasonable to assume adequate representation could occur with representation by an attorney for only one hour (or two hours for a non-attorney).

Employment rule²²³ and its 2016 Borrower Defense rule,²²⁴ and delayed the effective date of the 2016 Program Integrity and Improvement rule until July 2020.²²⁵ Setting aside the reasonableness of the Department's decisions with respect to these other regulations, it would only be appropriate for the Department to adopt a similar compliance period for Title IX rule that would have more far-reaching consequences for many more schools.

IX. Conclusion

Proper enforcement of Title IX has an immense impact on our states, our colleges and universities, our K-12 schools, and most importantly, our students. Title IX requires schools to provide an education that is free from sexual harassment, violence, and discrimination. Our educational institutions, relying on prior guidance from the Department, have spent many years developing procedures and policies to address these issues, and they have made great strides in fostering more open and inclusive educational environments. The proposed rule, however, is a step backward, rather than a step forward, in achieving Title IX's goals. It would inject confusion and bias into the Title IX adjudicatory process. Survivors of sexual harassment and violence would face significant reporting obstacles under the new rule, further undermining the already too low sexual violence and harassment reporting rates. The proposed rule is not consistent with Title IX as written and fails to further its goals. It should be withdrawn.

Respectfully submitted,



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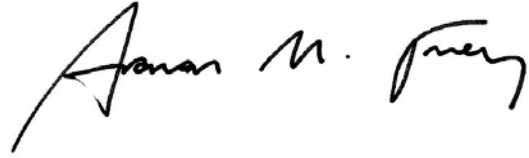
²²³ See 83 Fed. Reg. 28,177 (June 18, 2018).

²²⁴ See 83 Fed. Reg. 6,458 (Feb. 14, 2018); 83 Fed. Reg. 34,047 (July 19, 2018).

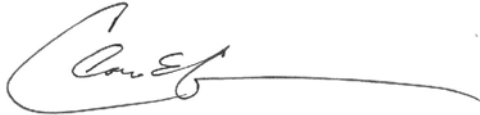
²²⁵ 83 Fed. Reg. 31,296 (July 3, 2018).



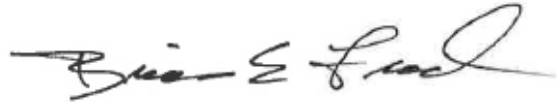
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REPORT ON CONVERSION THERAPY

WHAT IS CONVERSION THERAPY?

“Conversion therapy” is used as an umbrella term to describe interventions of a wide-ranging nature, all of which have in common the belief that a person’s sexual orientation or gender identity (SOGI) can and should be changed. Such practices aim (or claim to aim) at changing people from gay, lesbian or bisexual to heterosexual and from trans or gender diverse to cisgender. Depending on the context, the term is used for a multitude of practices and methods, some of which are clandestine and therefore poorly documented.

The term “therapy”, derived from the Greek, denotes “healing”. However, practices of “conversion therapy” are the very opposite: they are deeply harmful interventions that rely on the medically false idea that LGBT and

other gender diverse persons are sick, inflicting severe pain and suffering, and resulting in long-lasting psychological and physical damage. Conversion therapy currently happens in a multitude of countries in all regions of the world.

In 2012, the Pan American Health Organization (PAHO) noted that “conversion therapies” had no medical justification and represented a severe threat to the health and human rights of the affected persons, and in 2016, the World Psychiatric Association found that “there is no sound scientific evidence that innate sexual orientation can be changed”. In 2020, the Independent Forensic Expert Group (IFEG) has declared that offering “conversion therapy” is a form of deception, false advertising and fraud.

WHO ARE ITS PROMOTERS AND PERPETRATORS?

Perpetrators of “conversion therapy” practices include private and public mental health-care providers, faith-based organizations, traditional healers and State agents; promoters additionally include family and community members, political authorities and other agents.

Faith-based organizations and religious authorities in particular operate in a space surrounded by blurred lines, advising the family and victim and often promoting or providing the practices alone or in partnership with others.

Conversion therapy is a lucrative business for providers around the world. Marketing mechanisms operate to support the business model, and some States actively perpetrate or promote abuse through such practices.

State officials, including judges or police officers, may order “conversion therapy”, even in the absence of explicit legal provisions. It is also done through public policy. For example, Malaysia has adopted plans to curb behaviours perceived as immoral, including same-sex behaviour, and specifically promotes practices of “conversion therapy”, including through university programmes.

Young people are disproportionately subjected to practices of “conversion therapy”. A recent global survey suggests that 4 out of 5 persons subjected to them were 24 years of age or younger



WHAT ARE THE APPROACHES USED IN “CONVERSION THERAPY” PRACTICES?

There were three main approaches identified in the practice of “conversion therapy”:

PSYCHOTHERAPY

Interventions based on the belief that sexual or gender diversity is a product of an abnormal upbringing or experience. Variations applied include psychodynamic, behavioural, cognitive and interpersonal therapies. A recurrent method used is aversion (electric shocks, nausea-inducing or paralysis-inducing drugs) through which a person is subjected to a negative, painful or otherwise distressing sensation while being exposed to a certain stimulus connected to their sexual orientation.

MEDICAL

Practices rooted on the postulation that sexual or gender diversity is an inherent biological dysfunction. They rely on pharmaceutical approaches, such as medication or hormone or steroid therapy. In the Islamic Republic of Iran, individuals who inevitably fail at “converting” their sexual orientation will often be pressured to undergo gender-affirming surgery, in the belief that it will neutralize their orientation.

FAITH-BASED

Interventions that act on the premise that there is something inherently evil in diverse sexual orientations and gender identities. Victims are usually submitted to the tenets of a spiritual advisor, and subjected to programmes to overcome their “condition”. Such programmes can include anti-gay slurs as well as beatings, shackling and food deprivation. They are also sometimes combined with exorcism.



“The degrading nature of many conversion therapy practices, including physical abuse, electro-shock therapy, pseudo-medical procedures, and the use of anti-LGBT epithets and slurs, contribute to an overall dehumanising environment towards persons with diverse SOGI.”

WHAT ARE THE CONSEQUENCES OF “CONVERSION THERAPY” PRACTICES?

The methods and means commonly utilized to implement practices of “conversion therapy” lead to psychological and physical pain and suffering. The deep impact on individuals includes significant loss of self-esteem, anxiety, depressive syndrome, social isolation, intimacy difficulty, self-hatred, shame and guilt, sexual dysfunction, suicidal ideation and suicide attempts and symptoms of post-traumatic stress disorder.

The application of international human rights law is guided by the fundamental principles of universality, equality and non-discrimination. Practices of “conversion therapy” target a specific group on the exclusive basis of sexual orientation and gender identity, with the specific aim of interfering in their personal integrity and autonomy. In that sense, such practices are inherently discriminatory.

All practices attempting conversion are inherently humiliating, demeaning and discriminatory. The combined effects of feeling powerless and extreme humiliation generate profound feelings of shame, guilt, self-disgust, and worthlessness, which can result in a damaged self-concept and enduring personality changes.

These practices also violate the prohibition of torture and ill-treatment, since they take point of departure in the belief that sexually diverse or gender-diverse persons are somehow inferior – morally, spiritually or physically – than their heterosexual and cisgender siblings and must modify their orientation or identity to remedy that inferiority. Therefore, any means and mechanisms that treat LGBT persons as lesser human beings are degrading by their very definition and may amount to torture depending on the circumstances, namely the severity of physical and mental pain and suffering inflicted. Finally, these practices also violate the right to health, including the freedom from non-consensual medical treatment.

“The IESOGI is convinced that the decision to subject a child to conversion practices can never truly be in conformity with a child’s best interests. Parents must make decisions for their children under the premise of informed consent, which entails knowing the practice’s true nature, its inability to actually achieve “conversion”, and the mounting evidence pointing towards its long-term physical and psychological harm”.



RECOMMENDATIONS TO STATES

The IESOGI has called for a global ban on practices of “conversion therapy”, a process that must include: clearly defining the prohibited practices; ensuring public funds are not used to support them; banning advertisements; establishing punishments for non-compliance and investigating respective claims; creating mechanisms to provide access to all forms of reparation to victims, including the right to rehabilitation. He also recommends that States:

- a. Take urgent measures to protect children and young people from practices of “conversion therapy”;
- b. Carry out campaigns to raise awareness among parents, families and communities about the invalidity and ineffectiveness of and the damage caused by practices of “conversion therapy”;
- c. Adopt and facilitate health-care and other services related to the exploration, free development and/or affirmation of sexual orientation and/or gender identity;
- d. Foster dialogue with key stakeholders, including medical and health professional organizations, faith-based organizations, educational institutions and community-based organizations, to raise awareness about the human rights violations connected to practices of “conversion therapy”.

Criminalisation, demonization and pathologisation play a role in perpetuating violence and discrimination on the basis of SOGI and enable the exposure of LGBT persons to practices of conversion. Combatting such biases and prejudices requires action on the part of States, the medical community, and civil society.



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Sexual Orientation Change Efforts, Adverse Childhood Experiences, and Suicide Ideation and Attempt Among Sexual Minority Adults, United States, 2016–2018

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Objectives. To examine how sexual orientation change efforts (SOCE) are associated with suicide morbidity after controlling for adverse childhood experiences (ACEs).

Methods. Cross-sectional survey data are from the Generations survey, a nationally representative sample of 1518 nontransgender sexual minority adults recruited between March 28, 2016, and March 30, 2018, in the United States. Self-identified transgender individuals were included in a separate, related TransPop study. We used weighted multiple logistic regression analyses to assess the independent association of SOCE with suicidal ideation and suicide attempt while controlling for demographics and ACEs.

Results. Approximately 7% experienced SOCE; of them, 80.8% reported SOCE from a religious leader. After adjusting for demographics and ACEs, sexual minorities exposed to SOCE had nearly twice the odds of lifetime suicidal ideation, 75% increased odds of planning to attempt suicide, and 88% increased odds of a suicide attempt with minor injury compared with sexual minorities who did not experience SOCE.

Conclusions. Over the lifetime, sexual minorities who experienced SOCE reported a higher prevalence of suicidal ideation and attempts than did sexual minorities who did not experience SOCE.

Public Health Implications. Evidence supports minimizing exposure of sexual minorities to SOCE and providing affirming care with SOCE-exposed sexual minorities. (*Am J Public Health.* 2020;110:1024–1030. doi:10.2105/AJPH.2020.305637)

SOCE include increased distress, depression, hopelessness, and suicidal thoughts and behaviors.^{6,8–10} SOCE have been practiced by religious counselors, medical professionals, and other health care providers for decades.¹¹ Despite several national professional organizations' official positions against SOCE (e.g., American Psychological Association,¹¹ American Medical Association,¹² National Association of Social Workers¹³), as of June 2019, only 18 US states (and Puerto Rico and Washington, DC) have laws that ban subjecting minors to SOCE.¹⁴

Minority stress theory describes stressors as unique in that they stem from homophobia and chronic in that they are present in day-to-day social interactions.¹⁵ Minority stressors include prejudicial events and conditions that are expressed both interpersonally (e.g., violent attacks, discrimination) and structurally (e.g., laws allowing rejection of sexual minorities in housing and employment).¹⁶ By its very nature and purpose, SOCE can be defined as a minority stressor because they promote heteronormativity as the only acceptable way of life and reinforce individual, family, and community rejection of LGB sexual orientation. By reinforcing stigmatizing societal attitudes and promoting self-rejection, professionals who engage in

Suicide has increased to a level that, along with drug overdose— and alcohol-related deaths, has reduced life expectancy for US persons for 3 consecutive years.¹ Suicidal ideation and suicide attempt (i.e., suicide morbidity) are strong predictors of death by suicide,² and suicide morbidity occurs more frequently among lesbian, gay, and bisexual (LGB or sexual minority) populations than among heterosexuals.^{3,4}

Identifying unique stressors that are associated with sexual minority individuals' suicidal ideation and suicide attempts can lead to tailored intervention and prevention efforts.

One stressor unique to sexual minorities is experiencing sexual orientation change efforts (SOCE), sometimes referred to as conversion or reparative therapy.⁵ SOCE

include a variety of approaches such as immersion in heterosexual-focused cognitive exercises, amplification of shame for same-gender attraction, and physical punishment (e.g., electric shock) intended to condition against mental or physical attraction to the same gender.^{6–8} Negative outcomes of

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SOCE provide the exact opposite of recommended therapeutic approaches that should support self-acceptance.^{17–19} Minority stress also affects sexual minorities through internalization of stigmatizing social attitudes and stereotypes. For example, LGB people internalize homophobic notions, contributing to adverse health outcomes.^{17,20}

Related to stigmatization in their families, sexual minorities have a high prevalence of adverse childhood experiences (ACEs),²¹ including physical and sexual abuse. Evidence shows dose–response relations of ACEs with suicidality,²² which may partly explain disparities in poor mental health between sexual minority and heterosexual individuals.^{23,24} Less is understood about how ACEs and SOCE may be associated among sexual minorities. For instance, it is plausible that sexual minority children may be less accepted by their parents and more likely to be subjected to SOCE. To date, no research has examined the relationship between ACEs and SOCE to our knowledge.

Regardless of its relationship with ACEs, there has been scant investigation of how experiencing SOCE is related to suicidal ideation and attempt among sexual minorities. Similarly, little is known about the independent associations of SOCE and ACEs and suicidal ideation and attempt. The dearth of inquiry stems mainly from a lack of data on experiencing SOCE among sexual minorities. Capitalizing on a novel probability-based national sample of sexual minority adults, we examined how experiencing SOCE is associated with suicide morbidity, after considering the effects of ACEs.

METHODS

We collected data as part of the Generations study, which was designed to examine health and well-being across 3 generations of nontransgender sexual minority people.

Generations contracted with Gallup to use an innovative 2-phase sampling approach. In phase 1, Gallup used a dual-frame sampling procedure, which included random-digit dialing to reach US landline and cellphone users (a random selection method was used for choosing a respondent in households reached on landline phones). Respondents screened at phase 1 were eligible to participate in phase 2

(a self-administered Web or paper questionnaire) if they identified as cisgender or gender nonbinary sexual minority (and not transgender); were in the age ranges for 1 of the 3 cohorts of interest in the Generations study (aged 18–25, 34–41, or 52–59 years); belonged to the racial and ethnic groups targeted (Black, Latino, or White, or had multiple racial and ethnic identities that included at least 1 of these; Table 1); completed at least sixth grade; and spoke English well enough to conduct the telephone interview in English.

The specific age groups were selected to represent people who came of age in distinct social historical periods relevant to lesbian gay bisexual transgender (LGBT) rights. The investigators identified the Pride generation as people who came of age in the 1970s and were aged 51 to 59 years at the time of recruitment, the Visibility generation as people who came of age in the late 1980s and 1990s and were aged 34 to 41 years at the time of recruitment, and the Equality generation as people who came of age in the 2000s and were aged 18 to 25 years at the time of recruitment.

Asian American and American Indian/Alaska Native sexual minority people were excluded because their low representation in the US population meant the researchers would have not been able to recruit sufficient numbers of respondents during the recruitment period to allow meaningful statistical analyses for these racial and ethnic groups. Education level was selected because respondents needed to be able to comprehend and self-administer the main study questionnaire. Respondents who identified as transgender, regardless of their sexual orientation, were invited to participate in a related TransPop study, which asked questions that were tailored to the transgender population.

In phase 1 366 640 respondents were screened in the brief telephone interview between March 2016 and March 2017. Of these respondents, 3.5% ($n = 12\,837$) identified as sexual minority, transgender, or both. After applying the study inclusion criteria, 3525 were eligible to participate in the Generations study. The final cooperation rate²⁵ for the Generations study was 39%. The final sample included 1518 respondents, including 187 respondents from an enhancement recruitment period (April

2017 to March 2018) aimed at increasing the number of Black and Latino respondents. The entire sample was weighted for nonresponse using the US Census and for specific demographics of the LGBT population using Gallup data collected since 2012. More information about the study's methodology and rationale is available online at <http://www.generations-study.com>.

Measures

Demographic covariates included gender identity (man, woman, or nonbinary or genderqueer); sexual identity (lesbian, gay, bisexual, queer, pansexual, asexual, or other minority sexual identities); racial and ethnic identity (White, Black or African American, Hispanic or Latinx, or other racial and ethnic identity); educational attainment (high school diploma or less, some college, college degree, or more than a college degree); and age.

ACEs were measured using 11 items employed by the Centers for Disease Control and Prevention in population health surveillance.²⁶ The items are predicated with the statement “Now, looking back before you were 18 years of age. . .” and followed by several categories of negative experiences (e.g., living with anyone who was depressed, mentally ill, or suicidal; frequency of parents or adults in the home ever slapping, hitting, kicking, punching, or beating up each other; frequency of physical abuse). Three items specifically asked respondents about sexual abuse: How often did anyone at least 5 years older than you, or an adult, (1) ever touch you sexually, (2) try to make you touch them sexually, and (3) force you to have sex? These 3 sexual abuse items were combined into a cumulative measure of “any sexual abuse” if a respondent affirmatively answered 1 or more of the items.

Experiencing SOCE was measured by an item created by the survey team: “Did you ever receive treatment from someone who tried to change your sexual orientation (such as try to make you straight/heterosexual)?” Response options were: no; yes, from a health care professional (such as a psychologist or counselor who was not religious focused); and yes, from a religious leader (such as a pastor, religious counselor, priest). Because respondents could report experiencing both forms of SOCE, answers were combined in a

TABLE 1—Sociodemographic Characteristics of Individuals, by Experiencing Sexual Orientation Change Efforts (SOCE), Counts, and Weighted Proportions: Probability Sample of Sexual Minorities, United States, 2016–2018

| | Overall Sample (n = 1518), No. (%; SE) or Mean ±SE | Experienced SOCE | | P |
|-------------------------------|--|--|--|-----|
| | | No (n = 1410), No. (%; SE) or Mean ±SE | Yes (n = 108), No. (%; SE) or Mean ±SE | |
| Gender identity | | | | |
| Woman | 750 (55.0; 0.016) | 708 (94.3; 0.011) | 42 (5.7; 0.011) | .15 |
| Man | 674 (37.6; 0.015) | 616 (91.2; 0.014) | 58 (8.8; 0.014) | |
| Nonbinary or genderqueer | 94 (7.4; 0.009) | 86 (94.2; 0.022) | 8 (5.8; 0.022) | |
| Sexual identity | | | | |
| Lesbian/gay | 833 (46.9; 0.016) | 757 (89.9; 0.014) | 76 (10.1; 0.014) | .01 |
| Bisexual | 493 (40.6; 0.016) | 476 (96.3; 0.011) | 17 (3.7; 0.011) | |
| Other sexual identity | 181 (12.5; 0.010) | 166 (94.3; 0.018) | 15 (5.7; 0.018) | |
| Racial/ethnic identity | | | | |
| White | 931 (59.5; 0.016) | 871 (94.2; 0.010) | 60 (5.8; 0.010) | .14 |
| Black/African American | 180 (13.5; 0.011) | 162 (88.6; 0.029) | 18 (11.3; 0.029) | |
| Latino/a | 158 (10.8; 0.010) | 145 (91.7; 0.027) | 13 (8.3; 0.027) | |
| Other racial/ethnic identity | 249 (16.2; 0.011) | 232 (94.0; 0.019) | 17 (6.0; 0.019) | |
| Educational attainment | | | | |
| More than a college degree | 288 (9.6; 0.006) | 260 (90.6; 0.018) | 28 (9.4; 0.018) | .08 |
| College degree | 429 (16.0; 0.009) | 403 (95.5; 0.016) | 26 (4.5; 0.016) | |
| Some college | 492 (31.9; 0.014) | 464 (94.5; 0.011) | 28 (5.5; 0.011) | |
| High school diploma or less | 309 (42.5; 0.017) | 283 (91.8; 0.009) | 26 (8.2; 0.009) | |
| Age, y | 30.9 ±0.37 | 30.7 ±0.38 | 32.7 ±1.43 | .19 |

Note. Percentages and means were weighted. Sample size was n = 1518.

single category of having experienced SOCE by either or both sources.

Suicide morbidity was captured with several measures adapted from the Army Study to Assess Risk and Resilience in Service Members instrument,²⁷ which was adapted from the Columbia Suicide Severity Rating Scale (C-SSRS).²⁸ These measures included suicidal ideation (i.e., “Did you ever in your life have thoughts of killing yourself?”), having made a plan for suicide (i.e., “Did you ever think about how you might kill yourself [e.g., taking pills, shooting yourself] or work out a plan of how to kill yourself?”), and attempted suicide (“Did you ever make a suicide attempt [i.e., purposefully hurt yourself with at least some intention to die]?”). Individuals who reported at least 1 previous suicide attempt were then asked, “What were the most serious injuries you ever received from a suicide attempt?” The C-SSRS has 6 different categories of injury severity, but because of low frequencies in some categories, we combined information

from these 2 items to create a 3-category suicide attempt variable: no attempt; attempt with no or minor injury (e.g., surface scratches, mild nausea, sprain, first-degree burns, flesh wound); and attempt with moderate or severe injuries (e.g., broken bones, second- or third-degree burns, stitches, bullet wound, major fracture, coma requiring respirator, or surgery).

Analyses

We summarized demographics for the overall sample using descriptive statistics. We examined ACEs as 8 dichotomous categories (yes or no) and in a count of ACEs endorsed by the respondents. We tested differences in sociodemographics, ACEs, and suicide morbidity between respondents who had experienced SOCE and respondents who did not experience SOCE. To better understand the relation between ACEs and experiencing SOCE, we used multiple logistic regression to assess the association of

exposure to SOCE with ACEs after adjusting for demographics.

To investigate the independent associations of ACEs and SOCE with suicidal ideation, suicide planning, and suicide attempt, we first conducted separate multiple logistic regression models including covariates and ACEs followed by second models that added experiencing SOCE. For the 3-category variable of suicide attempt, we conducted multinomial logistic regression analyses, with “no attempts” set as the reference category; we followed the same method of having the first model include covariates and ACEs followed by a second model that added experiencing SOCE. We conducted all analyses using Stata/SE version 15 (StataCorp, College Station, TX). We weighted analyses to account for the complex sampling design and nonresponse. We reported all point estimates with 95% confidence intervals and assessed statistical significance at a P level of less than .05. All reported means and percentages are weighted.

RESULTS

Of the 1518 participants, 55% identified as women, more identified as lesbian or gay than bisexual (46.9% vs 40.6%, respectively), and about 60% identified as White (Table 1). Among men and women, sex assigned as birth was 100% concordant; for nonbinary individuals, 67.3% reported being assigned female sex at birth and 32.7% indicated being assigned male sex at birth (data not shown). Across the sample, 6.9% (n = 108) experienced SOCE from any source; of them, 80.8% reported SOCE from a religious leader, and 31.0% reported SOCE from a health care provider. Individuals with gay or lesbian identities were more likely to report experiencing SOCE than bisexually identified respondents or respondents with other sexual minority identities (e.g., queer, pansexual). The prevalence of experiencing SOCE did not significantly differ across the age cohorts of Generations: 6.2% among those aged 18 to 25 years, 8.3% among those aged 34 to 41 years, and 7.8% among those aged 52 to 59 years (P = .43; data not shown).

Participants had an average of 3 ACEs, and odds of experiencing SOCE were significantly greater among people who as

children lived with a parent or another adult who was depressed, mentally ill, or suicidal; lived in a household with parental intimate partner violence; or reported emotional, physical, or sexual abuse (Table 2) than among their counterparts. When ACEs were counted, there was a significant 25% increased odds of reporting SOCE experiences with each additional ACE experienced.

Sexual minorities who experienced SOCE had greater prevalence of all measures of suicide morbidity relative to sexual minorities without SOCE experiences (Table 3). Results of regression models with only ACEs and not SOCE and then with both ACEs and

SOCE showed little change in estimates, and interaction tests of ACEs and SOCE were not significant (data not shown). Therefore, results of the full models are shown in Table 4. In the adjusted models, ACEs were positively associated with all measures of suicide morbidity. Compared with not experiencing SOCE, experiencing SOCE was associated with twice the odds of lifetime suicidal ideation, 75% increased odds of planning to attempt suicide, 88% increased odds of attempting suicide resulting in no or minor injury, and 67% increased odds of suicide attempt resulting in moderate or severe injury (the last did not reach statistical significance at $P < .05$).

DISCUSSION

We found that about 7% of sexual minorities experienced SOCE. This compares with 17% reported by a previous study from the Multisite AIDS Cohort Study.²⁹ But that study is not directly comparable because its sample included men who have sex with men, was not representative of the US population, and had a mean age of 61.5 years, which is older than our sample. A study using a nonprobability sample of transgender and gender nonbinary individuals in the United States found that about 10% reported experiences of SOCE.³⁰ To our knowledge, our study is the first to publish data on SOCE in a nationally representative sample of non-transgender sexual minorities in the United States.

We found that sexual minorities who experienced ACEs were more likely to have experienced SOCE than were sexual minorities who did not experience ACEs. Even after adjustment for exposure to ACEs, which are known risk factors for mental health problems and suicide morbidity, experiencing SOCE was independently associated with suicidal ideation, suicide planning, and suicide attempts. We did not find a significant relation between experiencing SOCE and suicide attempt with moderate or severe injury, but it is noteworthy that the odds ratio estimate was in the same direction and of similar magnitude as the other significant associations. The relatively small sample may have hampered statistical power for the rare outcome of suicide attempts resulting in moderate or severe injury.

To date, the mental health harms of SOCE have been documented primarily via qualitative inquiry.⁶⁻⁸ Our study adds to previous anecdotal findings with quantitative evidence showing the association between SOCE and suicide morbidity. The results of this study suggest that SOCE is a stressor with particularly insidious associations with suicide risk. The SOCE associations may be explained with the construct of perceived burdensomeness of the interpersonal theory of suicide,³¹ which has been associated with suicide morbidity among sexual minorities.³² Further research into this area may investigate the specific constructs and mechanisms (e.g., enacted stigma, internalized stigma, identity concealment) that could incite perceived burdensomeness and

TABLE 2—Prevalence and Adjusted Association of Adverse Childhood Experiences (ACEs) With Experiencing Sexual Orientation Change Efforts (SOCE), Counts, Weighted Proportions, and AORs: Probability Sample of Sexual Minorities, United States, 2016–2018

| ACEs | Experienced SOCE | | P | Multivariable, ^a AOR (95% CI) |
|---------------------------------------|--------------------------------|---------------------------------|--------|---|
| | No, No. (%; SE) or Mean ±SE | Yes, No. (%; SE) or Mean ±SE | | |
| Household substance use | | | | |
| No | 771 (94.4; 0.010) | 48 (5.6; 0.010) | .11 | 1 (Ref) |
| Yes | 639 (91.8; 0.013) | 60 (8.2; 0.013) | | 1.56 (0.92, 2.65) |
| Parental separation or divorce | | | | |
| No | 928 (93.6; 0.009) | 72 (6.4; 0.009) | .45 | 1 (Ref) |
| Yes | 482 (92.3; 0.015) | 36 (7.7; 0.015) | | 1.38 (0.83, 2.30) |
| Parental mental illness | | | | |
| No | 789 (94.0; 0.010) | 50 (6.0; 0.010) | .23 | 1 (Ref) |
| Yes | 621 (92.1; 0.013) | 58 (7.9; 0.013) | | 1.76 (1.05, 2.94) |
| Incarcerated household member | | | | |
| No | 1218 (93.3; 0.009) | 90 (6.7; 0.009) | .59 | 1 (Ref) |
| Yes | 192 (92.1; 0.023) | 18 (7.9; 0.023) | | 1.17 (0.57, 2.39) |
| Parental partner violence | | | | |
| No | 960 (94.5; 0.009) | 62 (5.5; 0.009) | .02 | 1 (Ref) |
| Yes | 450 (90.5; 0.016) | 46 (9.5; 0.016) | | 1.86 (1.13, 3.05) |
| Emotional abuse | | | | |
| No | 478 (96.1; 0.011) | 22 (3.9; 0.011) | .01 | 1 (Ref) |
| Yes | 932 (91.9; 0.011) | 86 (8.1; 0.011) | | 2.48 (1.31, 4.70) |
| Physical abuse | | | | |
| No | 870 (94.7; 0.009) | 49 (5.3; 0.009) | .02 | 1 (Ref) |
| Yes | 540 (90.9; 0.014) | 59 (9.1; 0.014) | | 1.87 (1.11, 3.13) |
| Sexual abuse | | | | |
| No | 907 (95.4; 0.008) | 47 (4.6; 0.008) | < .001 | 1 (Ref) |
| Yes | 503 (89.1; 0.017) | 61 (10.9; 0.017) | | 2.95 (1.75, 5.00) |
| No. of ACEs | 3.3 ±0.07 | 4.2 ±0.31 | .01 | 1.25 (1.10, 1.42) |

Note. AOR = adjusted odds ratio; CI = confidence interval. Percentages and means are weighted. Sample size was n = 1518.

^aAll multivariable models were weighted and adjusted for age, gender identity, sexual identity, education, and race/ethnicity.

TABLE 3—Prevalence of Suicide Morbidity, by Experiencing Sexual Orientation Change Efforts (SOCE), Counts, and Weighted Proportions: Probability Sample of Sexual Minorities, United States, 2016–2018

| Lifetime Suicide Morbidity | Experienced SOCE | | p |
|--------------------------------|--------------------|------------------|-----|
| | No, No. (%; SE) | Yes, No. (%; SE) | |
| Suicidal ideation | 967 (73.4, 0.014) | 90 (84.0, 0.042) | .04 |
| Made a suicide plan | 763 (58.7, 0.016) | 74 (71.7, 0.054) | .03 |
| Attempted suicide | | | |
| No | 1087 (73.8, 0.015) | 65 (59.6, 0.060) | .02 |
| Yes, no injury or minor injury | 172 (13.4, 0.012) | 23 (24.6, 0.053) | |
| Yes, moderate or severe injury | 151 (12.8, 0.012) | 20 (15.7, 0.042) | |

Note. Percentages were weighted. Sample size was n = 1518.

create the risk of suicidal thoughts and behaviors among survivors of SOCE.

Limited evidence exists to guide clinical practice with individuals who have experienced SOCE. Many people participate in SOCE to conform to social expectations of

family, culture, and religion.⁶ Yet SOCE are ineffective and may compound or create problems, such as depression, guilt, intimacy avoidance,^{5–8} and, as we have shown here, suicidal ideation and suicide attempts. Cognitive behavioral therapy may help resolve

these outcomes by addressing the detrimental effects of minority stressors,¹⁸ including the effects of SOCE. However, best practices for affirming care with sexual minorities who experienced SOCE are largely uncharted.

Health care and social service providers working with sexual minorities with histories of or active suicidal thoughts and suicide attempts should be aware that cumulative trauma assessments should include a history of SOCE experiences, which may have amplified internalized stigma. To better understand the impacts of SOCE as a unique minority stressor for sexual minorities, population health surveys that include items about stressful life experiences should also include items to assess experiences of SOCE.

Study Limitations

The Generations study team developed the SOCE measure, and although it seems

TABLE 4—Associations of ACEs and Experiencing Sexual Orientation Change Efforts (SOCE) With Suicide Morbidity, AORs: Probability Sample of Sexual Minorities, United States, 2016–2018

| | Suicide attempt ^a | | | |
|------------------------------|---|--|--|---|
| | Suicidal Ideation (n = 1489), AOR (95%CI) | Suicide Planning (n = 1480), AOR (95%CI) | Suicide Attempt With No/Minor Injury (n = 1507), AOR (95%CI) | Suicide Attempt With Moderate/Severe Injury (n = 1507), AOR (95%CI) |
| Experienced SOCE | 1.92 (1.01, 3.64) | 1.75 (1.01, 3.06) | 1.88 (1.01, 3.50) | 1.67 (0.76, 3.64) |
| No. of ACEs | 1.28 (1.17, 1.39) | 1.27 (1.19, 1.37) | 1.27 (1.17, 1.39) | 1.38 (1.25, 1.52) |
| Age, y | 0.97 (0.96, 0.98) | 0.98 (0.97, 0.99) | 0.99 (0.97, 1.00) | 0.99 (0.97, 1.00) |
| Gender identity | | | | |
| Female (Ref) | 1 | 1 | 1 | 1 |
| Male | 1.06 (0.77, 1.45) | 0.86 (0.64, 1.15) | 1.19 (0.78, 1.82) | 0.46 (0.28, 0.78) |
| Nonbinary/genderqueer | 3.32 (1.32, 8.35) | 2.22 (1.08, 4.56) | 0.98 (0.35, 2.74) | 1.70 (0.83, 3.50) |
| Sexual identity | | | | |
| Gay/lesbian (Ref) | 1 | 1 | 1 | 1 |
| Bisexual | 1.34 (0.93, 1.92) | 1.16 (0.83, 1.61) | 1.12 (0.69, 1.82) | 1.53 (0.94, 2.49) |
| Other sexual minority | 2.19 (1.27, 3.79) | 1.87 (1.13, 3.09) | 1.55 (0.74, 3.25) | 0.96 (0.47, 1.96) |
| Racial/ethnic identity | | | | |
| White (Ref) | 1 | 1 | 1 | 1 |
| Black/African American | 0.55 (0.35, 0.85) | 0.65 (0.43, 0.99) | 1.43 (0.85, 2.39) | 0.54 (0.26, 1.12) |
| Latino/a | 0.55 (0.34, 0.89) | 0.70 (0.45, 1.10) | 1.02 (0.53, 1.98) | 0.59 (0.26, 1.31) |
| Other racial/ethnic identity | 0.93 (0.59, 1.48) | 1.22 (0.81, 1.82) | 0.85 (0.50, 1.44) | 1.12 (0.68, 1.85) |
| Educational attainment | | | | |
| Postgraduate (Ref) | 1 | 1 | 1 | 1 |
| College degree | 1.01 (0.70, 1.46) | 0.88 (0.62, 1.25) | 1.53 (0.86, 2.73) | 0.84 (0.45, 1.56) |
| Some college | 0.90 (0.61, 1.33) | 1.08 (0.75, 1.54) | 1.56 (0.89, 2.73) | 1.21 (0.68, 2.15) |
| High school diploma or less | 1.02 (0.65, 1.60) | 0.91 (0.60, 1.37) | 1.54 (0.83, 2.84) | 0.97 (0.51, 1.84) |

Note. ACE = adverse childhood experience; AOR = adjusted odds ratio; CI = confidence interval. All multivariable models were weighted. Sample size was n = 1518.

^aEstimated with multinomial logit model (no suicide attempts as reference category).

straightforward, no evidence of the measure's validity and reliability exists at this time. Additionally, people who experienced SOCE may continue to have negative feelings about their same-sex sexual orientation and may be more likely than others to hide their sexual minority identity; thus, our study recruitment method may have underrepresented SOCE exposure among sexual minorities.

Our measure of SOCE is limited in that it does not differentiate among the diverse experiences SOCE people may have had. Despite the strong associations of SOCE, further research is necessary to understand variability in SOCE experiences. For instance, our survey item broadly captured SOCE, but we are unable to determine if SOCE were received from a practitioner who solely focused on SOCE (e.g., conversion camps) or arose in the context of a generalized discussion with a mental health profession or religious leader. Thus, we cannot discern differential impact of various experiences of SOCE.

Similarly, our measure did not allow us to accurately time SOCE experiences as they related to ACEs exposure. To probe causal relationships, future survey items ought to attend to issues of the timing of ACEs and SOCE (e.g., age of first and last experiences) and the type and dosage of these stressful exposures (e.g., number of experiences). Other methodological limitations include that ACEs may be prone to recall bias, likely resulting in underestimates of the phenomena.³³ Additionally, other childhood adversities may not be captured in the ACEs inventory (e.g., community safety) that may be associated with SOCE or suicidal ideation or attempt. Last, data about mental health care utilization other than SOCE were not available, so we could not examine the relationship of non-SOCE mental health treatments, ACEs, and suicidality.

Other limitations include that because of their low base rates in the US population, our methodology did not allow us to recruit sufficient numbers of Asian and American Indian/Alaska Native sexual minorities to facilitate analyses of these groups. Our survey completion rate is lower than that of the 2017 Behavioral Risk Factor Surveillance System (BRFSS) survey (63.8%), but this may be because our comprehensive self-administered survey may be more demanding for

respondents than the BRFSS interviewer-administered phone modality.³⁴

Public Health Implications

Major professional medical and health services organizations condemn the practice of SOCE.^{11–13} However, to date, 32 US states have no laws protecting minors from SOCE, and existing laws do not apply to adults or SOCE administered through religious leaders.¹⁴ This religious exemption is particularly concerning because among the sexual minorities in this sample who experienced SOCE, 4 of 5 people received it from a religious provider. The landscape regarding legality of banning SOCE continues to evolve,³⁵ and despite both the lack of scientific evidence to uphold SOCE and the documented harm it can do, sexual minority people continue to be at risk for exposure to SOCE. Greater awareness of the harms of SOCE need to be conveyed to the general public, especially in areas that may have a greater prevalence of professionals who engage in SOCE. **AJPH**

CONTRIBUTORS

J. R. Blosnich conducted the analyses. J. R. Blosnich and I. H. Meyer conceptualized the study. All authors contributed to writing and reviewing article drafts.

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CONFLICTS OF INTEREST

The authors have no conflicts of interest to disclose.

HUMAN PARTICIPANT PROTECTION

Approval was received for this study by the institutional review boards of the University of California, Los Angeles and the University of Pittsburgh.

REFERENCES

- Centers for Disease Control and Prevention. CDC director's media statement on US life expectancy. 2018. Available at: <https://www.cdc.gov/media/releases/2018/s1129-US-life-expectancy.html>. Accessed June 11, 2019.
- Turecki G, Brent DA. Suicide and suicidal behaviour. *Lancet*. 2016;387(10024):1227–1239.
- Haas AP, Eliason M, Mays VM, et al. Suicide and suicide risk in lesbian, gay, bisexual, and transgender populations: review and recommendations. *J Homosex*. 2011;58(1):10–51.
- Hottes TS, Bogaert L, Rhodes AE, Brennan DJ, Gesink D. Lifetime prevalence of suicide attempts among sexual minority adults by study sampling strategies: a systematic review and meta-analysis. *Am J Public Health*. 2016;106(5):e1–e12.
- Drescher J. I'm your handyman: a history of reparative therapies. *J Homosex*. 1998;36(1):19–42.
- Flentje A, Heck NC, Cochran BN. Sexual re-orientation therapy interventions: perspectives of ex-gay individuals. *J Gay Lesbian Ment Health*. 2013;17(3):256–277.
- Haldeman DC. The practice and ethics of sexual orientation conversion therapy. *J Consult Clin Psychol*. 1994;62(2):221–227.
- Beckstead AL, Morrow SL. Mormon clients' experiences of conversion therapy: the need for a new treatment approach. *Couns Psychol*. 2004;32(5):651–690.
- Shidlo A, Schroeder M. Changing sexual orientation: a consumers' report. *Prof Psychol Res Pr*. 2002;33(3):249–259.
- Trevor Project. National survey on LGBTQ youth mental health. 2019. Available at: <https://www.thetrevorproject.org/wp-content/uploads/2019/06/The-Trevor-Project-National-Survey-Results-2019.pdf>. Accessed June 11, 2019.
- American Psychological Association, Task Force on Appropriate Therapeutic Responses to Sexual Orientation. Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation. 2009. Available at: <https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf>. Accessed June 19, 2019.
- American Medical Association. Advocating for the LGBTQ community: review issue briefs and talking point that focus on topics impacting the LGBTQ community, including conversion therapy, gender-affirming care and access to public utilities. Available at: <https://www.ama-assn.org/delivering-care/population-care/advocating-lgbtq-community>. Accessed June 11, 2019.
- National Association of Social Workers. Sexual orientation change efforts (SOCE) and conversion therapy with lesbians, gay men, bisexuals, and transgender persons. 2015. Available at: <https://www.socialworkers.org/LinkClick.aspx?fileticket=IQYALknHU6%3D&portalid=0>. Accessed March 24, 2020.
- Movement Advancement Project. Equality maps: conversion "therapy" laws. Available at: http://www.lgbtmap.org/equality-maps/conversion_therapy. Accessed June 11, 2019.
- Meyer IH. Minority stress and mental health in gay men. *J Health Soc Behav*. 1995;36(1):38–56.
- Meyer IH. Prejudice, social stress, and mental health in lesbian, gay, and bisexual populations: conceptual issues and research evidence. *Psychol Bull*. 2003;129(5):674–697.

17. Barnes DM, Meyer IH. Religious affiliation, internalized homophobia, and mental health in lesbians, gay men, and bisexuals. *Am J Orthopsychiatry*. 2012;82(4):505–515.

18. Pachankis JE, Hatzenbuehler ML, Rendina HJ, Safren SA, Parsons JT. LGB-affirmative cognitive-behavioral therapy for young adult gay and bisexual men: a randomized controlled trial of a transdiagnostic minority stress approach. *J Consult Clin Psychol*. 2015;83(5):875–889.

19. Ryan C, Toomey RB, Diaz RM, Russell ST. Parent-initiated sexual orientation change efforts with LGBT adolescents: implications for young adult mental health and adjustment. *J Homosex*. 2018;67(2):159–173.

20. Newcomb ME, Mustanski B. Internalized homophobia and internalizing mental health problems: a meta-analytic review. *Clin Psychol Rev*. 2010;30(8):1019–1029.

21. Andersen JP, Blosnich JR. Disparities in adverse childhood experiences among sexual minority and heterosexual adults: results from a multi-state probability-based sample. *PLoS One*. 2013;8(1):e54691.

22. Dube SR, Anda RF, Felitti VJ, Chapman DP, Williamson DF, Giles WH. Childhood abuse, household dysfunction, and the risk of attempted suicide throughout the life span: findings from the Adverse Childhood Experiences Study. *JAMA*. 2001;286(24):3089–3096.

23. Lytle MC, De Luca SM, Blosnich JR, Brownson C. Associations of racial/ethnic identities and religious affiliation with suicidal ideation among lesbian, gay, bisexual, and questioning individuals. *J Affect Disord*. 2015;178:39–45.

24. Austin A, Herrick H, Proescholdbell S. Adverse childhood experiences related to poor adult health among lesbian, gay, and bisexual individuals. *Am J Public Health*. 2016;106(2):314–320.

25. *Standard Definitions: Final Dispositions of Case Codes and Outcome Rates for Surveys*. 8th ed. Ann Arbor, MI: American Association for Public Opinion Research; 2015.

26. Centers for Disease Control and Prevention. Adverse childhood experiences reported by adults—five states, 2009. *MMWR Morb Mortal Wkly Rep*. 2010;59(49):1609–1613.

27. Nock MK, Stein MB, Heeringa SG, et al. Prevalence and correlates of suicidal behavior among soldiers: results from the Army Study to Assess Risk and Resilience in Servicemembers (Army STARARS). *JAMA Psychiatry*. 2014;71(5):514–522.

28. Posner K, Brown GK, Stanley B, et al. The Columbia–Suicide Severity Rating Scale: initial validity and internal consistency findings from three multisite studies with adolescents and adults. *Am J Psychiatry*. 2011;168(12):1266–1277.

29. Meanley SP, Stall RD, Dakwar O, et al. Characterizing experiences of conversion therapy among middle-aged and older men who have sex with men from the Multicenter AIDS Cohort Study (MACS). *Sex Res Soc Policy*. 2019; Epub ahead of print.

30. James SE, Herman JL, Rankin S, Keisling M, Mottet LA, Anafi M. *The Report of the 2015 US Transgender Survey*. Washington, DC: National Center for Transgender Equality; 2016.

31. Van Orden KA, Witte TK, Cukrowicz KC, Braithwaite SR, Selby EA, Joiner TE Jr. The interpersonal theory of suicide. *Psychol Rev*. 2010;117(2):575–600.

32. Woodward EN, Wingate L, Gray TW, Pantalone DW. Evaluating thwarted belongingness and perceived burdensomeness as predictors of suicidal ideation in sexual minority adults. *Psychol Sex Orientat Gen Divers*. 2014;1(3):234–243.

33. Hardt J, Rutter M. Validity of adult retrospective reports of adverse childhood experiences: review of the evidence. *J Child Psychol Psychiatry*. 2004;45(2):260–273.

34. Centers for Disease Control and Prevention. The Behavioral Risk Factor Surveillance System 2017 summary data quality report. 2018. Available at: https://www.cdc.gov/brfss/annual_data/2017/pdf/2017-sdqr-508.pdf. Accessed October 24, 2019.

35. Ludwig C. Conversion Therapy, Its Detrimental Consequences, and Its Place in the National Spotlight. *Rutgers JL & Religion*. 2016;18:121.

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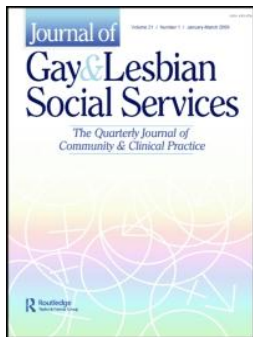
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Fighting for survival: The experiences of lesbian, gay, bisexual, transgender, and questioning students in religious colleges and universities

Shelley L. Craig, Ashley Austin, Mariam Rashidi & Marc Adams

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Fighting for survival: The experiences of lesbian, gay, bisexual, transgender, and questioning students in religious colleges and universities

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ABSTRACT

Little is known about the experiences of lesbian, gay, bisexual, transgender, and questioning (LGBTQ) students attending religious colleges and universities. This study used grounded theory to analyze the narratives ($N = 271$) of LGBTQ former and current students. The central theme described by LGBTQ students was a fight for survival with five subthemes: (a) institutionalized homo/transphobia (strict school policies, enforcement of heterosexuality and gender conformity through discipline, conversion therapy); (b) a culture of fear (fear of exposure, homophobic panic and code words, seeking cover); (c) marginalization and isolation; (d) struggle (suffering and suicide, reconciling faith and LGBTQ identity); and (e) coping and resilience (surviving through critical thinking and strategic activism). Implications for practice are provided.

KEYWORDS

gay, lesbian, bisexual, and transgender students; religious colleges and universities; hegemony; religious abuse

Introduction

Lesbian, gay, bisexual, transgender, and questioning (LGBTQ) college and university students attend public and private institutions (Woodford, Krentzman, & Gattis, 2012). Although the independent nature of many religiously affiliated universities and colleges makes definitive enrollment numbers difficult to determine, the United States Department of Education (2014) states that there are more than 4 million undergraduate students enrolled in private non-profit (2.7 million) or for-profit (1.5 million) schools. Broughman, Swaim, and Keaton (2009) reported that sectarian entities comprise approximately 76% of private educational institutions. Although public attitudes on and off campuses are increasingly accepting of LGBTQ identities (Newport, 2011), it is unknown whether students in religiously affiliated institutions benefit from such social changes. LGBTQ students in religious colleges and universities may also have distinct experiences that influence their well-being

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that are not captured in research with students in non-sectarian institutions. The limited research on LGBTQ students in religious schools suggests that despite the proliferation of sectarian institutions, there are challenges accessing these populations. This study explores the virtually unknown experiences of LGBTQ current and former students at religiously affiliated colleges and universities (RCU).

College climates for LGBTQ students

Educational climates have a profound influence on the mental health of students. Mounting research indicates that homophobia, transphobia, heterosexism, and hostility on college campuses (Rankin, 2003; Woodford et al., 2012) contribute to fear, anxiety, and depression among LGBTQ students (Evans & Broido, 1999; Woodford, Han, Craig, Matney, & Lin, 2013). Such climates result in students feeling unsafe and so fearful of exposure that they avoid spaces known to be LGBTQ friendly and/or try to present as heterosexual/gender conforming (Newman & Fantus, 2015). Moreover, students often do not report incidents of victimization to administration for fear of retribution, such as lowered grades or disrespectful classroom treatment (Rivers & Taulke-Johnson, 2002).

Research indicates the negative consequences of hostile campus climates on well-being of LGBTQ students. School victimization is related to suicidality and poor mental health, such as posttraumatic stress disorder (PTSD; D'Augelli, Pilkington, & Hershberger, 2002; Walls, Freedenthal, & Wineski, 2008). Negative perceptions of campus climate are significantly associated with emotional distress and academic disengagement (Cress, 2000), as well as discrete stigmatizing events, such as victimization by peers (Coker, Austin, & Schuster, 2010). Schmidt and Nilsson (2006) note that even when LGBTQ youths do not experience direct victimization in school, they face a “bottleneck effect” in career development, as they must focus their energy on addressing internal psychological issues regarding the suppression and “neutralization” of their sexual identity while in school, rather than being able to direct that energy toward their classes or careers (p. 22).

The religious school as a social context

Social context is important to the healthy development of psycho-sexual identity (Wilkinson & Pearson, 2009). As key socializing institutions, schools are critical contexts in which to examine the development and emergence of LGBTQ identity. To understand the experiences of LGBTQ students in religious schools, sexual orientation and gender identity must be considered within the broader context of religion. Despite increasing societal pressures, many religious organizations have not fundamentally altered their viewpoint that the “homosexual lifestyle” goes against their moral code (Cohen, Aviv, & Kelman, 2009). Sherkat (2002) suggests that LGB individuals have long experienced rejection by many religious denominations, as “few of the more than 2,500 American religious denominations actively ‘affirm’ homosexuality as a valid and morally supportive lifestyle and many still condemn it as a

sin” (p. 12). Despite increased tolerance from many denominations, there remains a lack of acceptance of LGBTQ individuals in major religious institutions (Sherkat, Powell-Williams, Maddox, & de Vries, 2011).

Research on the effects of religion on LGBTQ populations is mixed. Rosario, Yali, Hunter, and Gwadz (2006) discovered that religious participation served as a protective factor for sexual health and substance abuse for male but not female youths. Other studies have found that religion negatively impacts well-being among LGBTQ populations (Hatzenbuehler, Pachankis, & Wolff, 2012). Minority stress theory, which posits elevated stigma exposure contributes to mental health disparities for LGB populations (Meyer, 2003), supports an explanation of the differential influence of religion on LGB students. Specifically, non-affirming religious settings appear to contribute to minority stress and high levels of internalized homophobia (Barnes & Meyer, 2012). Similarly, compared to communities with LGBTQ affirmative religious climates, hostile religious social contexts contribute to higher rates of alcohol use, sexual health risks, and suicide attempts for LGBTQ youths (Hatzenbuehler, 2011; Hatzenbuehler et al., 2012).

Non-affirming religious contexts tend to be those rooted in fundamentalism (Whitley, 2009). A study conducted by Tsang and Rowatt (2007) with 137 college students at a private religious university found a positive correlation between fundamentalism and level of prejudice toward gay men and lesbians. In such religious contexts, LGBTQ individuals may feel that their identities and relationships are “wrong”; this homophobic perspective is reinforced as LGBTQ individuals are actively shunned by their peers in many religious environments (Sanabria, 2012; Whitehead, 2010). As a result, LGBTQ students often feel alienated within non-affirming religious organizations (Wolff & Himes, 2010).

LGBTQ students and religious schools

In response to increasing student demands for the organization of gay-straight alliances on campuses, many secular schools have begun to focus on LGBTQ issues (Eckholm, 2011). Some scholars assert that the policies of sectarian institutions are also evolving, with LGBTQ issues gaining attention within Christian colleges over the past decade and few schools currently disciplining or banning LGBTQ populations (Wolff & Himes, 2010). However, such claims of LGBTQ support have been refuted by LGBTQ advocacy organizations (Soulforce, 2014; Epstein, Telford, & O’Flynn, 2003). More than 200 American colleges and universities with religious or military affiliations continue to reject admission to “out” LGBTQ students (Soulforce, 2014). On religious campuses, there are a variety of strategies employed by administrators (in the name of religious morality or freedom) that reduce LGBTQ student influence (Eckholm, 2011). A recent trend is for RCU to create sanctioned groups for LGBTQ students under the close scrutiny of school leadership; such groups create the appearance of a supportive climate but have been experienced as unsafe by some LGBTQ students. Most educational institutions do not request that students identify their sexual orientation or gender identity, which may absolve

universities from specifically considering LGBTQ student needs (Epstein, Telford, & O'Flynn, 2003). Despite the challenges articulated by LGBTQ students, few studies have focused on their needs in religious social contexts. This study aims to generate an understanding of the experiences of current and former students at RCU using grounded theory.

Methods

Data collection

An online project aimed at gathering data on the experiences of LGBTQ students in sectarian educational institutions in the United States was conducted. Data consisted of personal narrative documents (Bowen, 2009) submitted anonymously through the website of Heartstrong, Inc., a national education organization. No identifying information was collected. The main page of the website contained a large clickable tab that stated "Share your experiences in religious schools." Potential participants were then able to click to receive information and begin the study. After completion of informed consent, participants were able to complete a Religious Educational Experiences Narrative (REEN). The REEN was created for this study and did not limit the length of the narrative replies. Between 2006 and 2010, 321 REENs were submitted ranging in length from one to seven pages. All REENs were analyzed for study inclusion criteria: (a) a minimum of one completed year at a religiously affiliated college or university and (b) self-identification as an LGBTQ individual. In total, 271 forms met inclusion criteria.

The REEN posed two primary questions related to participants' experiences as an LGBTQ student in a religious school: (a) Please describe your experiences in religious colleges and universities; and (b) Please describe the experiences of any of your friends in these environments. This second research question was based on the literature that identifies that both personal and ambient heterosexual harassment (directed toward peers) impacts the mental health of college students (Silverschanz, Cortina, Konik, & Magley, 2008). The content was analyzed according to the guiding exploratory questions for the study: What are/were experiences of LGBTQ persons while enrolled in religious colleges or universities? What were participants' responses to their experiences in these settings? What effects, if any, did these experiences have on their mental health, well-being, academics, and religious involvement?

Sample

Participant ages ranged from 17 to 56 ($\bar{x} = 29$). A majority identified as male (59%), compared to female (40%) or transgender (1%). Reported sexual orientations included gay (59%), lesbian (30%), bisexual (7%), or unsure/questioning (4%) (see Table 1). Participant race and ethnicity were not captured, but participants were able to write in their religious and educational affiliations in an open-ended question.

Table 1. Participant demographics (*N* = 271).

| Demographic | Count | Percentage (%) |
|--|-------|----------------|
| <i>Age (N = 271)</i> | | |
| >20 | 13 | 4.70 |
| 20–30 | 124 | 45.75 |
| 30–40 | 99 | 36.53 |
| 40–50 | 27 | 9.96 |
| <50 | 8 | 2.90 |
| <i>Gender Identity (N = 262)</i> | | |
| Male | 182 | 69.4 |
| Female | 78 | 29.7 |
| Transgender | 2 | .07 |
| <i>Sexual Orientation (N = 271)</i> | | |
| Gay | 164 | 60.4 |
| Lesbian | 71 | 25.9 |
| Questioning/Unsure | 21 | 8.1 |
| Straight | 6 | 2.3 |
| Bisexual | 6 | 2.3 |
| Queer | 3 | 1.0 |
| <i>Graduated from Religious School (N = 230)</i> | | |
| Yes | 150 | 65.2 |
| No | 80 | 34.8 |

Note. All questions were voluntary and some participants did not respond. The Religious Educational Experiences Narrative (REEN) did not contain questions about race or ethnicity.

Participants reported a wide variety of denominations and sectarian institutions, including Catholic, Seventh-day Adventist, Islamic, Jewish, Methodist, Christian, Baptist, as well as variations within those groups (e.g., charismatic, fundamentalist, conservative, orthodox).

Analysis

Data were analyzed using grounded theory strategies (Charmaz, 2014). The process of exploring the experiences of LGBTQ students in RCU began by reading transcripts to initiate understanding of participants’ experiences. All four authors independently coded the transcripts, using open and line-by-line coding and constant comparison within and across data (Charmaz, 2014). The two primary researchers then engaged in focused coding to further explore initial codes that appeared particularly relevant to participant struggles during college or university, which allowed for some of the implicit concepts in the data to become more explicit. Grounding the analyses in the data led to identification and ordering of codes, the generation of categories, and the development of larger analytical concepts (Charmaz, 2014). Theoretical sampling, the process of purposely seeking and exploring specific data to elaborate and refine emerging categories (Charmaz, 2014), was used to ensure the development of precise categories and overarching concepts. Over four research meetings, core findings were discussed and concepts were further refined, leading to the development of one primary theme, Fight for Survival, and five subthemes (institutionalized homo/transphobia; fear; isolation; struggle; and coping and resilience) associated with the experiences of LGBTQ students in RCU.

The research team took several steps to enhance the methodological rigor of the study and to ensure credibility, confirmability, dependability, and transferability of

results. Trustworthiness measures included the research experience of the investigative team (members have expertise in grounded theory methodologies and clinical and research experience with LGBTQ populations); the use of thick description (the extensive use of descriptive accounts and quotes); and maintenance of an audit trail (detailed recordings of the research steps and process) (Padgett, 2008). Written notes, memos, and feedback from the research team were used throughout data analysis to confirm themes and to validate interpretations of participant experiences to ensure the findings were grounded in the data.

Researchers' backgrounds and assumptions

The first author is a lesbian who has worked with LGBTQ populations in practice and research for two decades. She was also a student at a religious undergraduate institution. The second author is a pansexual woman with more than 15 years of research experience with LGBTQ populations and is currently a faculty member at a Catholic university that takes an affirming stance toward LGBTQ populations and issues. As a student, she did not attend a religious institution. The third author identifies as a heterosexual person of color with no religious school experience. The fourth author is a gay man that attended an undergraduate religious institution. Previous clinical, research, and personal experience led to the researchers' assumptions that LGBTQ students in religious educational institutions have experiences that are different from other educational experiences.

Because researchers had limited access to participants and there was no opportunity for member checking, all members of the research team met twice for two hours to reflect upon the findings within the context of our own professional, religious, and social locations to explore the possibility of biased interpretations. Helpful feedback from this process included the recognition that while the data included narratives from students/former students who experienced egregious harm within their religious educational contexts, and that while similar to the experiences of some of the researchers and/or former LGBTQ youths served by members of the research team, these experiences may vary by student and institution, and may not be universal. This perspective was incorporated into the research team's final analysis and presentation of the findings and limitations. The research team worked to explore and reflect upon the impact that positionality (e.g., queer, female), religious backgrounds and or current affiliations (Christian, Jewish, Muslim, atheist), and prior clinical experiences (e.g., working with LGBTQ students that had attended/were attending religious schools) may have on the interpretation of findings.

Findings

A core idea that emerged from the experiences of LGBTQ students in religious schools was their *fight for survival*. This fight for survival included emotional, psychological, spiritual, and physical facets. Participants' narratives revealed five sub-themes associated with their fight to survive in religious schools:

1. institutionalized homo/transphobia (strict school policies, enforcement of heterosexuality and gender conformity through discipline, conversion therapy);
2. a culture of fear (fear of exposure, homophobic panic and code words, seeking cover);
3. marginalization and isolation;
4. struggle (suffering and suicide and reconciling faith and sexual orientation); and
5. coping and resilience (or a struggle for resilience).

Participants' quotes have been presented as submitted, except where indicated in brackets.

Institutionalized homophobia and transphobia

Strict anti-LGBTQ school policies

LGBTQ students were very aware of their school policies. To set the context for their experiences, many participants initially described strict policies for student behavior that were clearly outlined in student handbooks. According to one participant, these anti-LGBTQ policies were introduced at the very beginning of their matriculation: "During orientation, each student was given a code of conduct that was enforced." These handbooks essentially function as the student code of conduct and students are required to sign off and abide by them as conditions of continued enrollment. Another participant (age 21) noted the strong anti-LGBTQ stance explicated in his or her school's policy: "In the student handbook, it clearly states that if students are caught in homosexual acts, they will be expelled."

Within these handbooks, many schools articulated inappropriate behavior (e.g., caught performing homosexual acts) instead of identity (e.g., being LGBTQ). However some policies considered an LGBTQ orientation as a transgression equal to troubling sexual crimes (e.g., sexual violence). One student (age 23) stated, "In the handbook, it lists homosexuality as equally violent as rape and sexual abuse and they were each disciplined with equal weight."

Thus, conservative religious educational institutions often hold policies completely forbidding students from acting on their sexual orientation or voicing the "struggle" of having an LGBTQ identity (Sanabria, 2012) and reinforce those expectations by establishing parallels with egregious crimes. The institutionalization of homophobic policies and viewpoints in documents such as the student handbook, a principal document which is supposed to detail and safeguard the rights of students, was particularly troubling to many respondents.

Enforcement of heterosexuality and gender normativity through discipline

Many students reported instances of discipline for attempting to embody their burgeoning LGBTQ identities. In some circumstances, often under threat of expulsion, students would agree to modify attitudes, behaviors, or appearance that transgressed university-sanctioned social norms. The following quote describes the experience of a transgender freshman (age 19) forced to engage in dress and

behavior inconsistent with his internal sense of self in order to continue matriculating in his Christian school.

During my first year at college, someone saw my girlfriend and I kiss on the swings at the campus park and immediately went and told the pastor of the school and church. The pastor called my house and informed my grandparents that I wasn't allowed on campus because of my actions. They were going to expel me but my grandparents want me in that school and I really have no say in it. Also they found my website that explains me being transgender and wanting to be male. So when I went into the meeting immediately they said I was out of the school. My grandparents were then called in and somehow I was let back in with these rules: I had to wear a skirt every day, grow my hair out, stay away from the girls, [and] go to their church 3 times a week. I was forced to sign a contract saying I was to follow those rules for the rest of the year.

For violating both implicit and explicit rules, this student was disciplined through social exclusion, open shaming, and threats of expulsion, which in turn caused stress for his family. The final agreement between the school and the grandparents resulted in consequences that can have notable detrimental impacts on well-being for transgender individuals. Other participants similarly reported that their families or friends were often used as an additional form of social pressure to coerce changes in their attitudes or behavior.

Students often had to engage in concrete behaviors (e.g., signing a contract or attending services) intended to enforce conformity to a gender or religious norm. Sometimes the enforcement included physical punishment or deprivation. A 42-year-old participant stated the following:

I] was slated in the end to be put on a 40 day fast of bread and water because I loved another man. I am diabetic. If I had submitted to the fast I would have died. I left them instead. For the penalty of masturbation, [I] had to recite almost endlessly a litany of prayers, bowings to the east and received harsh words and disciplines for such infractions. It was thought that it would be better that a homosexual should die so as not to commit any homosexual acts or deeds.

The enforcement of heterosexuality and gender conformity within some RCU included a wide range of disciplinary actions that were damaging to students' well-being.

Conversion therapy

Very few participants reported seeking help to cope with their struggles regarding their LGBTQ identities. Most stated simply that “[t]here are no safe or available resources for those who struggle.” Those that accessed the school counseling center experienced interventions intended to suppress their LGBTQ identity.

I did not have anyone to talk to. I put in a counseling request form, though I was afraid of what might happen because of my school's policy. I was sure that they would not even be allowed to affirm me as gay. During my intake appointment the counselor did exactly what I feared, she referred me to what I was sure was “reparative therapy”; at least that was what she described. I did not protest because, quite simply, I was too scared. After much internal conflict, I decided to go through with it and contact the therapist because I was completely desperate at that point. I was even considering “ex-gay” again. (Age 25)

Other students similarly reported the widespread use of controversial and unethical conversion therapies when they sought mental health care.

While a student at college I sought counseling from a Christian psychologist and professor. He encouraged me to see him in his private practice and to go through 40 sessions of “aversive conditioning” or electric shock therapy to cure me of my homosexuality. (Age 32)

Such experiences with mental health practitioners contributed to participant reluctance to pursue psychosocial care while students.

Culture of fear

Students clearly articulated a culture of fear that permeated many of their experiences as LGBTQ students at religious institutions. Participants reported a fear of exposure of their LGBTQ identities, which was perpetuated by a broader climate that used “homophobic panic” and stigmatizing “code words.” In response, the LGBTQ students sought cover and tried to survive by using a variety of strategies to protect themselves and their identities.

Fear of exposure

Threats by faculty and other students resulted in fear of exposure of participants’ LGBTQ identities. Given that school policies and practices punished students for having, displaying, or acting on an LGBTQ identity, hiding their identities was a pervasive concern. The fear of expulsion was a particular issue for many students.

People at school could tell I was different, and comments and jokes came back to me from time to time. I lived in constant fear of expulsion from the college. I did not want this because I borrowed so much money to go there I could not back out; and I had nowhere else to go at this point because I was abandoned by my family because of my sexuality. (Age 31)

Some students discussed the climate of fear cultivated by the expulsion of others.

The impact the expulsion [of a student admitting he was gay] had on the student body was one of constant fear—that the “underground” [LGBTQ] students would be discovered, that students or administration officials would be posted near the gay bar in town in order to catch student[s], that those who were attending gay-friendly events, churches, or businesses would be evidence enough to be expelled. (Age 29)

I never felt afraid for my physical safety, but there was an enormous shadow following me around everywhere, apprehension that I’d be discovered and expelled. (Age 37)

Fear was perpetuated among students through stories that circulated in which students that exhibited LGBTQ behaviors were disciplined and “made examples” as a warning to others.

The people I went to school with ridiculed [a lesbian] and treated her like trash until the school finally expelled her when she came out. There were rumors circulating that her transcript was totally deleted from their records. I didn’t want to end up like that. (Age 24)

Thus, the threat of expulsion was a very powerful warning to students to vigilantly hide their LGBTQ identities.

Homophobic panic and code words

Communication of unacceptability of LGBTQ identities through language was an important component of the culture of fear. Some students reported direct homophobic slurs used simultaneously with religious pressure to modify their behavior, while many noted that homophobic attitudes, beliefs, and language were never discussed directly; instead, school administrators and faculty would use broadly understood “code words” to deliver the message that LGBTQ identities and behaviors were unacceptable. An intricate exclusionary system reinforced the idea that LGBTQ students were a threat to religious beliefs and consequently needed to be changed or rejected.

Some guys called me “queer” and other hurtful names. One guy punched me out several times, saying that I didn’t deserve to be at a school with “real Christians.” Several people held prayer meetings dedicated to helping me “get my heart right with God.” All of these code words about being “different” masked a homophobic panic (Age 26)

Many students stated that the specific terms or identity labels (e.g., gay, lesbian, homosexual) were never spoken, as instead schools delivered anti-LGBTQ messages via “code.” Participants noted that the anti-LGBTQ stigma is so pervasive that it is often communicated indirectly; for example, “in a secret society where everyone knows what they mean. We students are so familiar with this insider language that it is clear what administrators are referring to when they target friendships that are *too close*.”

I was questioning my sexuality, but certainly wasn’t “out” so I was not expelled or disciplined in school. However, in Religious Life (course) we were always warned against “particular friendships” or “exclusive relationships” and I was disciplined over one such exclusive relationship with my roommate. (Age 33)

Other students discussed that the reinforcement of acceptable behavioral norms was delivered using indirect or spiritual tones.

Though I wasn’t expelled from the College for [LGBTQ] reasons officially, I was deemed to be “different” and not “spirit-filled.” It was suggested by several faculty members that I not return with my “rebellious spirit” intact. (Age 25)

Such coded language was interpreted by participants as a rejection of their behavior for being “too gay” or “too friendly with other women,” which led to a fear of judgment and consistent internal monitoring of their behavior in order to make it through their education.

Seeking cover

To survive, participants coped in several ways. For some, the choice to attend religious school was an attempt to seek cover and avoid or hide their LGBTQ identities.

I decided to go to a conservative Christian school as a sort of last ditch effort to run away from my sexuality. I thought if there was one thing that would convince me I wasn't gay, it would be Christian college. (Age 31)

Existing in an environment of constant surveillance caused some students to become hypervigilant and monitor their gender presentation or sexual orientation to avoid suspicion. Several sought to deny their sexual orientation by fully embracing a non-LGBTQ lifestyle. Some channeled their internalized homophobia into anti-LGBTQ activities in the hopes of suppressing their own LGBTQ identities. This projection or overcompensation was often directed toward helping others in their battle against LGBTQ behaviors.

I was very homophobic and a volunteer counselor at a local ministry to help people change their sexual orientation. I started to break down toward the end of the last semester as the struggle to cope with my attractions to other men was causing extreme anxiety. (Age 40)

In an effort to deflect attention from their own feelings, others aggressively sought out and reported those in their colleges that were LGBTQ.

My fear of God and the institution prevented me from acknowledging and/or doing anything "gay." Actually I was one of the "gay bashers." I successfully facilitated the expulsion of two of my fellow students as well as the removal of a faculty member. I now realize that this was my way of providing "cover" for myself. How sick I was. I believed their abusive hatred and felt somehow I was doing the right thing. How I regret my actions today!!! (Age 35)

Many participants went to great lengths to seek cover for their LGBTQ identity by creating fake heterosexual relationships, and some of these behaviors continued long after leaving college.

There was a time in my sophomore year that a kind friend pulled me aside and asked if I knew about the rumor going around that I was gay. Of course I denied it (I was denying it to myself at the time, I didn't come out to myself until 12 years later), but I realized that that would explain why people were starting to avoid me. So I went on the offensive. I created an imaginary girlfriend at home and started to talk about her. I figured that since she was imaginary, I might as well make her blonde and stunningly beautiful. It only took a week for things to start to improve for me. People started to talk to me again. (Age 34)

Several participants similarly sought cover in both heterosexual marriages and active church ministry.

In college I was not out to myself and yet had circumstances where I was drawn to other gay men. In seminary, I received my degree in Pastoral Theology and had an affair with another man but didn't come out to myself until 8 years later. By that time I was married and had two children. (Age 56)

Based on the teachings of my former school and my then current church, I threw myself lock stock and bible into the straight world, as a good married Christian housewife, certain that as they taught me in the past, it was a matter of willpower and walking away from sin. I was tenacious. I stayed to all appearances a nice straight happily married Church attending Conservative Christian wife for TEN years before I could no longer ignore my gender and my unhappiness. (Age 41)

Sadly, such misguided efforts aimed at taking cover to survive in a hostile climate had long-lasting negative impacts on participants. For example, participants discussed issues such as mental health problems that were linked to these negative educational experiences.

Marginalization and isolation

Administration and faculty contributed to the marginalization of LGBTQ students, often through the use of laughter or silence.

One day I came to my dorm room with a sign posted on my door. This sign said, "I am a homosexual, I love sex with children." I am still unsure of the intent of this message and I could not tell if it was a joke or a personal attack. Regardless, I reported the incident to my RA, who began to laugh. I went on to report this incident to the Student Development Office, and they did nothing. Throughout the school, I was often the butt of cruel "gay jokes" and I found little comfort in their so-called "Christian" environment. (Age 28)

Other students articulated that in classes faculty made jokes at the expense of LGBTQ students.

I was appalled my senior year when two professors made jokes in the classes about homosexuals. Of course everyone thought this was funny. Students were allowed and encouraged to bash homosexuals. I still have the memory burned in my mind of the last day of a social work class with families. The professor (dean of the department) stated, "what are some of the problems with families in America today?" One of the female students answered "gays." The professor then continued a conversation on why gays are harming American families today and it was clear no one could speak up in opposition. (Age 26)

The silencing of LGBTQ students or their allies reinforces the predominance of heterosexuality and gender normativity and fuels fears of disclosure. Thus, the use of silencing and shaming can contribute to less disclosure and further stigmatization of LGBTQ individuals.

The importance of community experienced in religious schools was often discussed by participants. Being isolated, voluntarily or involuntarily, from religious communities may represent a loss of identity and self because such support may be difficult to find elsewhere for individuals who have experienced extreme homophobia within religious institutions.

I eventually left and no longer consider myself Catholic or a member of any organized religion. I still long for the sense of community I experienced and would love connecting with other [LGBTQ] former members of religious orders. (Age 36)

Some participants still reported a pervasive sense of isolation and disconnection as a result of their intersecting LGBTQ and Christian identities.

To my knowledge, I have never been around any gay persons. There have been no examples for me to follow and I spent many years, always knowing I was gay and always feeling like I was the only gay Christian in the entire universe. At this point in my life, I would like to form friendships with other LGBT people but I feel trapped (I come from a very conservative family as well) because I do not know any other LGBT people. (Age 45)

Consequently, the social exclusion experienced by LGBTQ students can result in isolation and a quest for affirmative support.

Struggle

Students expressed multiple manifestations of their struggle for survival within this social context that included suffering and suicide, as well as struggles between their religious and LGBTQ identities.

Suffering and suicide

The theme of suffering was quite pronounced throughout the students' narratives. The treatment they received as students in religious schools was often accepted by participants as their punishment for being LGBTQ.

My years at [university] was my purgatory for being cowardly. There were so many uncalled-for homophobic comments in classes and chapel and general student conversations that I can't even begin to list each singular incident. (Age 31)

Such experiences of shame often spanned their years as students and contributed to accumulated stress to their mental health. Many participants stated that the constant pressure and need to escape the pain of daily life often led to suicide attempts while enrolled in school.

I became extremely depressed and suicidal while attending school there. I took to drinking and partying to try to escape myself. One night I was with a friend and was so despondent, I took out a gun and threatened myself. He took it from me but it didn't stop how I felt. Within six hours of my friend taking the shotgun, he was having me admitted to a hospital mental ward as I got to the point of using a knife to try to kill myself. (Age 24)

Several students considered their suicidality and poor mental health as punishment for their inability to repress their LGBTQ identity. Many who hadn't experienced this themselves had seen such behavior in their friends.

Most of the young people I knew "disciplined" themselves. There were many suicide attempts and "nervous breakdowns" along with a constant low-level depression. (Age 25)

The persistent antigay messages that these students received contributed to a sense of shame that was so powerful that many almost did not survive.

Reconciling faith and LGBTQ identities

Students in religious schools are taught that being LGBTQ means the severance of a spiritual relationship. Many have been raised in religious social contexts that include family, educational, and church systems. This struggle to live authentically both as a religious or spiritual person and as LGBTQ posed a challenge for many students. This religious context continued to shape the recognition and reporting of LGBTQ identity into young adulthood.

I was taught homosexuality is a sin and one cannot have a relationship with God if they CHOOSE to live that lifestyle. So I hid my sexuality while in college and then abandoned

my relationship with God. I have just recently come out to my parents and they still demand that I repent and surrender this choice. (Age 35)

The struggle between the external pressures exerted by their educational institutions and their internal struggles with coexisting was commonly articulated in participant reflections.

During my junior and senior years of college, I struggled to reconcile my faith and my sexual orientation. I had other gay friends there, some who I was sexually active with, but none of us were open about it. We all hid it and “struggled” spiritually with it. (Age 27)

This internal battle caused inner turmoil for the participants because many had found comfort in their religious relationships. They were nostalgic for the feelings of closeness with their religion, but could not reconcile them with their shame. Some students appeared to be losing the struggle to reconcile their faith and LGBTQ identity positively.

I miss having a relationship with God and I hate feeling like a dirty person every time I think about being a lesbian, but I don't know how to get around these issues. I feel like a bad, dirty person every day because I am homosexual. I feel that it is not a choice, but I can't turn off the voices I've heard for nearly 20 years that tell me I'm wrong. (Age 51)

In this study, many participants coped with this struggle by initially repressing their sexual orientation in favor of their religious identity. As time passed, many chose to seek out religious environments that were open and affirming and start the long process of self-acceptance by integrating their new, affirming faith with their sexual orientation and/or gender identity.

I came to the belief that God made me this way. I tried to be straight for years and it never worked. This is who God made me to be, and God doesn't make mistakes. (Age 42)

For many, this reconciliation required a great deal of study.

Thank God for the internet and my research. It took me the last two years of my marriage, researching everything from the bible in its original Hebrew, to seeking online connections for help as I wrestled with my most painful question, can you be gay and be Christian? My faith survived my coming out process. (Age 36)

Many others felt that such reconciliation was not possible and/or felt comfortable abandoning their religious identity, and accepting and owning their LGBTQ identity.

Such is the nature of homophobia and the effect of religious oppression—some of us come to our senses and some do not. It must be dealt with or it deals with us—and suffering is the result. I threw out the ex-gay ministry propaganda, and decided that I'd be much happier being gay than worrying about whether or not I was going to heaven. I stopped believing in their “god” and never looked back. (Age 44)

Thus, despite encountering significant stigma while students in religious schools, through these struggles many participants advanced their own identity development. This growth, through (a) a reconciliation of faith and identity, or (b) a

rejection of faith, or (c) a combination of the two, contributed to a reduction in despair and increased well-being.

Coping and resilience

Surviving through critical thinking and strategic activism

Many participants credited their survival to their ability to think critically about their experiences and become active. Supporting other students was a way that participants were able to cultivate their own resilience. One student defied the administration and created a more open campus atmosphere by starting an “underground” LGBTQ support group. This represented a very real sense of empowerment.

As the administration got word of my efforts (with the [LGBTQ] support group), I was asked to bring an end to the group and told if I did not stop passing out flyers I would be asked to leave the school. I did not end the group and I was prepared to be kicked out if that meant that [LGBTQ] students on campus could meet and get the support they needed. I would alter the location of the group every week and the meeting place was always confidential and always on campus. That was one of my necessities—it had to be on campus to meet the needs and send the school a message. The administration had a tough time targeting me after more and more students started to come out on campus and be open, God-loving queer folk. (Age 30)

This positive, proactive response on campus to institutionalized homophobia illustrates an important form of resilience.

In contrast, for some participants, leaving the campus, either voluntarily or involuntarily, gave them the freedom express their true selves.

When I was 21, just a few months after graduating from university, I finally came out to myself. I felt such a relief to finally allow myself to feel. (Age 23)

Leaving campus allowed others to gain a different perspective and reflect on their experiences.

I was asked to move off campus (I think they were trying to sweep me under the rug). When I left the university, I did not believe in God and despised the hypocrisy of the evangelical/fundamentalist Christians I met there. I have fought my way back. (Age 35)

The ability to critically examine and grow beyond the exclusionary values that were revered in their RCU may be a particular act of resilience for these students.

Discussion

This study provides a glimpse into the understudied world of LGBTQ students in religious colleges and universities and provides insight for social service professionals. Overall, participants articulated the centrality of a fight for survival when they considered their experiences in religious schools. As illustrated in [Figure 1](#), the emergent conceptual model suggests that a larger context of fundamentalist/antigay

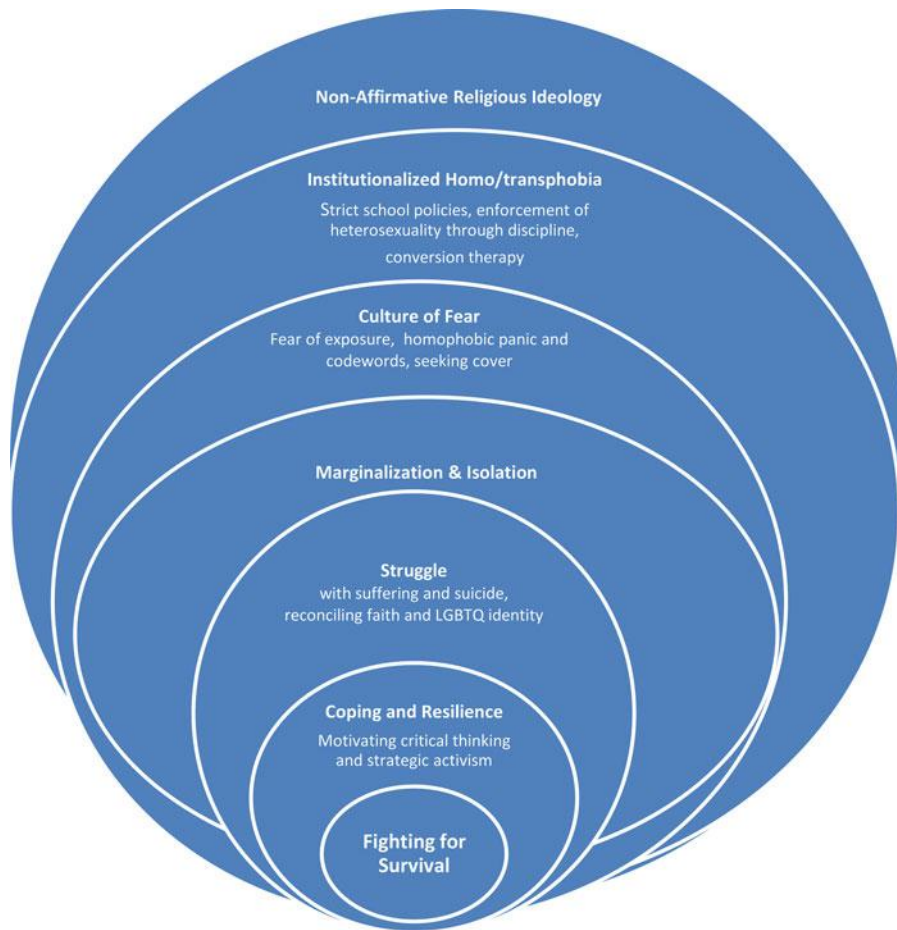


Figure 1. Fighting for survival: A conceptual model of LGBTQ students' experiences in religious colleges and universities.

religious ideology impacts anti-LGBTQ institutional policies and structure, which in turn contributes to a culture of fear that may result in students seeking cover for their LGBTQ identities. This fear leads to isolation, which contributes to struggles with suffering and suicide. For many participants, these struggles to survive resulted in a renegotiation of LGBTQ and religious identities, which contributed to their resilience.

Students struggled in various ways to resolve the conflict they felt between their sexual orientation and the religious doctrine to which they had been exposed. For instance, participants reported immersing themselves in helping others to eliminate their LGBTQ identity, burying themselves in religious ministry, entering into heterosexual relationship (both real and imagined), and abandoning their schools or faith. Students' painful struggles to understand their emerging sexuality and to reconcile intersecting faith and sexual identities were exacerbated by homophobic policies that isolated students and threatened academic failure and expulsion for embracing their identities. Similar to the findings of Wilkinson & Pearson (2009), students repressed or rejected their sexual orientation while

some internalized and/or embraced anti-LGBTQ attitudes and actions. As many religious institutions assert identity is an individual choice, LGBTQ students may experience shame because they are not strong enough to “overcome” this identity and consequently believe they deserve punishment (Sanabria, 2012; Whitehead, 2010). These conflicts resulted in great suffering, including suicidality for some students, and contribute to their poor mental health (Exley, 2013; Helminiak, 2008; Schuck & Liddle, 2001).

Study participants that sought professional treatment found that the response by counselors ranged from ineffective to harmful “reparative” therapies. Such findings are particularly concerning given the stance of all major mental health and educational associations (National Association of Social Workers [NASW], American Psychological Association [APA], American Counseling Association [ACA], Council on Social Work Education [CSWE]) that clearly renounce conversion therapies (Alessi & Craig, 2016; Anton, 2010; Craig et al., 2016; NASW, 2000; Whitman, Glosoff, Kocet, & Tarvydas, 2013). More recently, several states have banned conversion therapy (Lavender, 2015), yet these important advances may not have influenced the climate at RCU.

When LGBTQ students are afraid to disclose their LGBTQ status, then the student body is only aware of heterosexually identified students (Turner, Crisp, & Lambert, 2007), which in turn perpetuates further silence. Pettigrew and Tropp (2006) found that as individuals increasingly socialize with those who are different, they develop empathy, become less anxious about future interactions, and become less prejudicial in their attitudes. Specific to religious contexts, Cunningham and Melton (2013) found that effects of religiosity on sexual prejudice decreased when more contact was reported between LGBTQ and religious individuals. Woodford, Levy, and Walls (2013) found that heterosexual Christian students enrolled in a large non-sectarian liberal arts university often harbored strong anti-LGBTQ personal feelings, yet reported that the open campus climate exposed them to LGBTQ students, which contributed to a reduction of their own homophobia. The results of this study suggest that LGBTQ students in religious colleges or universities who do not have “out” classmates or professors, or an LGBTQ-affirming climate to neutralize pre-existing prejudicial attitudes, may experience threats to their mental health.

Harsh penalties for LGBTQ students may emerge from the sense that religious organizations believe they are under attack. All participants discussed the struggles they experienced between their LGBTQ and religious identities in an environment of administrative vigilance. Macgillivray (2008) found that religious hegemony or authority is enshrined in institutional policies and covenants. Perceived threats to these policies, such as an LGBTQ identity, are considered direct attacks on spiritual and educational authority. Narratives suggest that faculty, administration, and students all serve as anti-LGBTQ enforcers in various capacities. Macgillivray (2008) found that religious teachers feared that the legitimization of gay identities would lead to the destruction of social norms. Thus, to protect society and their religious beliefs, teachers had to be vigilant enforcers of anti-LGBTQ rhetoric. These religious beliefs

were “protected” through a range of strategies similar to this study, such as covertly mocking LGBTQ students and overtly disciplining them. Importantly, this study found that such approaches were also utilized by other students toward their LGBTQ classmates.

In defense of this perceived attack on spirituality, some religious school leaders have opposed antidiscrimination policies for LGBTQ students and support their expulsion on the grounds of freedom of religion. Echoing Hills’ (1997) explanation that conservatives see antidiscrimination policies as “barely concealed weapons aimed at their beliefs” (p. 1588), religious high school administrators have argued that anti-LGBTQ policies protect parental rights to a religious education and changing those policies would be a violation of the First Amendment. This approach effectively positions the ardently religious as the group experiencing discrimination (Macgillivray, 2008), and the need for protection from this “threat of homosexuality” contributes to homophobic attitudes (Harbaugh & Lindsey, 2015; Haslam & Levy, 2006). Such fears are now being enshrined in the religious freedom legislation being considered across many states (National Conference of State Legislatures, 2015).

Although participants shared challenges associated with navigating LGBTQ identities while enrolled in RCU, they also articulated resilience. Ungar (2012) describes resilience as the facilitative processes that enable coping in the face of adversity and notes that environments that facilitate or hinder resilience may be particularly influential to coping and ultimately impact mental health. Although religious environments provide a sense of community (Berger, 1967; Krause, 2008) and belonging (Lim & Putnam, 2010), the rejection experienced by some participants left them floundering for social connections and support. This study found that survival for LGBTQ individuals included seeking community outside of the traditional religious contexts (e.g., with LGBTQ advocacy). Study participants reduced the impact of discrimination in a homophobic social context by managing their LGBTQ identities using “role flexing” (e.g., identifying with the least stigmatized identity in a given context) (Craig, Austin, Alessi, McInroy, & Keane, 2016; Wilson & Miller, 2002). While leaving their institutions physically (e.g., withdrawing from classes) or emotionally (e.g., internally rejecting the doctrine) was the only option for some, others became advocates actively working to eliminate barriers for LGBTQ students. This positive, proactive response to institutionalized homophobia has been demonstrated in earlier research (Craig, Dentato, Messinger, & McInroy, 2016). Wilkinson and Pearson (2009) found that students that report LGBTQ attraction in stigmatizing contexts often leverage that same stigmatized identity to combat stigma on behalf of others. Other participants retained their spiritual connections by deftly negotiating oppressive religious perspectives to create positive spiritual relationships. Although the long-term effects of attending religious educational institutions are not well-understood, the results of this study point to lingering effects of pervasive and persistent religious social environments to LGBTQ student mental health.

Implications for practice

This study provides several insights to inform practice with LGBTQ populations. It is critical to consider the effects of attendance at religious educational institutions with homophobic and transphobic cultures, policies, and practices. As identified by study participants, LGBTQ individuals may have a range of responses to those experiences that may impact their long-term mental health. Initially, practitioners should assess their clients for attendance at RCU and acknowledge the possibility of psychosocial effects. Few study participants had ever discussed these experiences. Although religious involvement can be protective for some LGBTQ individuals, the results of this study indicate that involvement with non-affirming, non-inclusive religious organizations may pose serious risks. For instance, the impact of these experiences on feelings such as guilt, shame, and fear appeared to cross the boundaries of denomination or age. Services and interventions for these individuals should be tailored to these experiences; particularly noting that clients may report a struggle between religious and sexual or gender identities. For many clients, their own familial and religious identities are inextricably linked and they may internalize their experience in a RCU as a failure to live up to the expectations of those communities. Openly addressing any shame and guilt through affirmative practice approaches that reinforce the positive nature of LGBTQ identities is critical (Craig, Austin & Alessi, 2013).

A key component of affirmative practice with clients exposed to LGBTQ oppression based in religion is the self-reflection and self-awareness of providers, and a willingness to engage in social change efforts. Service providers should explore their own beliefs with regard to LGBTQ identity and religious affiliations and involvement. Providers must recognize that progress on LGBTQ issues at national and state levels does not necessarily trickle down to a RCU rooted in fundamentalist ideologies and anti-LGBTQ beliefs. As such, practitioners should take steps to recognize hegemony and advocate for positive change across colleges and universities. Practitioners must take an active stance against RCU that embrace policies and practices that explicitly oppress LGBTQ students, faculty, and staff (e.g., written policy statements and student handbooks), as well as against other implicit and insidious forms of LGBTQ oppression (e.g., do not have an LGBTQ student organization, fail to provide gender-inclusive restrooms or housing). Raising awareness about the deleterious impact of LGBTQ-oppressive practices and the positive impact of inclusivity is also critical. Practitioners can work with institutions to create campuses that are safe, welcoming, and affirming across the spectrum of identities. Despite such potential, this study suggests a tremendous gap in the provision of safe and affirming higher education for LGBTQ students, a gap which deserves immediate scrutiny and action.

Limitations

This study has several limitations. This research was designed to elicit the experiences of current and former students in RCU. Students that did not participate

may have different narratives. For example, negative experiences may have compelled some students to participate while those with positive narratives did not. Thus the data may reflect the experiences of students in schools with more fundamentalist beliefs and do not cover all RCU. Moreover, there may be individual supportive faculty, staff, and students within these institutions. This study spanned several years and a vast number of religious educational environments. Although the heterogeneity of the themes over time and institutional contexts is illuminating for this exploratory study, this study does not claim to capture the nuance of particular denominations and recognizes that some institutions may have evolved over time. However, current information suggests that some RCU continue to espouse anti-LGBTQ policies and approaches to education. For example, the San Diego Christian College (SDCC) student handbook states the following:

This covenant is binding for all members who choose to become part of the SDCC Community and are standards that should be maintained while a member. The traits that should not inhabit our lives are identified as abusive anger; malice; jealousy; lust; sexually immoral behavior including premarital sex, adultery, pornography, homosexuality, [and] evil desires. (SDCC, 2010, p.2)

As participants were not required to list their religious schools (although some did), we opted not to list the institutions because we would not have a comprehensive list. Importantly, religiously affiliated educational environments may be on a continuum between and within denominations (Moon, 2014) and there is likely great diversity within those student experiences. Despite this challenge, it is important to give voice to the experiences of participants in this study. Moreover, the lingering effects of these experiences are important as the current climates may have little bearing on the lives of former students. Importantly, we did not ask whether the participants experienced long-term effects from these experiences in RCU, yet most participants utilized the open-narrative format to reflect extensively and insightfully about those effects. Surprisingly, few of our participants espoused fluid sexual or gender identities (e.g., genderqueer). This could be due to the retrospective nature of the data collection or the pressures of religious environments that leave little room for flexible identities (Wilkinson & Pearson, 2009), but remains an intriguing area for study.

Conclusion

The results of this exploratory study across multiple institutions indicate experiences in religious social contexts share unique features that deeply impact both current and former students. Despite the progress of the LGBTQ movement, such advances may not be impacting the lives of LGBTQ students in RCU. Since thousands of LGBTQ students attend these educational institutions across the United States, their experiences are important to study and our results offer critical insights into the painful experiences and potential implications of anti-LGBTQ university policies, practices, and ideologies on the lives of students.

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References

- Alessi, E., & Craig, S. L. (2016). Conversion Therapy: A Position Statement for Social Work Education. *Council on Social Work Education*. Retrieved from <http://www.cswe.org/File.aspx?id=85010>.
- Anton, B. S. (2010). APA resolution on appropriate affirmative responses to sexual orientation distress and change efforts: APA policy statements. *American Psychologist*, 65, 385–475.
- Barnes, D. M., & Meyer, I. H. (2012). Religious affiliation, internalized homophobia, and mental health in lesbians, gay men, and bisexuals. *The American Journal of Orthopsychiatry*, 82(4), 505–515.
- Berger, P. L. (1967). *Sacred canopy: Elements of a sociological theory of religion*. Garden City, NJ: Doubleday & Co.
- Bowen, G. A. (2009). Document analysis as a qualitative research method. *Qualitative Research Journal*, 9(2), 27–40.
- Broughman, S. P., Swaim, N. L., & Keaton, P. W. (2009). *Characteristics of private schools in the United States: Results from the 2007–08 private school universe survey* (NCES 2009-313). Washington, DC: National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education.
- Charmaz, K. (2014). *Constructing grounded theory: A practical guide through qualitative analysis*. Thousand Oaks, CA: SAGE.
- Cohen, S. M., Aviv, C., & Kelman, A. Y. (2009). Gay, Jewish, or both: Sexual orientation and Jewish engagement. *Journal of Jewish Communal Service*, 84(1/2), 154–166.
- Coker, T., Austin, S., & Schuster, M. (2010). The health and health care of lesbian, gay, and bisexual adolescents. *Annual Review of Public Health*, 31, 457–477.
- Craig, S. L., Alessi, E., Munke, P., Galarza, J. (2016). Conversion Therapy: A Resource Guide for Social Work Education. *Council on Social Work Education*. Retrieved from <http://www.cswe.org/File.aspx?id=85017>
- Craig, S. L., Austin, A., & Alessi, E. (2013). Gay affirmative cognitive behavioral therapy for sexual minority youth: A clinical adaptation. *Clinical Social Work*, 41(3), 25–35.
- Craig, S. L., Austin, A., Alessi, E., McInroy, L., & Keane, G. (2016). Minority Stress and HEROic Coping among Ethnoracial Sexual Minority Girls: Intersections of Resilience. *Journal of Adolescent Research*. doi: 10.1177/0743558416653217.
- Craig, S. L., Dentato, M., Messinger, L., & McInroy, L. (2016). Educational determinants of readiness to practice with LGBTQ Clients: Social work students speak out. *British Journal of Social Work*, 46(1), 115–134. doi: 10.1093/bjsw/bcu107
- Cress, C. M. (2000). The impact of campus climate on students' cognitive and affective development. *Dissertation Abstracts International*, 60, 7A.
- Cunningham, G., & Melton, E. (2013). The moderating effects of contact with lesbian and gay friends on the relationships among religious fundamentalism, sexism, and sexual prejudice. *Journal of Sex Research*, 50(3–4), 401–408.
- D'Augelli, A. R., Pilkington, N. W., & Hershberger, S. L. (2002). Incidence and mental health impact of sexual orientation victimization of lesbian, gay, and bisexual youths in high school. *School Psychology Quarterly*, 17, 148–167.
- Eckholm, E. (2011, April 18). Even on religious campuses, students fight for gay identity. *The New York Times*. Retrieved from http://www.nytimes.com/2011/04/19/us/19gays.html?_r=0

- Epstein, D., Telford, D., & O'Flynn, S. (2003). *Silenced sexualities in schools and universities*. Trentham Publishing: Stoke-on-Trent.
- Evans, N. J., & Broido, E. M. (1999). Coming out in college residence halls: Negotiation, meaning making, challenges, supports. *Journal of College Student Development*, 40, 658–668.
- Exley, S. (2013, August 9). Equality: The schools that can legally expel gay students. *Times Educational Supplement*, 50–56.
- Harbaugh, E., & Lindsey, E. (2015). Attitudes toward homosexuality among young adults: Connections to gender role identity, gender-typed activities, and religiosity. *Journal of Homosexuality*, 62(8), 1098–1125.
- Haslam, N., & Levy, S. R. (2006). Essentialist beliefs about homosexuality: Structure and implications for prejudice. *Personality and Social Psychology Bulletin*, 32, 34–44.
- Hatzenbuehler, M. L. (2011). The social environment and suicide attempts in a population-based sample of LGB youth. *Pediatrics*, 127, 896–903.
- Hatzenbuehler, M. L., Pachankis, J. E., & Wolff, J. (2012). Religious climate and health risk behaviors in sexual minority youth: A population-based study. *American Journal of Public Health*, 102(4), 657–663.
- Helminiak, D. A. (2008). Homosexuality in world religions: A case study in the psychology of spirituality. *Journal of Individual Psychology*, 64(2), 137–160.
- Hills, R. M. (1997). You say you want a revolution? The case against the transformation of culture through antidiscrimination laws: Review of antidiscrimination law and social equality. *Michigan Law Review*, 95, 1588–1635.
- Krause, N. (2008). *Aging in the church: How social relationships affect health*. West Conshohocken, PA: Templeton Foundation Press.
- Lavender, P. (2015). Some states are taking a stand against controversial gay conversion therapy. Retrieved from http://www.huffingtonpost.com/2015/02/24/gay-conversion-therapy-bills_n_6745692.html
- Lim, C., & Putnam, R. (2010). Religion, social networks and life satisfaction. *American Sociological Review*, 75(6), 914–933.
- Macgillivray, I. (2008). Religion, sexual orientation, and school policy: How the Christian right frames its arguments. *Educational Studies*, 43, 29–44.
- Meyer, I. H. (2003). Prejudice, social stress, and mental health in lesbian, gay, and bisexual populations: Conceptual issues and research evidence. *Psychological Bulletin*, 129, 674–697.
- Moon, D. (2014). Beyond the dichotomy: Six religious views of homosexuality. *Journal of Homosexuality*, 61(9), 1215–1241.
- National Association of Social Workers. (2000). “Reparative” and “conversion” therapies for lesbians and gay men: Position statement. Retrieved from <http://www.naswdc.org/diversity/lgb/reparative.asp>
- National Conference of State Legislatures. (2015). *State religious freedom restoration legislation*. Retrieved from <http://www.ncsl.org/research/civil-and-criminal-justice/2015-state-rfra-legislation.aspx>
- Newman, P., & Fantus, S. (2015). A social ecology of bias-based bullying of sexual and gender minority youth: Toward a conceptualization of conversion bullying. *Journal of Gay and Lesbian Social Services*, 27, 46–63.
- Newport, F. (2011). For first time, majority of Americans favor legal gay marriage. Retrieved from <http://www.gallup.com/poll/147662/First-Time-Majority-Americans-Favor-Legal-Gay-Marriage.aspx>
- Padgett, D. K. (2008). *Qualitative methods in social work research: Challenges and rewards* (2nd ed.). Thousand Oaks, CA: Sage.
- Pettigrew, T. F., & Tropp, L. R. (2006). A meta-analytic test of intergroup contact theory. *Journal of Personality and Social Psychology*, 90, 751–783.

- Rankin, S. R. (2003). *Campus climate for gay, lesbian, bisexual, and transgender people: A national perspective*. New York, NY: National Gay and Lesbian Task Force Policy Institute.
- Rivers, I., & Taulke-Johnson, R. (2002). Listening to lesbian, gay and bisexual students on campus: Experiences of living in university residence. *Australasia Association for Institutional Research, 11*(2), 1–19.
- Rosario, M., Yali, A. M., Hunter, J., & Gwadz, M. V. (2006). Religion and health among lesbian, gay and bisexual youths: An empirical investigation and theoretical explanation. In A. M. Omoto & H. S. Kurtzman (Eds.), *Sexual orientation and mental health: Examining identity and development in lesbian, gay and bisexual people* (pp. 117–140). Washington, DC: American Psychological Association.
- Sanabria, S. (2012). Religious orientation and prejudice: Predictors of homophobia. *Journal of LGBT Issues in Counseling, 6*, 183–201.
- San Diego Christian College (SDCC). (2010). *Student community covenant*. Retrieved from http://internal.sdcc.edu/sites/default/files/Advancement_Administration/2010%20Community%20Covenant.pdf
- Schmidt, C. K., & Nilsson, J. E. (2006). The effects of simultaneous developmental processes: Factors relating to the career development of lesbian, gay, and bisexual youth. *Career Development Quarterly, 55*, 22–37.
- Schuck, K. D., & Liddle, B. J. (2001). Religious conflicts experienced by lesbian, gay and bisexual individuals. *Journal of Gay and Lesbian Psychotherapy, 5*(2), 63–82.
- Sherkat, D. E. (2002). Sexuality and religious commitment in the United States: An empirical examination. *Journal for the Scientific Study of Religion, 41*, 313–323.
- Sherkat, D., Powell-Williams, M., Maddox, G., & de Vries, K. (2011). Religion, politics, and support for same-sex marriage in the United States, 1988–2008. *Social Science Research, 40*, 167–180.
- Silverschanz, P., Cortina, L. M., Konik, J., & Magley, V. (2008). Slurs, snubs, and queer jokes: Incidence and impact of heterosexist harassment in academia. *Sex Roles, 58*(3), 179–191.
- Soulforce. (2014). *The equality ride*. Retrieved from <http://www.soulforce.org/equalityride>
- Tsang, J., & Rowatt, W. C. (2007). The relationship between religious orientation, right-wing authoritarianism, and implicit sexual prejudice. *International Journal for the Psychology of Religion, 17*(2), 99–120.
- Turner, R. N., Crisp, R. J., & Lambert, E. (2007). Imagining contact can improve intergroup attitudes. *Group Processes & Intergroup Relations, 10*, 427–441.
- Ungar, M. (2012). Researching and theorizing resilience across cultures and contexts. *Preventive Medicine, 55*(5), 387–389.
- United States Department of Education. (2014, May). National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), “Fall Enrollment Survey” (IPEDS-EF:90–99); and IPEDS spring 2001 through spring 2013, enrollment. Retrieved from https://nces.ed.gov/programs/coe/indicator_cha.asp
- Walls, N. E., Freedenthal, S., & Wineski, H. (2008). Suicidal ideation and attempts among sexual minority youth receiving social services. *Social Work, 53*, 21–29.
- Whitehead, A. (2010). Sacred rights and civil rights: Religion’s effects on attitudes towards same-sex unions and the perceived causes of homosexuality. *Social Science Quarterly, 91*(1), 63–79.
- Whitley, J. E. (2009). Religiosity and attitudes toward lesbians and gay men: A metaanalysis. *International Journal for the Psychology of Religion, 19*(1), 21–38.
- Whitman, J., Glosoff, H., Kocet, M., & Tarvydas, V. (2013). Ethical issues related to conversion or reparative therapy. Retrieved from <http://www.counseling.org/news/updates/2013/01/16/ethical-issues-related-to-conversion-or-reparative-therapy#sthash.SFMVq8sG.dpuf>
- Wilkinson, L., & Pearson, J. (2009). School culture and the well-being of same-sex attracted youth. *Gender & Society, 23*(4), 542–568.

- Wilson, B. D. M., & Miller, R. L. (2002). Strategies for managing heterosexism used among African-American gay and bisexual men. *Journal of Black Psychology*, 28, 371–391.
- Wolff, J. R., & Himes, H. L. (2010). Purposeful exclusion of sexual minority youth in Christian higher education: The implications of discrimination. *Christian Higher Education*, 9, 439–460.
- Woodford, M., Han, Y., Craig, S. L., Matney, M., & Lin, C. (2013). Interpersonal discrimination and mental health among sexual minority college students: The type and form of discrimination does matter: A mediation analysis. *Journal of Gay and Lesbian Mental Health*, 18(2), 142–163.
- Woodford, M. R., Krentzman, A. R., & Gattis, M. N. (2012). Alcohol and drug use among sexual minority college students and their heterosexual counterparts: The effects of experiencing and witnessing incivility and hostility on campus. *Substance Abuse and Rehabilitation*, 3, 11–23.
- Woodford, M., Levy, D., & Walls, E. (2013). Sexual prejudice among Christian college students, denominational teachings, and personal religious beliefs. *Review Religious Research*, 55, 105–130.

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FEBRUARY 24, 2021

LGBT Identification Rises to 5.6% in Latest U.S. Estimate

BY JEFFREY M. JONES

STORY HIGHLIGHTS

- Estimate has risen more than one percentage point from 2017 update
 - Majority of LGBT Americans say they are bisexual
 - One in six adults in Generation Z consider themselves LGBT
-

WASHINGTON, D.C. -- Gallup's latest update on lesbian, gay, bisexual or transgender identification finds 5.6% of U.S. adults identifying as LGBT. The current estimate is up from 4.5% in Gallup's previous update based on 2017 data.

Currently, 86.7% of Americans say they are heterosexual or straight, and 7.6% do not answer the question about their sexual orientation. Gallup's 2012-2017 data had roughly 5% "no opinion" responses.

The latest results are based on more than 15,000 interviews conducted throughout 2020 with Americans aged 18 and older. Gallup had previously reported annual

updates from its 2012-2017 daily tracking survey data, but did not routinely measure LGBT identification in 2018 or 2019.

The identity question asked in 2020 offers a greater level of detail than the question asked in previous years. Now, respondents have the ability to more precisely indicate aspects of their sexual orientation or gender identity. In addition to being able to identify whether they are lesbian, gay, bisexual or straight, respondents may also specifically identify whether they are transgender.

Different approaches to measuring LGBT status can produce varying estimates of its incidence in the U.S. population. Results from Gallup's new question do appear comparable to those from its prior question. The 1.1-percentage-point increase in the 2020 estimate (using the new question) compared with the 2017 estimate (using the old question) is about what would have been predicted from the recent trends. The LGBT percentage rose an average of 0.3 points per year in 2016 and 2017. Assuming that trend continued the past three years, the total increase would have been about one percentage point.

Majority of LGBT Americans Identify as Bisexual

More than half of LGBT adults (54.6%) identify as bisexual. About a quarter (24.5%) say they are gay, with 11.7% identifying as lesbian and 11.3% as transgender. An additional 3.3% volunteer another non-heterosexual preference or term to describe their sexual orientation, such as queer or same-gender-loving. Respondents can give multiple responses when describing their sexual identification; thus, the totals exceed 100%.

Rebasing these percentages to represent their share of the U.S. adult population finds 3.1% of Americans identifying as bisexual, 1.4% as gay, 0.7% as lesbian and 0.6% as transgender.

Americans' Self-Identified Sexual Orientation

Which of the following do you consider yourself to be? You can select as many as apply: Straight or heterosexual; Lesbian; Gay; Bisexual; Transgender.

| | Among LGBT U.S. adults | Among all U.S. adults |
|---|------------------------|-----------------------|
| | % | % |
| Lesbian | 11.7 | 0.7 |
| Gay | 24.5 | 1.4 |
| Bisexual | 54.6 | 3.1 |
| Transgender | 11.3 | 0.6 |
| Other (e.g., queer, same-gender-loving) | 3.3 | 0.2 |

Percentages total more than 100% because respondents may choose more than one category.

GALLUP, 2020

LGBT Identification Not Uncommon Among Younger Generations

One of the main reasons LGBT identification has been increasing over time is that younger generations are far more likely to consider themselves to be something other than heterosexual. This includes about one in six adult members of Generation Z (those aged 18 to 23 in 2020).

LGBT identification is lower in each older generation, including 2% or less of Americans born before 1965 (aged 56 and older in 2020).

Americans' Self-Identification as LGBT, by Generation

| | LGBT | Straight/Heterosexual | No opinion |
|-------------------------------|------|-----------------------|------------|
| | % | % | % |
| Generation Z (born 1997-2002) | 15.9 | 78.9 | 5.2 |

GALLUP, 2020

| | LGBT | Straight/Heterosexual | No opinion |
|------------------------------------|-------------|------------------------------|-------------------|
| | % | % | % |
| Millennials (born 1981-1996) | 9.1 | 82.7 | 8.1 |
| Generation X (born 1965-1980) | 3.8 | 88.6 | 7.6 |
| Baby boomers (born 1946-1964) | 2.0 | 91.1 | 6.9 |
| Traditionalists (born before 1946) | 1.3 | 89.9 | 8.9 |

GALLUP, 2020

The vast majority of Generation Z adults who identify as LGBT -- 72% -- say they are bisexual. Thus, 11.5% of all Gen Z adults in the U.S. say they are bisexual, with about 2% each identifying as gay, lesbian or transgender.

About half of millennials (those aged 24 to 39 in 2020) who identify as LGBT say they are bisexual. In older age groups, expressed bisexual preference is not significantly more common than expressed gay or lesbian preference.

Americans' Self-Identified Sexual Orientation, by Generation

| | Bisexual | Gay | Lesbian | Transgender | Other |
|------------------------------------|-----------------|------------|----------------|--------------------|--------------|
| | % | % | % | % | % |
| Generation Z (born 1997-2002) | 11.5 | 2.1 | 1.4 | 1.8 | 0.4 |
| Millennials (born 1981-1996) | 5.1 | 2.0 | 0.8 | 1.2 | 0.4 |
| Generation X (born 1965-1980) | 1.8 | 1.2 | 0.7 | 0.2 | 0.1 |
| Baby boomers (born 1946-1964) | 0.3 | 1.2 | 0.4 | 0.2 | 0.0 |
| Traditionalists (born before 1946) | 0.3 | 0.3 | 0.2 | 0.3 | 0.1 |

Figures represent the percentage of all adult members of each generation who have that sexual orientation

GALLUP, 2020

In addition to the pronounced generational differences, significant gender differences are seen in sexual identity, as well as differences by people's political ideology:

- Women are more likely than men to identify as LGBT (6.4% vs. 4.9%, respectively).
- Women are more likely to identify as bisexual -- 4.3% do, with 1.3% identifying as lesbian and 1.3% as something else. Among men, 2.5% identify as gay, 1.8% as bisexual and 0.6% as something else.
- 13.0% of political liberals, 4.4% of moderates and 2.3% of conservatives say they are lesbian, gay, bisexual or transgender.
- Differences are somewhat less pronounced by party identification than by ideology, with 8.8% of Democrats, 6.5% of independents and 1.7% of Republicans identifying as LGBT.
- There are no meaningful educational differences -- 5.6% of college graduates and 5.7% of college nongraduates are LGBT.

Bottom Line

At a time when Americans are increasingly supportive of equal rights for gay, lesbian and transgender people, a growing percentage of Americans identify themselves as LGBT. With younger generations far more likely than older generations to consider themselves LGBT, that growth should continue.

The pronounced generational differences raise questions about whether higher LGBT identification in younger than older Americans reflects a true shift in sexual orientation, or if it merely reflects a greater willingness of younger people to identify as LGBT. To the extent it reflects older Americans not wanting to acknowledge an LGBT orientation, the Gallup estimates may underestimate the actual population prevalence of it.

One of the biggest recent advances in LGBT rights was the legalization of same-sex marriage nationwide. Gallup's new estimates on same-sex marriages and domestic partnerships in the U.S. can be found here.

Editor's note: On Feb. 26, 2021, some article text was revised to clarify aspects of sexual orientation versus gender identity.

Learn more about how the [Gallup Poll Social Series](#) works.

SURVEY METHODS



RELEASE DATE: February 24, 2021

SOURCE: Gallup <https://news.gallup.com/poll/329708/lgbt-identification-rises-latest-estimate.aspx>

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FEBRUARY 24, 2021

One in 10 LGBT Americans Married to Same-Sex Spouse

BY JEFFREY M. JONES

STORY HIGHLIGHTS

- 9.6% of LGBT adults in the U.S. are married to a same-sex spouse
- Number of same-sex marriages have increased since 2016
- Opposite-sex marriages, partnerships more common among bisexual adults

WASHINGTON, D.C. -- About one in 10 LGBT adults in the U.S. (9.6%) are married to a same-sex spouse, with a slightly smaller proportion (7.1%) living with a same-sex domestic partner. Half of LGBT adults have never been married, while 11.4% are married to an opposite-sex spouse and 9.5% are either divorced or separated.

Overall, less than 1% of U.S. adults are married to a same-sex spouse. The greatest percentage of Americans, 47.7%, are married to an opposite-sex spouse.

U.S. Adults' and LGBT Adults' Marital Status

| | U.S. adults | LGBT adults |
|---|--------------------|--------------------|
| | % | % |
| Married to opposite-sex spouse | 47.7 | 11.4 |
| Married to same-sex spouse | 0.6 | 9.6 |
| Living with opposite-sex domestic partner | 8.1 | 9.2 |
| Living with same-sex domestic partner | 0.4 | 7.1 |
| Single/Never married | 22.9 | 50.5 |
| Separated | 2.4 | 2.0 |
| Divorced | 9.5 | 7.5 |
| Widowed | 5.9 | 2.5 |
| No opinion | 2.6 | 0.4 |

Based on aggregated data from 2020 Gallup polls

GALLUP

These results are based on aggregated data from 2020 Gallup surveys, encompassing interviews with more than 15,000 U.S. adults. According to Gallup's latest estimate, 5.6% of U.S. adults identify as lesbian, gay, bisexual or transgender, with over half of them saying they are bisexual. LGBT identification is most prevalent among young adults, explaining the high proportion of the subgroup that has never been married.

The percentage of LGBT adults in same-sex marriages appears to have leveled off after increasing following the Supreme Court's 2015 *Obergefell v. Hodges* decision that legalized same-sex marriages nationwide. In the six-month period before the *Obergefell* ruling, Gallup found that 7.9% of LGBT adults were in same-sex marriages. That percentage increased to 9.6% in the first year after the decision (through June 2016) and is the same in the 2020 average.

However, because of the growth in LGBT identification in recent years, coupled with the growth in the U.S. population more generally, the number of same-sex marriages has likely increased significantly. In the pre-*Obergefell* decision period, Gallup estimated that 0.3% of U.S. adults overall were married to a same-sex spouse. In the first year after that ruling, the proportion of U.S. adults in same-sex marriages was 0.4%, and is 0.6% today.

Extrapolating those percentages to the U.S. population suggests that an estimated 1.5 million U.S. adults are married to a same-sex spouse, which would translate to about 750,000 same-sex marriages. Previously, Gallup estimated there were 368,000 same-sex marriages before the *Obergefell* decision and 491,000 in the first 12 months after it.

Same-sex marriage rates are similar among most demographic subgroups of U.S. adults, although the percentage does exceed 1% among higher-socioeconomic-status Americans -- those in upper-income households (annual incomes of \$100,000 or more) and those with education beyond a four-year college degree. The percentage of people married to a same-sex spouse also exceeds 1% among political liberals, Democrats and those with no religious affiliation.

Additionally, Gallup trends show that same-sex cohabiting couples are increasingly opting for marriage rather than domestic partnership. In the months leading up to the nationwide legalization of same-sex marriage in 2015, many more LGBT Americans in same-sex cohabiting couples were living together but not married (62%) as opposed to being married (38%). In the first 12 months after same-sex marriages were legalized, the split was roughly even, with 49% being married and 51% not married. Since then, about six in 10 same-sex couples have been married, including 57% in the 2020 data.

Same-Sex Committed Relationships Uncommon for Bisexual

Adults

Notably, same-sex marriages are largely confined to gay, lesbian or transgender adults. Only 1.0% of bisexual adults -- who comprise the largest segment of the LGBT population -- report being married to a same-sex spouse. Meanwhile, 17.2% of bisexual adults are married to a spouse of the opposite sex, which explains why LGBT adults overall are somewhat more likely to be married to an opposite-sex spouse than to someone of the same gender.

Bisexual adults are also much less likely to have a same-sex domestic partner (2.7%) than to have an opposite-sex domestic partner (13.3%), which also leads to more LGBT adults in opposite-sex than same-sex domestic partnerships.

As might be expected, the patterns are different among gay and lesbian adults, who are much more likely to be in same-sex marriages and domestic partnerships than to be married to or in domestic partnerships with members of the opposite sex. Still, close to half of gay and lesbian adults identify their marital status as single.

Marital Status Among U.S. Adults Who Identify as Bisexual vs. Gay or Lesbian

| | Bisexual adults | Gay/Lesbian adults |
|---|------------------------|---------------------------|
| | % | % |
| Married to opposite-sex spouse | 17.2 | 0.3 |
| Married to same-sex spouse | 1.0 | 23.9 |
| Living with opposite-sex domestic partner | 13.3 | 1.6 |
| Living with same-sex domestic partner | 2.7 | 15.9 |
| Single/Never married | 55.5 | 47.8 |
| Separated | 1.0 | 1.3 |
| Divorced | 8.0 | 6.1 |

Based on aggregated data from 2020 Gallup polls; Gallup does not have sufficient data to report reliable, separate estimates for gay vs. lesbian adults, or for transgender adults.

GALLUP

| | Bisexual adults | Gay/Lesbian adults |
|------------|-----------------|--------------------|
| | % | % |
| Widowed | 1.4 | 1.9 |
| No opinion | 0.0 | 1.0 |

Based on aggregated data from 2020 Gallup polls; Gallup does not have sufficient data to report reliable, separate estimates for gay vs. lesbian adults, or for transgender adults.

GALLUP

Gallup does not have sufficient data for transgender adults to yield reliable estimates of marital status among that group.

Bottom Line

Same-sex marriages are not common in the U.S., or even very common among LGBT adults. But they are becoming more prevalent in the U.S. because of the increase in the LGBT population more generally and because more same-sex cohabiting couples are opting to marry rather than be unmarried partners.

What is unclear is how marital rates among LGBT adults will change as the population grows older and many reach the age when they would want to be in a committed relationship. Though it has been more than five years since same-sex marriage became legal, LGBT adults aged 30 and older are much more likely than non-LGBT adults in the same age group to describe their marital status as single (27.5% vs. 10.9%, respectively).

But decisions about entering committed relationships will be coming at a time when societal trends and attitudes are moving away from marriage. The 48% of Americans who reported being married in 2020 is down from 55% less than a generation ago, in 2006. Additionally, fewer Americans today than in the recent past believe it is important that people be married if they have children together, or if they want to spend the rest of their lives together.

It is unclear what those attitudes are among LGBT Americans, but young adults, nonreligious people, Democrats and political liberals -- the subgroups most likely to be LGBT -- are among the least likely subgroups to see marriage as being relevant.

And while many LGBT adults may decide not to get married, Americans increasingly support their right to marry a same-sex partner if they choose to do so.

Learn more about how the Gallup Poll Social Series works.

SURVEY METHODS



RELEASE DATE: February 24, 2021

SOURCE: Gallup <https://news.gallup.com/poll/329975/one-lgbt-americans-married-sex-spouse.aspx>

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FEBRUARY 24, 2021

LGBT Identification Rises to 5.6% in Latest U.S. Estimate

BY JEFFREY M. JONES

STORY HIGHLIGHTS

- Estimate has risen more than one percentage point from 2017 update
 - Majority of LGBT Americans say they are bisexual
 - One in six adults in Generation Z consider themselves LGBT
-

WASHINGTON, D.C. -- Gallup's latest update on lesbian, gay, bisexual or transgender identification finds 5.6% of U.S. adults identifying as LGBT. The current estimate is up from 4.5% in Gallup's previous update based on 2017 data.

Currently, 86.7% of Americans say they are heterosexual or straight, and 7.6% do not answer the question about their sexual orientation. Gallup's 2012-2017 data had roughly 5% "no opinion" responses.

The latest results are based on more than 15,000 interviews conducted throughout 2020 with Americans aged 18 and older. Gallup had previously reported annual

updates from its 2012-2017 daily tracking survey data, but did not routinely measure LGBT identification in 2018 or 2019.

The identity question asked in 2020 offers a greater level of detail than the question asked in previous years. Now, respondents have the ability to more precisely indicate aspects of their sexual orientation or gender identity. In addition to being able to identify whether they are lesbian, gay, bisexual or straight, respondents may also specifically identify whether they are transgender.

Different approaches to measuring LGBT status can produce varying estimates of its incidence in the U.S. population. Results from Gallup's new question do appear comparable to those from its prior question. The 1.1-percentage-point increase in the 2020 estimate (using the new question) compared with the 2017 estimate (using the old question) is about what would have been predicted from the recent trends. The LGBT percentage rose an average of 0.3 points per year in 2016 and 2017. Assuming that trend continued the past three years, the total increase would have been about one percentage point.

Majority of LGBT Americans Identify as Bisexual

More than half of LGBT adults (54.6%) identify as bisexual. About a quarter (24.5%) say they are gay, with 11.7% identifying as lesbian and 11.3% as transgender. An additional 3.3% volunteer another non-heterosexual preference or term to describe their sexual orientation, such as queer or same-gender-loving. Respondents can give multiple responses when describing their sexual identification; thus, the totals exceed 100%.

Rebasing these percentages to represent their share of the U.S. adult population finds 3.1% of Americans identifying as bisexual, 1.4% as gay, 0.7% as lesbian and 0.6% as transgender.

Americans' Self-Identified Sexual Orientation

Which of the following do you consider yourself to be? You can select as many as apply: Straight or heterosexual; Lesbian; Gay; Bisexual; Transgender.

| | Among LGBT U.S. adults | Among all U.S. adults |
|---|------------------------|-----------------------|
| | % | % |
| Lesbian | 11.7 | 0.7 |
| Gay | 24.5 | 1.4 |
| Bisexual | 54.6 | 3.1 |
| Transgender | 11.3 | 0.6 |
| Other (e.g., queer, same-gender-loving) | 3.3 | 0.2 |

Percentages total more than 100% because respondents may choose more than one category.

GALLUP, 2020

LGBT Identification Not Uncommon Among Younger Generations

One of the main reasons LGBT identification has been increasing over time is that younger generations are far more likely to consider themselves to be something other than heterosexual. This includes about one in six adult members of Generation Z (those aged 18 to 23 in 2020).

LGBT identification is lower in each older generation, including 2% or less of Americans born before 1965 (aged 56 and older in 2020).

Americans' Self-Identification as LGBT, by Generation

| | LGBT | Straight/Heterosexual | No opinion |
|-------------------------------|------|-----------------------|------------|
| | % | % | % |
| Generation Z (born 1997-2002) | 15.9 | 78.9 | 5.2 |

GALLUP, 2020

| | LGBT | Straight/Heterosexual | No opinion |
|------------------------------------|-------------|------------------------------|-------------------|
| | % | % | % |
| Millennials (born 1981-1996) | 9.1 | 82.7 | 8.1 |
| Generation X (born 1965-1980) | 3.8 | 88.6 | 7.6 |
| Baby boomers (born 1946-1964) | 2.0 | 91.1 | 6.9 |
| Traditionalists (born before 1946) | 1.3 | 89.9 | 8.9 |

GALLUP, 2020

The vast majority of Generation Z adults who identify as LGBT -- 72% -- say they are bisexual. Thus, 11.5% of all Gen Z adults in the U.S. say they are bisexual, with about 2% each identifying as gay, lesbian or transgender.

About half of millennials (those aged 24 to 39 in 2020) who identify as LGBT say they are bisexual. In older age groups, expressed bisexual preference is not significantly more common than expressed gay or lesbian preference.

Americans' Self-Identified Sexual Orientation, by Generation

| | Bisexual | Gay | Lesbian | Transgender | Other |
|------------------------------------|-----------------|------------|----------------|--------------------|--------------|
| | % | % | % | % | % |
| Generation Z (born 1997-2002) | 11.5 | 2.1 | 1.4 | 1.8 | 0.4 |
| Millennials (born 1981-1996) | 5.1 | 2.0 | 0.8 | 1.2 | 0.4 |
| Generation X (born 1965-1980) | 1.8 | 1.2 | 0.7 | 0.2 | 0.1 |
| Baby boomers (born 1946-1964) | 0.3 | 1.2 | 0.4 | 0.2 | 0.0 |
| Traditionalists (born before 1946) | 0.3 | 0.3 | 0.2 | 0.3 | 0.1 |

Figures represent the percentage of all adult members of each generation who have that sexual orientation

GALLUP, 2020

In addition to the pronounced generational differences, significant gender differences are seen in sexual identity, as well as differences by people's political ideology:

- Women are more likely than men to identify as LGBT (6.4% vs. 4.9%, respectively).
- Women are more likely to identify as bisexual -- 4.3% do, with 1.3% identifying as lesbian and 1.3% as something else. Among men, 2.5% identify as gay, 1.8% as bisexual and 0.6% as something else.
- 13.0% of political liberals, 4.4% of moderates and 2.3% of conservatives say they are lesbian, gay, bisexual or transgender.
- Differences are somewhat less pronounced by party identification than by ideology, with 8.8% of Democrats, 6.5% of independents and 1.7% of Republicans identifying as LGBT.
- There are no meaningful educational differences -- 5.6% of college graduates and 5.7% of college nongraduates are LGBT.

Bottom Line

At a time when Americans are increasingly supportive of equal rights for gay, lesbian and transgender people, a growing percentage of Americans identify themselves as LGBT. With younger generations far more likely than older generations to consider themselves LGBT, that growth should continue.

The pronounced generational differences raise questions about whether higher LGBT identification in younger than older Americans reflects a true shift in sexual orientation, or if it merely reflects a greater willingness of younger people to identify as LGBT. To the extent it reflects older Americans not wanting to acknowledge an LGBT orientation, the Gallup estimates may underestimate the actual population prevalence of it.

One of the biggest recent advances in LGBT rights was the legalization of same-sex marriage nationwide. Gallup's new estimates on same-sex marriages and domestic partnerships in the U.S. can be found here.

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FEBRUARY 24, 2021

One in 10 LGBT Americans Married to Same-Sex Spouse

BY JEFFREY M. JONES

STORY HIGHLIGHTS

- 9.6% of LGBT adults in the U.S. are married to a same-sex spouse
- Number of same-sex marriages have increased since 2016
- Opposite-sex marriages, partnerships more common among bisexual adults

WASHINGTON, D.C. -- About one in 10 LGBT adults in the U.S. (9.6%) are married to a same-sex spouse, with a slightly smaller proportion (7.1%) living with a same-sex domestic partner. Half of LGBT adults have never been married, while 11.4% are married to an opposite-sex spouse and 9.5% are either divorced or separated.

Overall, less than 1% of U.S. adults are married to a same-sex spouse. The greatest percentage of Americans, 47.7%, are married to an opposite-sex spouse.

U.S. Adults' and LGBT Adults' Marital Status

| | U.S. adults | LGBT adults |
|---|--------------------|--------------------|
| | % | % |
| Married to opposite-sex spouse | 47.7 | 11.4 |
| Married to same-sex spouse | 0.6 | 9.6 |
| Living with opposite-sex domestic partner | 8.1 | 9.2 |
| Living with same-sex domestic partner | 0.4 | 7.1 |
| Single/Never married | 22.9 | 50.5 |
| Separated | 2.4 | 2.0 |
| Divorced | 9.5 | 7.5 |
| Widowed | 5.9 | 2.5 |
| No opinion | 2.6 | 0.4 |

Based on aggregated data from 2020 Gallup polls

GALLUP

These results are based on aggregated data from 2020 Gallup surveys, encompassing interviews with more than 15,000 U.S. adults. According to Gallup's latest estimate, 5.6% of U.S. adults identify as lesbian, gay, bisexual or transgender, with over half of them saying they are bisexual. LGBT identification is most prevalent among young adults, explaining the high proportion of the subgroup that has never been married.

The percentage of LGBT adults in same-sex marriages appears to have leveled off after increasing following the Supreme Court's 2015 *Obergefell v. Hodges* decision that legalized same-sex marriages nationwide. In the six-month period before the *Obergefell* ruling, Gallup found that 7.9% of LGBT adults were in same-sex marriages. That percentage increased to 9.6% in the first year after the decision (through June 2016) and is the same in the 2020 average.

However, because of the growth in LGBT identification in recent years, coupled with the growth in the U.S. population more generally, the number of same-sex marriages has likely increased significantly. In the pre-*Obergefell* decision period, Gallup estimated that 0.3% of U.S. adults overall were married to a same-sex spouse. In the first year after that ruling, the proportion of U.S. adults in same-sex marriages was 0.4%, and is 0.6% today.

Extrapolating those percentages to the U.S. population suggests that an estimated 1.5 million U.S. adults are married to a same-sex spouse, which would translate to about 750,000 same-sex marriages. Previously, Gallup estimated there were 368,000 same-sex marriages before the *Obergefell* decision and 491,000 in the first 12 months after it.

Same-sex marriage rates are similar among most demographic subgroups of U.S. adults, although the percentage does exceed 1% among higher-socioeconomic-status Americans -- those in upper-income households (annual incomes of \$100,000 or more) and those with education beyond a four-year college degree. The percentage of people married to a same-sex spouse also exceeds 1% among political liberals, Democrats and those with no religious affiliation.

Additionally, Gallup trends show that same-sex cohabiting couples are increasingly opting for marriage rather than domestic partnership. In the months leading up to the nationwide legalization of same-sex marriage in 2015, many more LGBT Americans in same-sex cohabiting couples were living together but not married (62%) as opposed to being married (38%). In the first 12 months after same-sex marriages were legalized, the split was roughly even, with 49% being married and 51% not married. Since then, about six in 10 same-sex couples have been married, including 57% in the 2020 data.

Same-Sex Committed Relationships Uncommon for Bisexual

Adults

Notably, same-sex marriages are largely confined to gay, lesbian or transgender adults. Only 1.0% of bisexual adults -- who comprise the largest segment of the LGBT population -- report being married to a same-sex spouse. Meanwhile, 17.2% of bisexual adults are married to a spouse of the opposite sex, which explains why LGBT adults overall are somewhat more likely to be married to an opposite-sex spouse than to someone of the same gender.

Bisexual adults are also much less likely to have a same-sex domestic partner (2.7%) than to have an opposite-sex domestic partner (13.3%), which also leads to more LGBT adults in opposite-sex than same-sex domestic partnerships.

As might be expected, the patterns are different among gay and lesbian adults, who are much more likely to be in same-sex marriages and domestic partnerships than to be married to or in domestic partnerships with members of the opposite sex. Still, close to half of gay and lesbian adults identify their marital status as single.

Marital Status Among U.S. Adults Who Identify as Bisexual vs. Gay or Lesbian

| | Bisexual adults | Gay/Lesbian adults |
|---|------------------------|---------------------------|
| | % | % |
| Married to opposite-sex spouse | 17.2 | 0.3 |
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| Living with opposite-sex domestic partner | 13.3 | 1.6 |
| Living with same-sex domestic partner | 2.7 | 15.9 |
| Single/Never married | 55.5 | 47.8 |
| Separated | 1.0 | 1.3 |
| Divorced | 8.0 | 6.1 |

Based on aggregated data from 2020 Gallup polls; Gallup does not have sufficient data to report reliable, separate estimates for gay vs. lesbian adults, or for transgender adults.

GALLUP

| | Bisexual adults | Gay/Lesbian adults |
|------------|------------------------|---------------------------|
| | % | % |
| Widowed | 1.4 | 1.9 |
| No opinion | 0.0 | 1.0 |

Based on aggregated data from 2020 Gallup polls; Gallup does not have sufficient data to report reliable, separate estimates for gay vs. lesbian adults, or for transgender adults.

GALLUP

Gallup does not have sufficient data for transgender adults to yield reliable estimates of marital status among that group.

Bottom Line

Same-sex marriages are not common in the U.S., or even very common among LGBT adults. But they are becoming more prevalent in the U.S. because of the increase in the LGBT population more generally and because more same-sex cohabiting couples are opting to marry rather than be unmarried partners.

What is unclear is how marital rates among LGBT adults will change as the population grows older and many reach the age when they would want to be in a committed relationship. Though it has been more than five years since same-sex marriage became legal, LGBT adults aged 30 and older are much more likely than non-LGBT adults in the same age group to describe their marital status as single (27.5% vs. 10.9%, respectively).

But decisions about entering committed relationships will be coming at a time when societal trends and attitudes are moving away from marriage. The 48% of Americans who reported being married in 2020 is down from 55% less than a generation ago, in 2006. Additionally, fewer Americans today than in the recent past believe it is important that people be married if they have children together, or if they want to spend the rest of their lives together.

It is unclear what those attitudes are among LGBT Americans, but young adults, nonreligious people, Democrats and political liberals -- the subgroups most likely to be LGBT -- are among the least likely subgroups to see marriage as being relevant.

And while many LGBT adults may decide not to get married, Americans increasingly support their right to marry a same-sex partner if they choose to do so.

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Oral Roberts' surprising NCAA Tournament run is shedding light on the school's 'homosexual activity' ban and conversion therapy practices

Meredith Cash Mar 23, 2021, 1:49 PM



Founded by a Christian televangelist, Oral Roberts bans "homosexual activity" and forces conversion therapy — a deadly practice — on LGBTQ students. AP Photo/AJ Mast

Oral Roberts has punched a ticket to the men's Sweet Sixteen as this year's apparent "Cinderella."

The Golden Eagles' success in the NCAA Tournament has spotlighted the school's troubling history.

The school's controversial founder and homophobic record complicates the team's historic run.

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Oral Roberts' shocking upsets of the No. 2-seeded Ohio State Buckeyes and the No. 7-seeded Florida Gators in the opening two rounds of this year's NCAA men's basketball tournament have given the small school located in Tulsa, Oklahoma, a national platform and its first ticket to the Sweet Sixteen in nearly 50 years.

But along with all of the fanfare that comes with a "Cinderella" story, the Golden Eagles' miraculous March Madness run has been accompanied by some far less heartening public relations; the team's success has shined a spotlight on Oral Roberts' troubling history and long record of homophobia that stretches to the present day.

ORU's founder and namesake was a controversial televangelist known to many as a swindler and a homophobe

Oral Roberts University, a private evangelical university with just 4,000 students, was founded by its namesake in 1963. Roberts was a

prominent — and controversial — televangelist known for generating wild, fantastical stories to bolster his ministry's fundraising efforts. Most famously, Roberts alleged that God spoke with him and promised to take the preacher's life if he did not collect \$8 million in donations from his followers within a single calendar year.

The Christian leader's extreme approach to fundraising garnered significant notoriety and caused Roberts to develop a reputation as a swindler in the mainstream. But among his many acolytes, Roberts was considered nothing less than a visionary.

The televangelist Oral Roberts. AP Photo/Yun Jai-Hyoung

Roberts was vehemently homophobic, and he was far from quiet about his anti-gay sentiment. In his sermons, the preacher said homosexuality "is not only wild, it is insane," and likened same-sex attraction to perversion.

Just six months after Roberts' son, Ronald "Ronnie" Roberts, came out as gay, he [killed himself](#). Roberts' grandson, Randy Roberts Potts, [wrote a letter to his late uncle](#) after coming out himself. In the piece, Potts directly blamed his grandfather and the community he helmed for his Uncle Ronnie's death and the plight of so many other LGBTQ evangelicals.

"Suicide among gay men and women in Evangelical communities is still prevalent," Potts wrote. "Evangelicals may not be killing gays outright — the police report suggests my uncle killed himself. However, while the Evangelical community might not pull the trigger when one of their gay members commits suicide, they provide the ammunition."

Four thousand people attended a memorial service for Oral Roberts. AP Photo/David Crenshaw

Potts was not welcomed to sit with his family at his grandfather's

funeral in 2009. And he wrote that in front of the 4,000 people who attended the service, his mother made a point to tell her son "that Hell does exist" and that he's "going there."

Oral Roberts' legacy lives on through his school, where 'homosexual activity' is banned and conversion therapy is mandatory

The university created in Oral Roberts' name was "founded to be and is committed to being a Christian religious ministry" and, as such, requires a "commitment to Jesus Christ of Nazareth as personal Savior and Lord" from all of its students. Part of that commitment involves signing [the school's Honor Code Pledge](#), which prohibits stealing, gossiping, cheating, cursing, drinking alcohol, using drugs and tobacco, and "any illicit, unscriptural sexual acts" deemed "immoral and illegal" by the institution.

Roberts at the eventual site of Oral Roberts University. Francis Miller/The LIFE Picture Collection via Getty Images

That latter category includes "any homosexual activity and sexual intercourse with one who is not [a] spouse through traditional marriage of one man and one woman." And the school mandates that students who are found to be in violation of the policy or identify as LGBTQ undergo conversion therapy, a pseudoscientific practice [outlawed in at least 20 states](#) — but not Oklahoma — that the American Psychological Association "strongly opposes."

The leading group of American scientists and psychologists insists that conversion therapy represents "a significant risk of harm by subjecting individuals to forms of treatment which have not been scientifically validated and by undermining self-esteem when sexual orientation fails to change."

"No credible evidence exists that any mental health intervention can

reliably and safely change sexual orientation," [the APA said in a 2013 statement](#). "Nor, from a mental health perspective, does sexual orientation need to be changed."

A march opposing conversion therapy. AP Photo/Jim Mone

In practice, [conversion therapy often prompts or exacerbates depression](#). And [research from the Williams Institute at UCLA School of Law](#) found that recipients of such treatments were "almost twice as likely to attempt suicide" or experience suicidal ideation compared with their queer counterparts who were not subjected to the practice.

In other words, [conversion therapy could be deadly](#), and it's mandatory on Oral Roberts' campus.

Such was the case for [Chance Bardsley](#), a Farmington, Arkansas, native who was kicked out of his home for coming out as gay mere months before heading to college, according to a 2018 article in [The](#)

Arkansas Traveler. Then 18 years old, Bardsley told the University of Arkansas student newspaper that he was set to attend Oral Roberts University and that while he considered not matriculating because of the school's anti-LGBTQ policies, he prioritized "food and shelter."

A statue on Oral Roberts University's campus. Education Images/Universal Images Group via Getty Images

Bardsley said he begrudgingly signed the Honor Code Pledge when he arrived on campus in Tulsa, and Oral Roberts staff members quickly went to work attempting to convert him to heterosexuality. After two years at the university featuring regular conversion-therapy sessions, the aspiring missionary said, he realized "if I keep going through this therapy, if I keep trying to change who I am, I'm going to kill myself."

He transferred to the University of Arkansas, where he grew to embrace his sexuality. Coincidentally, Oral Roberts will face his

Arkansas Razorbacks in its next March Madness game.

Oral Roberts' surprising Sweet Sixteen run will almost certainly have real-world repercussions that harm LGBTQ youth

As a result of reaching the third round of the NCAA men's tournament, both the Razorbacks and the Golden Eagles have earned roughly \$5 million for their school's athletic programs, [per The Washington Post](#). The winner stands to rake in even more money.

Plus, schools whose teams make runs in March Madness, [particularly so-called Cinderellas like the Golden Eagles](#), typically see a significant boost in applications during the following year's admissions cycle. And a [February 2021 Gallup poll](#) indicates that approximately 16% of Generation Z — the age group currently applying to college — identify as LGBT, with many more likely to come out over time.

Oral Roberts players celebrate their NCAA men's tournament upset. AP Photo/Robert Franklin

It follows, then, that a portion of Oral Roberts' extra applications stemming from the basketball team's surprising tournament success will belong to queer kids. Like Bardsley, those queer kids would almost certainly be subjected to conversion therapy at Oral Roberts. And if they're subjected to conversion therapy, research suggests they're far more likely to experience suicidal thoughts — and, ultimately, more likely to die.

Oral Roberts University did not reply to multiple requests for comment from Insider.

If you or someone you know is struggling with depression or has had thoughts of harming themselves or taking their own life, get help. [The National Suicide Prevention Lifeline \(1-800-273-8255\)](#) provides 24/7,

free, confidential support for people in distress, as well as best practices

for professionals and resources to aid in prevention and crisis situations.

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OUT NEWS

Transgender student suspended from Christian college after top surgery

“It’s the best and worst day of my life. I’d do this surgery again if I could,” Yanna Awtrey said.

Aug. 9, 2019, 4:46 PM EDT

By Gwen Aviles

A transgender male student was suspended from a Christian college because of his gender identity on the same day he got surgery to remove breast tissue.

Yanna Awtrey, 21, was staying with family friends for the summer before his junior year at Welch College, a Free Will Baptists Church institution, in Gallatin, Tennessee, began.

“I left a letter with the couple on Aug. 2, the day of the surgery, telling them that I’d be having surgery – though I didn’t specify what the surgery would be for,” Awtrey told NBC News.

— Yann Awrey was suspended from Welch College because of his gender identity on the same day he got top surgery. Courtesy of Yann Awrey

After struggling with gender dysphoria – a medical condition resulting from a conflict between one’s sex assigned at birth and one’s gender identity – since early adolescence, getting top surgery, which involves removing breast tissue to flatten the chest, was an emotional experience for Awrey.

“Everything went great,” Awrey said. “I woke up and I cried from happiness to the point where my nurse told me to be quieter for the other patients’ sake.”

Yet his joy was eclipsed when the woman he was staying with came to visit him at the hospital and realized the kind of surgery he received.

“She was angry and told me she wouldn’t have me in the house anymore,” Awrey said about the family friend.

Awrey said the woman called his parents, who are Free Will Baptists currently on a missionary trip in Bulgaria, and Welch College. A few hours later, he received an email from the school’s Vice President for Student Services, Jon Forlines, instructing Awrey he wasn’t welcome back on campus.

"Please be aware that because of the choices you have made we will not be able to allow you to come back to the dorm," the email read. "We’re praying for you that the love of Christ will speak to your every need in the coming days.”

Related

NBC OUT

'We're a totally peaceful racist group,' says 'Straight Pride' organizer

Forlines offered Awrey a one week’s stay at a local hotel as well as some money for food in the email.

“I did not expect the email because I was physically vulnerable after the surgery and do not have an income nor can I work for a few months following the surgery,” Awrey said.

Awtrey posted about the situation on [Facebook](#) and was able to find a friend to stay with during the initial recovery process.

“It’s the best and worst day of my life. I’d do this surgery again if I could,” Awtrey wrote in the post. “The physical pain right now is nothing compared to witnessing a lack of empathy for our fellow man.”

Awtrey said that the school tried to get him to sign a withdrawal form stating that leaving Welch College was his responsibility and decision but he refused to sign it, which led to a hearing with a school disciplinary committee on Aug. 7.

During the hearing, Forlines stated that Awtrey was in violation of the student handbook, which forbids "any kind of sexual immorality, impurity, including the use of pornography" and "engaging in acts of sex immorality, including premarital and extramarital relations, sexual advances and sexual perversion in any form."

Awtrey argued that his receiving top surgery was not an act of sexual perversion, according to a recording of the hearing obtained by NBC News, and was ultimately suspended from the school for two semesters.

“They told me I could reapply to the school again, but I doubt I’d be accepted,” Awtrey, who was only one credit from earning a degree in Biology and 11 credits from earning a degree in Theological Studies, said.

Welch College did not immediately respond to NBC News’ requests for comment.

“Welch College didn’t have any legal language that did not allow trans people to attend, but everything LGBTQ-related at the school is kept hush-hush,” according to Awtrey.

He plans to stay with another couple while he fully recovers from the surgery and then look for a job.

“You can’t argue with the people who run Welch because they believe they’re doing the right thing,” Awtrey said. “They think their actions have no consequences and that it just works out for trans people, but when you look at the trans homeless and unemployed population and the amount of trans people that are murdered, that clearly isn’t true.”

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RELIGION

Christian Colleges Are Tangled In Their Own LGBT Policies

March 27, 2018 · 7:26 AM ET

Heard on Morning Edition

TOM GJELTEN

4-Minute Listen

PLAYLIST Download
 Transcript

Calvin College in Michigan is affiliated with the Christian Reformed Church, which holds that "homosexual practice ... is incompatible with obedience to the will of God as revealed in Scripture."

Noah PreFontaine/Calvin College

Conservative Christian colleges, once relatively insulated from the culture war, are

increasingly entangled in the same battles over LGBT rights and related social issues that have divided other institutions in America.

Students and faculty at many religious institutions are asked to accept a "faith statement" outlining the school's views on such matters as evangelical doctrine, scriptural interpretation and human sexuality. Those statements often include a rejection of homosexual activity and a definition of marriage as the union of one man and one woman. Changing attitudes on sexual ethics and civil rights, however, are making it difficult for some schools, even conservative ones, to ensure broad compliance with their strict positions.

"Millennials are looking at the issue of gay marriage, and more and more they are saying, 'OK, we know the Bible talks about this, but we just don't see this as an essential of the faith,' " says Brad Harper, a professor of theology and religious history at Multnomah University, an evangelical Christian institution in Portland, Ore.

LGBT students at Christian schools are also increasingly likely to be open about their own sexual orientation or gender identity.

ARTS & LIFE

From Mormon Missionary To LGBTQ Advocate (And International Rock Star)

LISTEN · 10:27

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Transcript

At Calvin College in Grand Rapids, Mich., junior Sam Koster, who identifies as queer, finds fellow students to be generally tolerant.

"People I've met in the English Department," Koster says, "even in my dorms, they're like, 'Oh, you're queer? OK, cool. Do you want to go get pizza?' "

Staff and faculty at these Christian schools have to balance a need to attend to their students' personal and spiritual needs with a commitment to their schools' faith

statements or official positions on sexuality.

"You've got those two values," says Mary Hulst, senior chaplain at Calvin. "We love our LGBT people. We love our church of Jesus Christ. We love Scripture. So those of us who do this work are right in the middle of that space. We are living in the tension."

Calvin College is affiliated with the Christian Reformed Church, which holds that "homosexual practice ... is incompatible with obedience to the will of God as revealed in Scripture." Hulst leads Bible study groups with her LGBT students and discusses with them the passages that refer to same-sex relationships.

"Those are the clobber passages," Koster says. "They're used to clobber queer kids back into being straight."

Koster was troubled by those Bible verses at first but eventually became comfortable with a devout Christian identity and joined the Gay Christian Network.

THE TWO-WAY

In Guidance To Teachers, Church of England Targets Anti-LGBT Bullying

"When I realized that my faith wasn't necessarily about the [Christian Reformed] Church, and it wasn't even necessarily about the Bible but about my relationship with God and that God is all-encompassing and loving, I felt very free," Koster says.

Koster says Hulst helped guide that faith journey, but Hulst herself is still torn between her love for her LGBT students and her own understanding that the Bible does not really allow them to act on their sexual orientation.

"It's a place where you need to be wise," Hulst says. "I tell them I want to honor Scripture, but I also honor my LGBT brothers and sisters."

It doesn't always work out.

"Someone from the LGBT community will say, 'If you will not honor the choices I

make with my life, if I choose a partner and get married, then you're not actually honoring me.' I can understand that," Hulst says, grimacing. "I can see how they might come to that conclusion."

Legal entanglement

In addition to changing social and cultural attitudes, conservative religious schools face a changing legal environment regarding LGBT issues. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of "race, color, religion, sex, or national origin."

Though the language does not refer to sexual orientation or gender identity, some courts have interpreted Title VII as protecting LGBT individuals and the recent trend has been in a pro-LGBT direction.

LAW

Appeals Court Rules The Civil Rights Act Protects Gay Workers

LISTEN · 5:08

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Transcript

Christian colleges and universities also have to consider Title IX of the Higher Education Amendments of 1972: "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."

As with Title VII, the question of whether "sex" under Title IX should be interpreted as referring to sexual orientation is hotly debated.

In April 2015, during a Supreme Court argument over the constitutional rights of LGBT individuals, Justice Samuel Alito noted that Bob Jones University in South Carolina had lost its tax-exempt status because of its prohibition on interracial dating

and marriage.

"Would the same apply to a university or a college if it opposed same-sex marriage?"

Alito asked then-U.S. Solicitor General Donald Verrilli Jr.

"It's certainly going to be an issue," Verrilli answered. "I don't deny that."

The exchange alarmed officials at conservative religious schools, for which the loss of tax-exempt status or federal funding would be devastating. Their anxiety deepened a year later, when the Obama administration notified colleges and universities that it interpreted Title IX as prohibiting discrimination "based on a student's gender identity, including discrimination based on a student's transgender status." Christian schools saw that letter as threatening a loss of federal funding if they refused to accommodate students who identify as transgender and want to be housed with other students who share their gender identity.

THE TWO-WAY

Trump Administration Rescinds Obama Rule On Transgender Students' Bathroom Use

Upon taking office, the Trump administration rescinded the Obama directive, but some leaders at Christian schools still fear the cultural and legal trends are in favor of expanded LGBT rights on their campuses, which could mean their policies on sexual behavior could face serious challenges.

Educational institutions can currently apply for an exemption from the nondiscrimination provisions of Title VII by demonstrating that those provisions contradict their religious beliefs, but opinions vary on whether those exemptions will protect Christian colleges that seek to maintain strict student and employee policies relating to sexual orientation.

"Religious exemptions are exemptions because they are for small groups of people, and it doesn't necessarily undermine the full purpose of the law to have them," says Shapri LoMaglio, vice president for government affairs at the Council for Christian

Colleges and Universities. "I think case law is upholding the idea that that exemption is the right thing in order to be faithful to the Constitution."

Other Christian college leaders, however, fear that the application of civil rights law to LGBT individuals could eventually jeopardize religious exemptions.

"Four years down the line, eight years down the line, depending on the makeup of the Supreme Court, depending on who is president, I can see the gay/transgender issue being pushed in a way that would seek to make Christian colleges either surrender their federal funding or change their position and conform with the wider consensus," says Carl Trueman, a professor of church history at Westminster Theological Seminary in Pennsylvania.

Preparing for revoked funding

In a recent article in the journal *First Things*, titled "Preparing for Winter," Trueman argued that conservative Christian schools need to begin planning for a "worst-case scenario, where not only federal money but also tax-exempt status is revoked."

The combination of changing social attitudes and more complex legal issues were major points of discussion when the CCCU assembled representatives of more than 130 of its member institutions in Dallas in late January. College chaplains, student counselors and classroom professors reviewed how they were responding to LGBT students, while administrators and financial officers considered whether they need to prepare for more government scrutiny of their positions and policies on sexual orientation and activity.

One off-the-record session titled "Is Government Funding Replaceable?" was packed solid.

"The fear is so large in many institutions because 40 or 50 or maybe even 60 percent of their budgets are really coming from the federal government," says Dale Kemp, the chief financial officer at Wheaton College in Illinois and the speaker at the CCCU session. "To think they could survive without that [funding] would be catastrophic."

NATIONAL

College Campus Not Always Safe For Gay Students

LISTEN · 2:51

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Transcript

Brad Harper of Multnomah University, which affirms that "sexual relationships are designed by God to be expressed solely within a marriage between a man and a woman," says he has seen growing anxiety about the future of federal aid at like-minded schools in recent years.

"Every single Christian institution is wondering about that, and thinking, 'What happens if we lose government funding?' " he says. "Everybody has done the math about how much money you would have to raise if you lose government funding. You can't do it."

Just as vexing are the cultural questions, especially among the staff and faculty who work with LGBT students on a daily basis. All colleges and universities receiving federal aid are required to have a Title IX coordinator responsible for working with students who feel they have been subject to discrimination because of their sex. Whether gay or transgender students are entitled to Title IX protection is unresolved, so Title IX coordinators find themselves having to judge on their own how to respond to those students who seek their help.

"Sex has to do with identity and your gender and with who you are," says Christine Guzman, the Title IX coordinator at Azusa Pacific University in California, "so if there's a student who is feeling discriminated against because of their gender, then, yes, absolutely, I'm going to apply that law."

So far, at least, Guzman is attentive to gay and transgender students despite her school's official belief that human beings are created "as gendered beings" and that heterosexuality is "God's design."

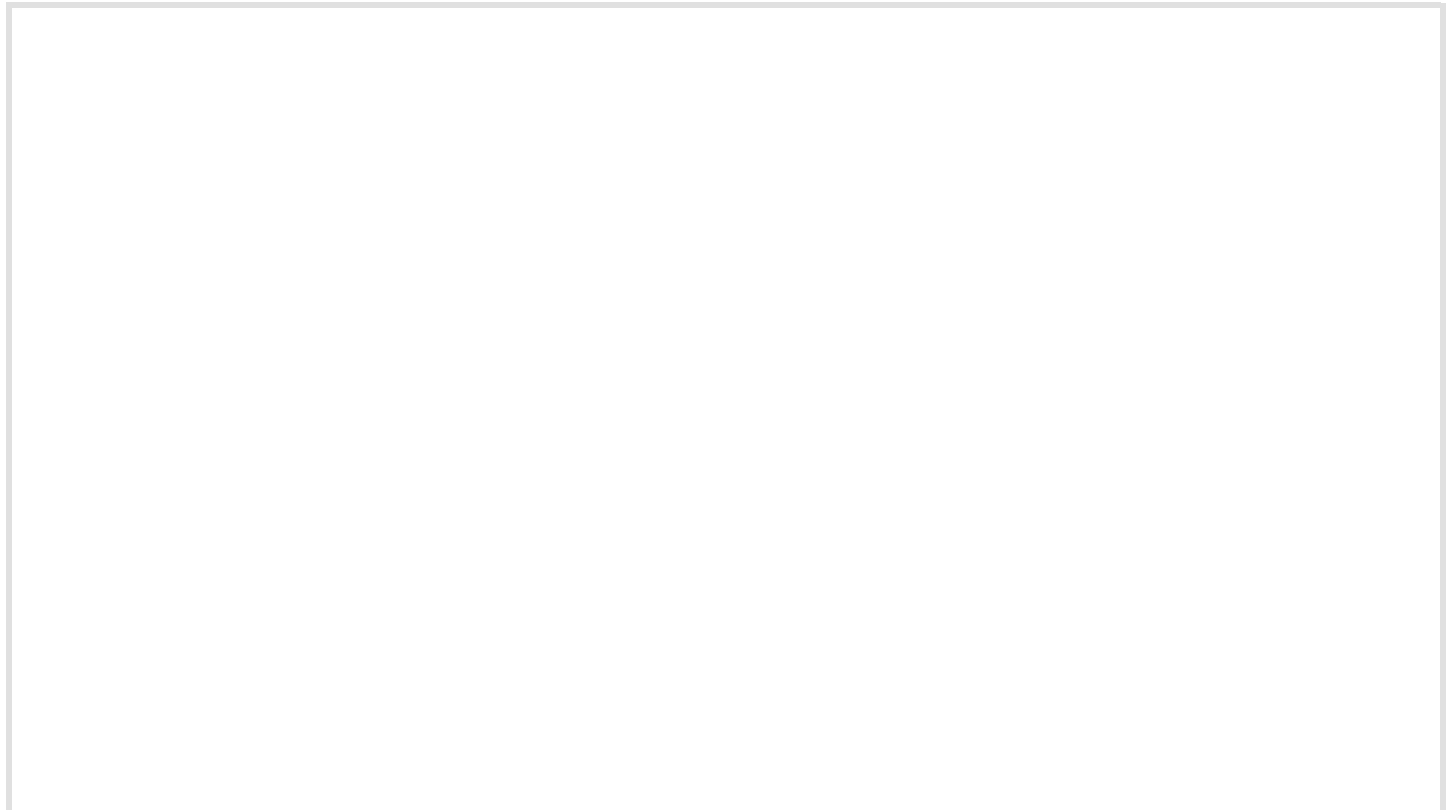
At Calvin College, Hulst says the struggle to find an appropriate response to her LGBT

students is among the most difficult challenges she has faced as a college chaplain.

"The suicidality of this particular population is much higher," she notes. "The chances that they will leave the church are much higher. These [realities] weigh very heavily on me."

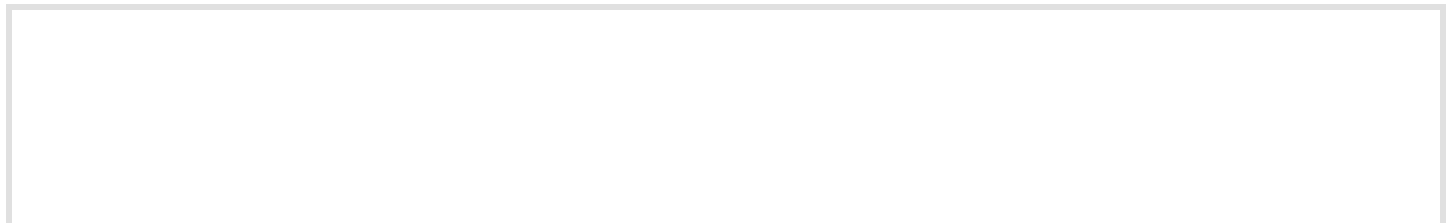
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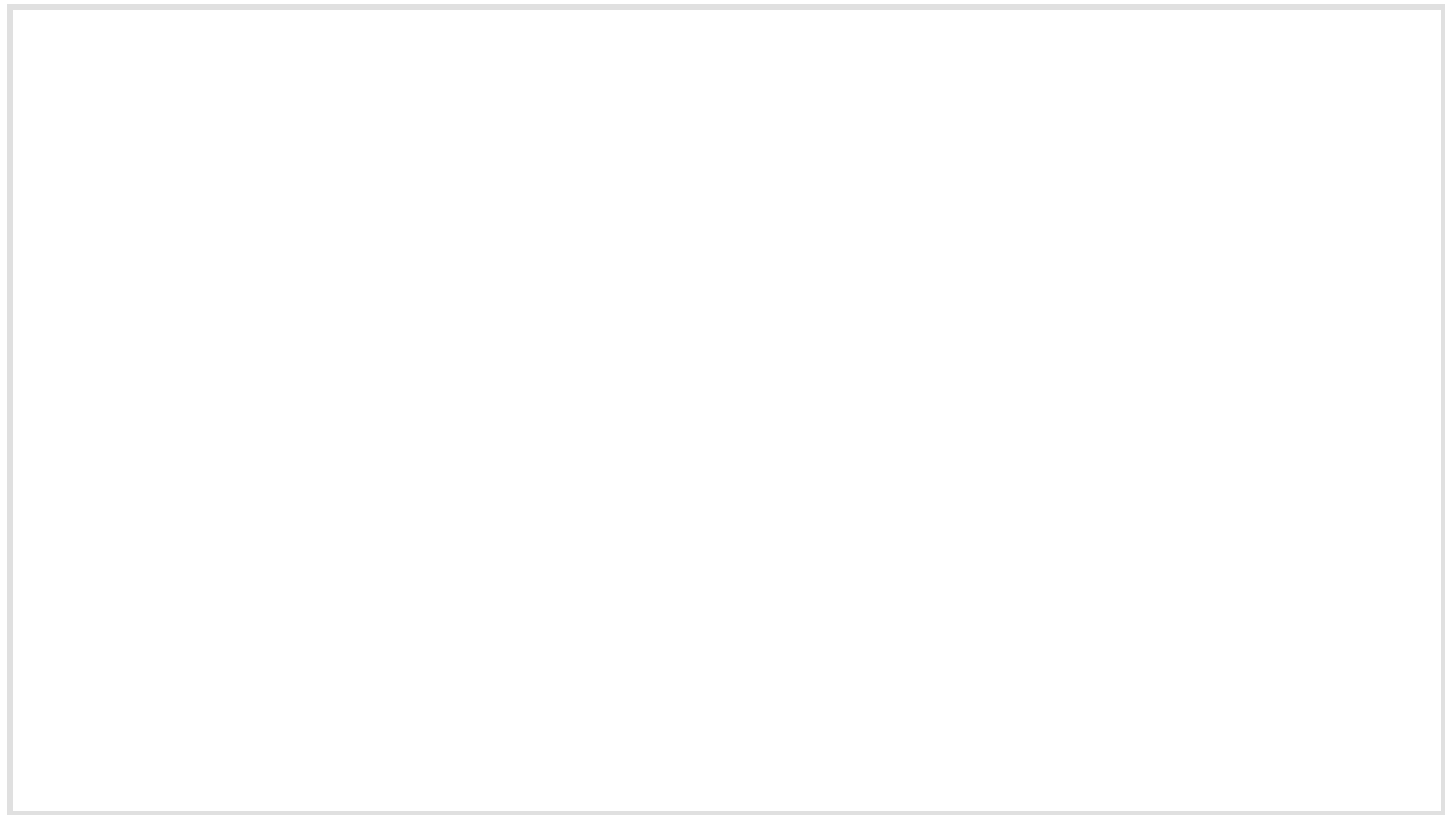
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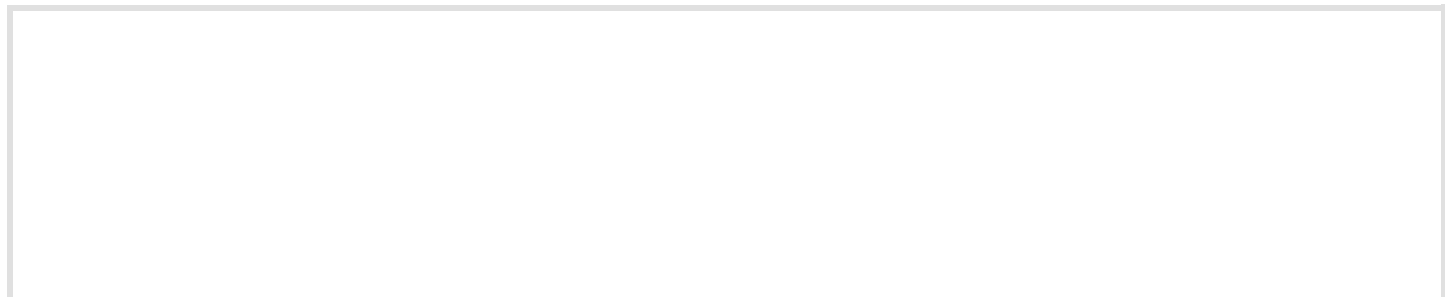
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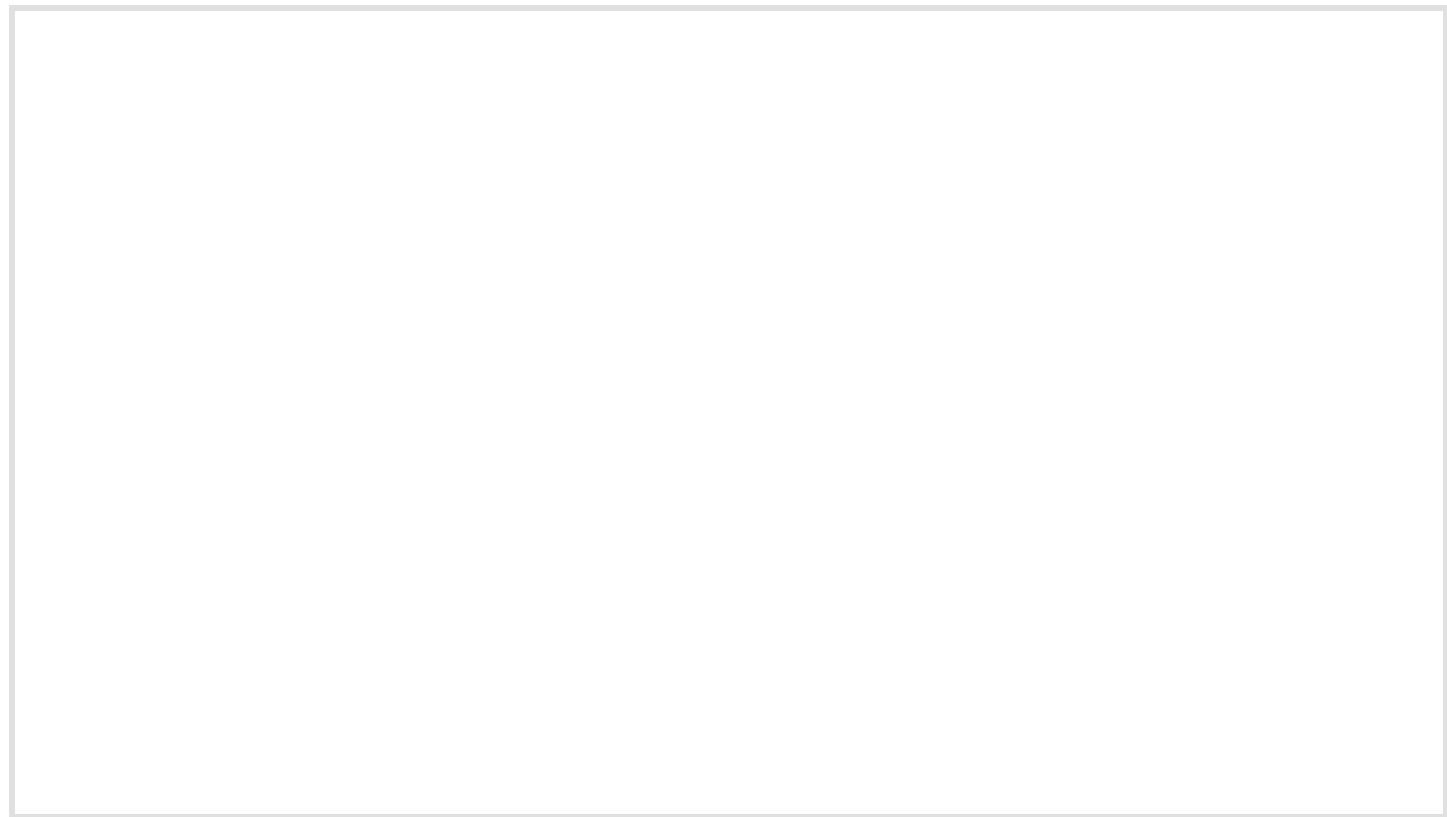
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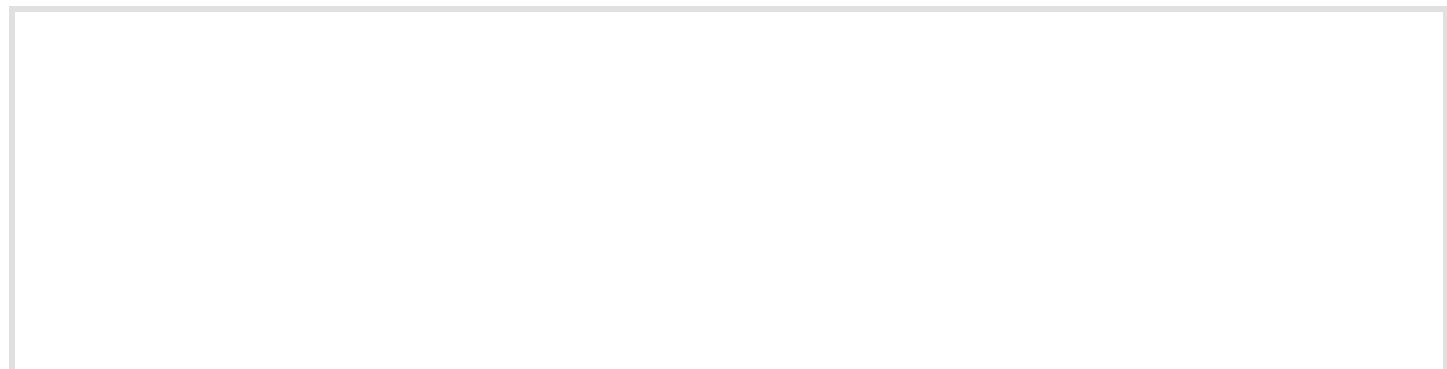
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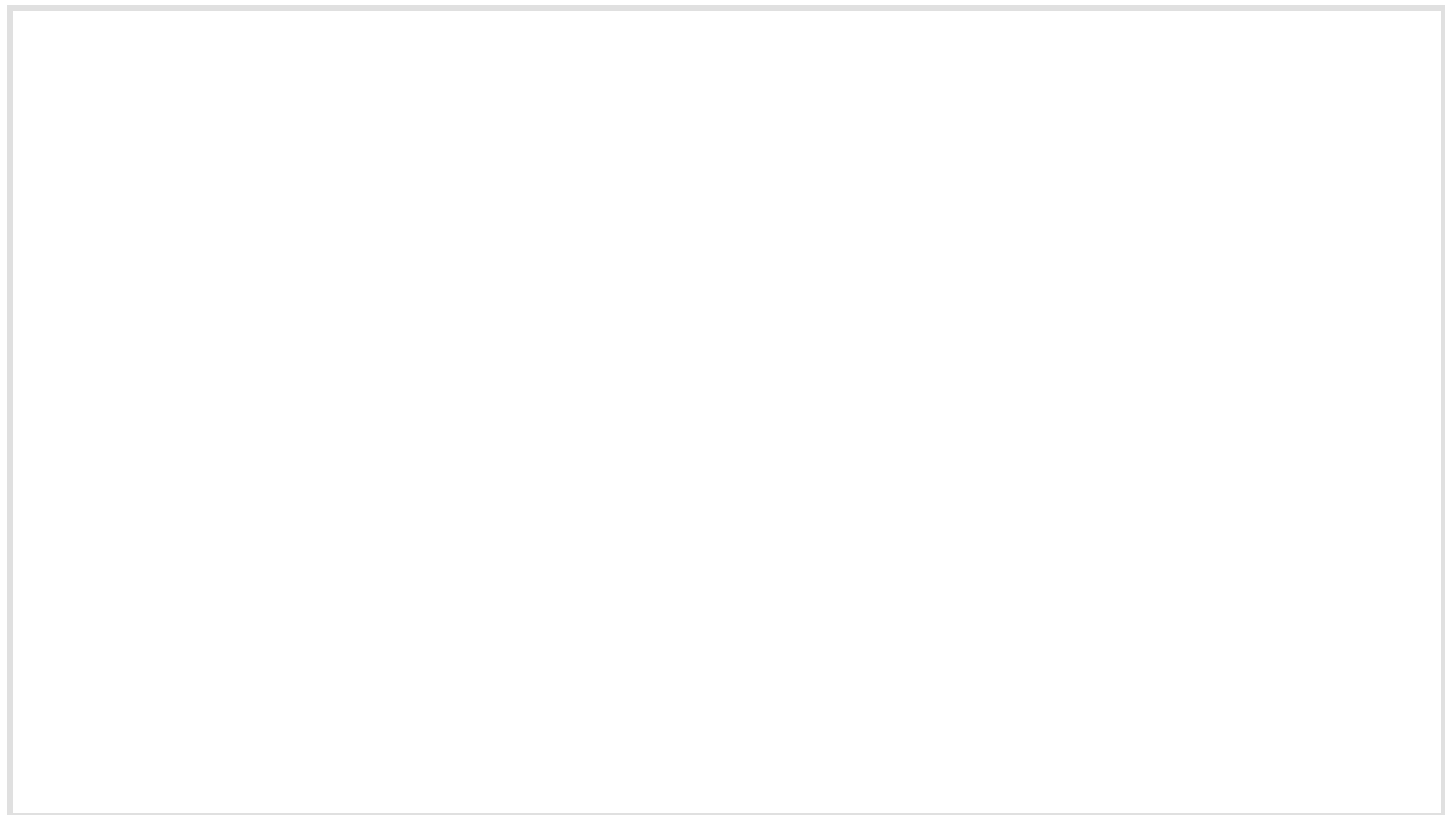




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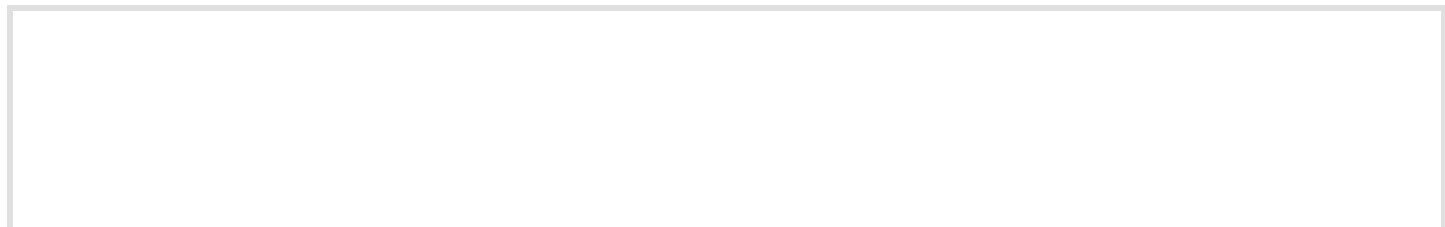
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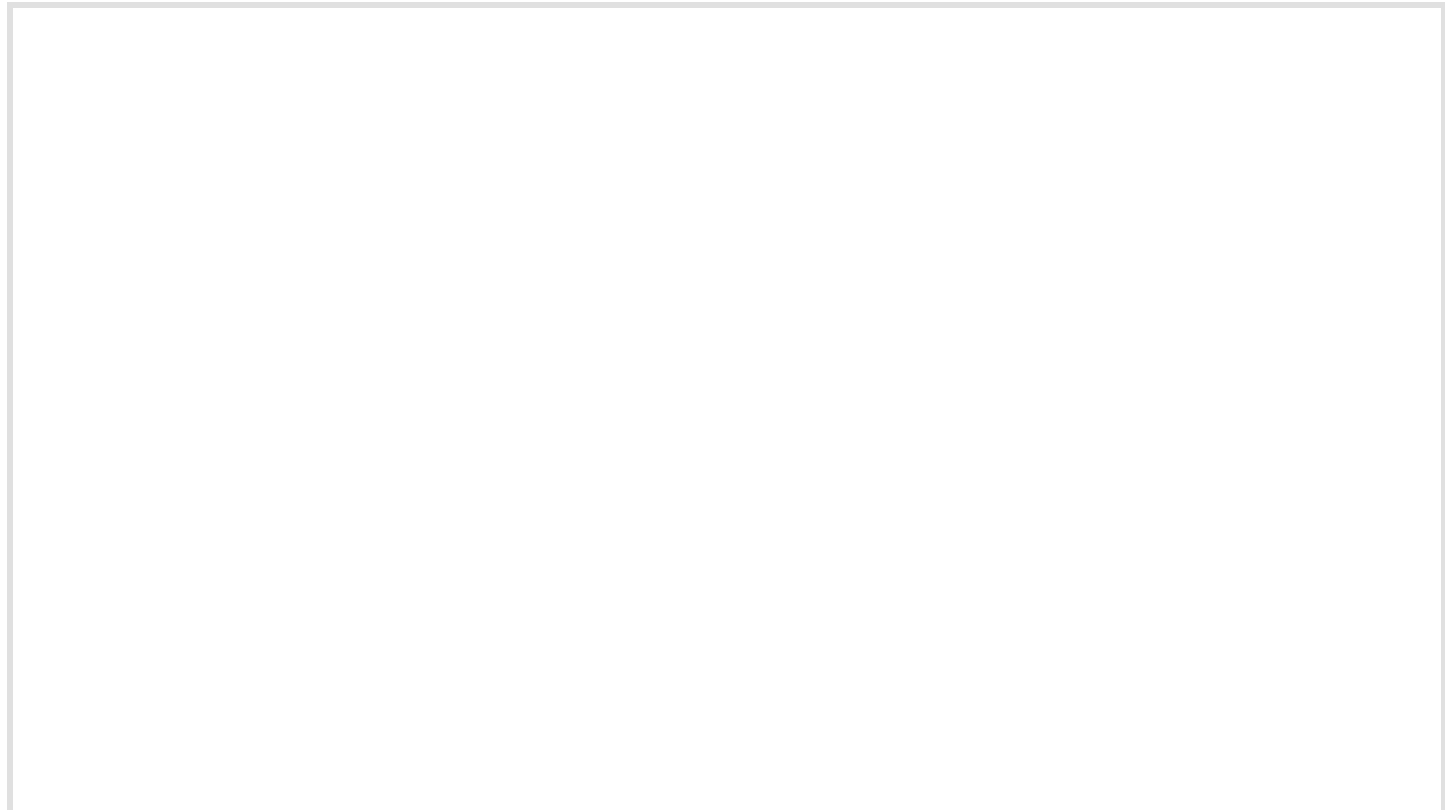
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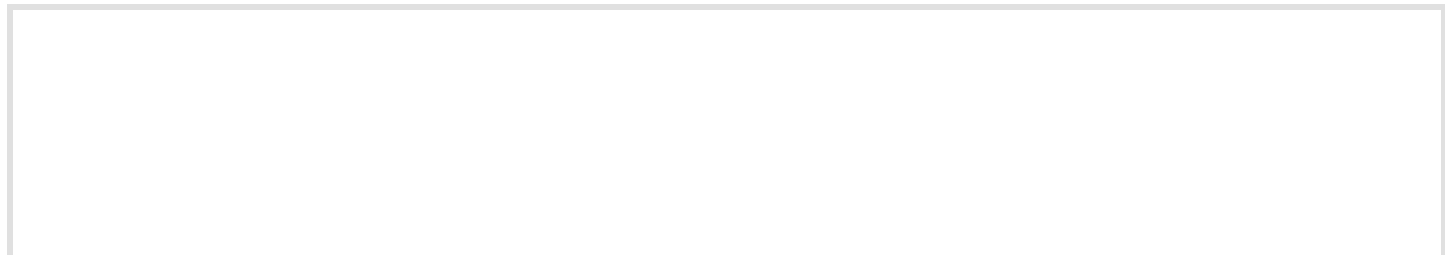
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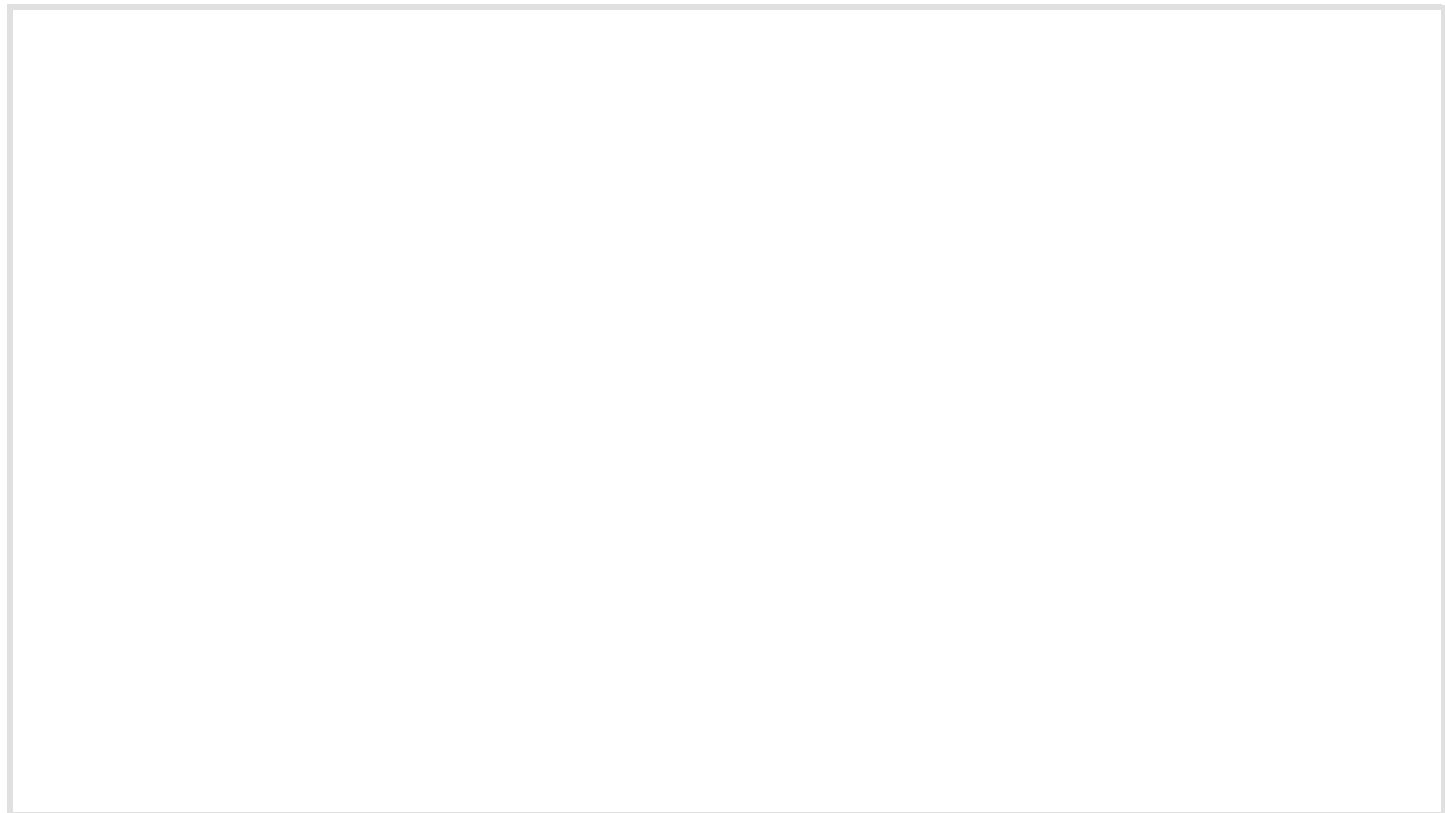
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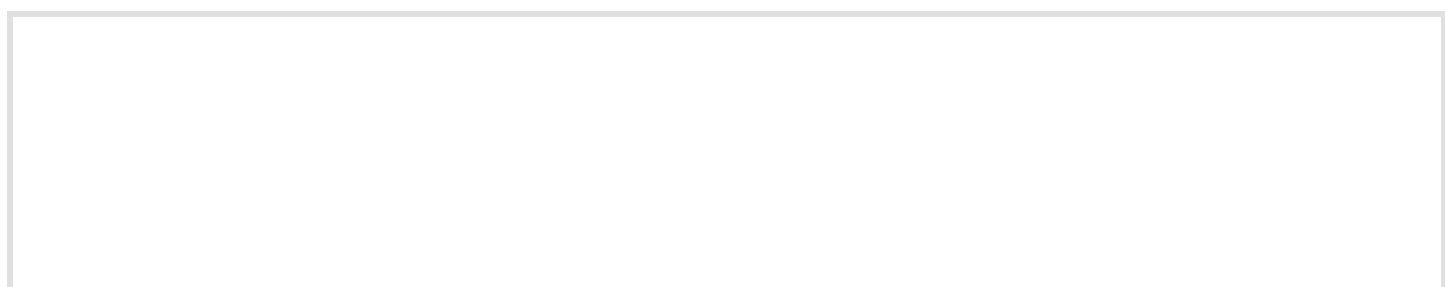
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Oklahoma student speaks out about being expelled from Christian college after same-sex wedding

A Christian school tossed her for her sexual orientation.

By DYLAN GOFORTH World Staff Writer

Jul 16, 2014

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Christian Minard and her longtime girlfriend, Kady Parks, were driving through New Mexico in March, exploring some of the state's scenery when they settled on a courthouse in Albuquerque for their marriage.

Minard, 22, a student at Southwestern Christian University in Bethany, said she and Parks had dated for more than three years before they decided to wed. Unable to get married in Oklahoma because of the state's same-sex marriage ban, they had settled on New Mexico.

Four months later, the couple found themselves thrust into the same-sex marriage debate raging in Oklahoma and across the nation.

Minard said she and Parks had a small ceremony celebrating their marriage in June for their friends and family. Following that, they took off for a honeymoon in Las Vegas.

When they returned, Minard, who was one semester away from graduation,

discovered her parents had received a letter from SCU addressed to her, telling her she was no longer welcome at the school.

Lifestyle covenant

Minard came to SCU from Redlands Community College in El Reno after a friend convinced her to join her on the school's basketball team.

SCU is affiliated with the International Pentecostal Holiness Church. Minard, who grew up in a Lutheran church, was faced with a tough decision. To attend the school, she had to sign the university's "Lifestyle Covenant," a document that forbids "homosexual behavior," as well as tobacco, alcohol and drug use, profanity, sexual misconduct, pornography and "any other violation deemed inappropriate by SCU."

"Basketball is something I love," Minard said. "When they offered me a scholarship, it was a tough decision, because they were going to pay for my school. It would have been tough to say no to that. I struggled with what to do, and in the end the desire to play basketball again was stronger."

The university, bound by the Family Educational Rights and Privacy Act, can't speak directly about Minard's case, but Connie Sjoberg, the school's provost, issued a brief statement.

"Making the choice to attend SCU means that students have a responsibility to our guiding principles and choose to abide by our SCU Lifestyle Covenant," said Sjoberg, a former associate professor of psychology at Oral Roberts University. "The core principals of the SCU Lifestyle Covenant include: spiritual, intellectual, communal, physical, and behavioral."

Separate lives

SCU is a private institution, and therefore has the right to bar a student from attending for whatever reason it sees fit, a fact Minard accepts.

What bothers her, she said, is the sudden nature of the dismissal over the "open

secret” of her sexual orientation and the “uneven” nature of the enforcement of the school’s rules.

“There have been pictures of my wife and I together on Facebook forever. People were aware of my sexual orientation,” Minard said. “There have been other girls on the basketball team that are lesbians. Our coach would even acknowledge when their girlfriends were in the stands.

“I know (the school) didn’t want my relationship in their face, so I kept my school life my school life and my home life my home life. But as soon as one picture of our vow-exchanging ceremony was posted, that was apparently too much.”

She believes it was the wedding picture that led to her expulsion, which troubles her. The lifestyle covenant she signed also forbids alcohol and tobacco use, but she said pictures of students drinking and smoking are routinely posted on Facebook with no repercussions.

Minard said she’s not fighting to regain admission to the school. Although she was one semester shy of graduation, a number of classes she took at SCU were based on required religious studies, and they likely won’t transfer to a public institution, she said.

She believes she will need two or more semesters to graduate at another university.

“What I’ve found out this week is that by telling my story, I’ve been able to help other people,” she said. “I’ve had so many people message me and say, ‘I go to a small Christian college, and I’m gay, too.’ They say they never realized that there were so many people in the same situation they are in.

“I believe in God. I’ve always had a very strong faith and I still do. But being gay in a Christian college makes you feel unwelcome and unwanted.

“It’s been incredible to hear from all these people who have said my story has helped them in some way,” Minard said.

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