

Gender Identity in the College Setting

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CONTENT ADVISORY

The content and discussion in this course will necessarily engage with sex and gender based harassment, discrimination, and violence and associated sensitive topics that can evoke strong emotional responses

All IA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language.



AN EXAMPLE TO ILLUSTRATE OUR DISCUSSION

AGENDA

- 1 Introduction & Terminology**
- 2 Gender Identity as a Political Issue**
- 3 Gender-based Discrimination Manifestation**
- 4 Title IX & Political, Religious, and Academic Freedom and Free Speech**
- 5 Applicable Case Law**
- 6 Case Studies (working pairs)**
- 7 Group Discussion Case Studies and Emerging Best Practices**

THE ISSUES

Individuals who identify differently from their sex assigned at birth may wish to be addressed by a chosen term, name, and/or pronouns

What is the obligation of the institution to support chosen names/pronouns?

What are the rights of faculty and administrators to refuse to honor a student's chosen name or pronouns?

Navigating legal name changes so as not to out someone



TERMINOLOGY (CONT)

Gender Fluid: Denoting or relating to a person who does not identify themselves as having a fixed gender

Nonbinary: a term used to describe individuals who may experience a gender identity that is neither exclusively woman nor man or is in between or beyond both genders

Queer: Denoting or relating to a sexual or gender identity that does not correspond to established ideas of sexuality and gender; especially heterosexual norms

Intersex: A term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that doesn't seem to fit the typical definitions of female or male

MERITHELV HARIO

NO 203289 (61 HCR MAR 26 2021)

Facts

Case against Shawnee State University (SSU) (Ohio)

MERWETHERV HARIOP



MERWEIHER V. HARIO

NO. 203289 (6TH CIR. MAR. 26, 2021)

Facts (Cont.)

MERWETHER V. HARJOP

NO 203289 (61 HCR MAR 26 2021)

Facts (Cont.)

De received a high grade in Merivether's course

Merivether filed a grievance, but the Provost would not discuss academic freedom and religious discrimination aspects of the case

Merivether alleged he could not address a "high profile issue of public concern that has significant philosophical implications" He filed a lawsuit under the 1st Amendment.

MERWETHER V. HARJOT

NO 203289 (6TH CIR MAR 26 2021)

Decision

Merivether lost at the trial court level.

The Court of Appeals overturned the decision and found in favor of Merivether.

The Court held that under Supreme Court decisions & 6th Circuit precedent, the First Amendment protects the academic speech of university professors.

“The First Amendment protects the right to speak freely and right to refrain from speaking . . . and the government may not compel affirmation of a belief with



MERWETHER V. HARIO

NO 203289 (61 HCR MAR 26 2021)

Considerations

There may be a balancing test to applying the First Amendment rights of the professor vs the rights of the institution to maintain a non-disruptive learning environment.

The professor may not create a “g”

Considerations (Cont.)

What are the rights of the student?

What are the obligations of the institution?

Would the use of a racial epithet be treated differently?

Should it? How are misogyny and racism different?

BOSTOCK V. CLAYTON COUNTY, GEORGIA

590 U.S. (2020)

Employment case decided by the U.S. Supreme Court June 15, 2020

The Court ruled that Title VII's prohibition on discrimination "because of sex" covers discrimination on the basis of gender identity and sexual orientation

Following this ruling the Fourth, Eleventh, Sixth and Seventh Circuits reached decisions supporting trans and gender diverse individuals

DODDS V. U.S. DEPARTMENT OF EDUCATION

85F.3D217(6TH CIR 2016)

Facts

DODDS V. U.S. DEPARTMENT OF EDUCATION

85F.3D217(6TH CIR. 2016)

Decision

The court distinguished this case from the *Gimm*³ case which upheld the stay of the injunction requested by the Gloucester County School Board requiring them to allow a trans male student to use the boys' bathroom

In *Dodds* the court held that staying the injunction against the school would disrupt the significant improvement in Doe's health and well-being that resulted from the injunction allowing her to use the girls' bathroom and further confuse her; thus the injunction was upheld, and Doe retained the right to use the girls' bathroom

³*Gimm v. Gloucester County School Board*, 972 F.3d 586 (4th Cir. 2020).



WHITAKER V. KENOSHA UNIFIED SCHOOL DIST.

858 F.3D 1034 (7th Cir. 2017)

Decision

Whitaker filed a lawsuit under Title IX and the Equal Protection clause of the 14th Amendment

The Seventh Circuit issued a unanimous ruling in favor of Whitaker, stating “A policy that requires an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX”

This represented the first federal appellate decision to find that Title IX as a matter of law requires public schools to permit transgender students to use restrooms corresponding to their gender identities

GRIMM v. GLOUCESTER COUNTY SCHOOL BD

972 F.3D 586 (4th CIR 2020)

Case involving restroom access in the K-12 environment

Case has been litigated since 2016 with *cert* requested twice (granted, then dismissed, then finally denied in June 2021)

Gavin Grimm, assigned female at birth, transitioned to male during his freshman year in high school

Initially permitted to use the restroom of his identified gender; the school later rescinded that decision

Following *Bostock*, the Fourth Circuit upheld Grimm's right to use the restroom of his gender identity

Gloucester County petitioned *cert* to the U.S. Supreme Court

After Grimm's response, the Supreme Court denied *cert*, allowing Grimm's protections to stand (and effectively establishing those protections for all students by impliedly suggesting that *Bostock* controls the Title IX analysis of sex encompassing gender)

ADAMS V. SCHOOLS OF ST. JOHNS COUNTY

988F3D1286(2030)

Decision

The Eleventh Circuit has held that the



PRESIDENT BIDEN'S EXECUTIVE ORDERS

EO 13988 issued January 20, 2021, citing to the Equal





OCR NOTICE OF FINAL INTERPRETATION (CONT.)

**“[T]he Department finds no persuasive or well-founded basis for deciding to apply *Bostock’s* reasoning—
discrimination ‘b’, ! i**



INSTRUCTIONS

For each of the following case studies, identify three possible solutions or approaches, and then select one that is your preferred approach

Please be prepared to share why you chose that

1-SAMANTHA

A male faculty member has been intentionally and repeatedly misgendering a student. Samantha is an openly trans female, but the faculty member insists on using the student's dead name when calling on her in class, and always calls the student "Mr.", both in class and in one on one

2- A VARIATION ON SAMANTHA

Samantha comes to the registrar's office to make sure her name is listed correctly for her courses. She's concerned because she changed her name in the student information system to reflect her identity but is unsure whether the registrar has accurately carried over the change to her course assignments

It turns out that the registrar erred, and her birth assigned name has already been provided to all of her faculty members

2- A VARIATION ON SAMANTHA (CONT)

Samantha approaches the Title IX office about this, feeling like she is in an impossible position. If she does not correct her name with her faculty members, they'll be dead naming her all semester. But, if she does correct her name with them, it's possible she'll be outing herself to them as trans and she does not want to do that, if possible, because she fears they may discriminate against her.

As a Title IX team member, what would you do to assist Samantha and to help her resolve the problem?

3- JUNE ANDRAE (ruh-fee)

June walks into the Title IX office, meets her colleague, Rafi, is now using the women's restroom in their department. Rafi is a trans woman, and June refuses to use the restroom along with someone who has a penis. She feels unsafe and thinks anyone with a penis should be required to use the men's room.

June files a complaint that she's being deprived of the ability to safely use the women's restroom in her department, which is discrimination on the basis of her sex.

How should the Title IX officer respond?

4- BARTOK (CONT)

Bartok files a Title IX complaint arguing that the F grade is rooted in discriminatory beliefs held by Doltle, a Christian theologian

Explore variations of this case where Doltle both admits and denies that her Christian beliefs influenced her grade decision. What should the Title IX office do?

5- ISTVANS (isht-vaa-n) TEAMMATES

Istvan's teammates consider Istvan's sex assigned at birth and gender identity to be ambiguous

The teammates shower together in the locker room, but the school has jury-rigged a separate enclosure inside the larger shower area to provide privacy, which Istvan always uses when showering

Istvan comes to the Title IX office with concerns that his teammates are spying on Istvan in the shower:



5- ISTVAN'S TEAMMATES (CONT.)

Coach proposes that he should confront Istvan and require Istvan to prove eligibility or else be removed from the team

Coach recognizes that Istvan has privacy rights, but the rights of all members of the team are also at stake here

You thank the coach for his thoughts, tell him you will confer with your colleagues in the Title IX office, and get back to him with a game plan

What's your plan?



6- FRUITIA (CONT.)

GENDER FLUIDITY

Fruitia also identifies/expresses as a Micaque, (zirconkey fusion).

Many people are frustrated by Fruitia, because they are often corrected by zircon for not using correct identifiers, pronouns, etc.

Numerous complaints have been filed with the Title IX office, alleging that Fruitia's fluidity is a game and is just an excuse for zircon to do anything zircon wants, anywhere zircon wants. They assert Fruitia is a gender fraud and needs to "pick a side".

Continued next slide...

6- FRUITIA

GENDER IDENTITY

One particular complaint is that because Fruitia's gender identity and expression do not always match, zed can be found dressed as a male in a women's restroom but protests when questioned about it there. Fruitia won't reveal any details of zir anatomy when questioned in the restroom.

Fruitia responds to such concerns by telling the Title IX office that no one knows how to deal with an extreme "bender" like zir, and that zed doesn't have to verify anything to anyone about anything.

What should the Title IX office do?

7- FRUITIA'S COMPLAINT

CONSENT

Amidst all of the complaints against Fruitia, ze brings forward their own complaint to the Title IX office

Fruitia has a nonbinary sexual partner; Zolo Fruitia has made it clear that Zolo can have sex with zir when ze is male or female, and when ze is neither; but not when ze is a monkey (because monkeys cannot consent to sex with humans).

Fruitia comes to the Title IX office to file a formal sexual assault complaint against Zolo for having sex with zir when Zolo knew ze was expressing as a Micaque

What should the Title IX office do?

8- SIMPSON & NUNUNU

PEERTOPEERBAS

Simpson joined the NuNuNu fraternity and was initiated. In late April, the fraternity discovered that Simpson is a trans male.

On that basis, the fraternity reversed its decision to admit Simpson and expelled him.

The Dean of Fraternity and Sorority Life has filed a complaint against NuNuNu for violation of the university's non-discrimination policy.

Continued on the next slide...

8- SIMPSON & NUNUNU (CONT.)

PEERTOPEERBAS

NuNuNu explained that it has the right by charter to admit only males

The Dean has countered that Simpson is a male, and that the n and

8- SIMPSON & NUNUNU (CONT.)

PEERTOPEERBAS

Simpson responds that he was not born female, but intersex and had gender confirmation surgery.

Did NuNuNu discriminate against Simpson on the basis of sex?

What should the Title IX office do?

9- JANA & SELENE (CONT.)

COMPETITION MEANS THE RIGHT TOWN

Jana and Selene both show clear statistical proof that their times are the fastest female times in the league, eclipsed only by the times of the two trans females

No other cisgender female has beaten either of the trans females all season

The trans females are both asserted to be compliant with the applicable hormone suppression regimen required by the league

How should the Title IX office analyze and address this complaint?

10- PROFESSOR PETERSEN (CONT.)

FREESPEECH

Petersen is incensed by the adaption

10- PROFESSOR PETERSEN (CONT.)

FREE SPEECH

This is an advanced and complex case study.

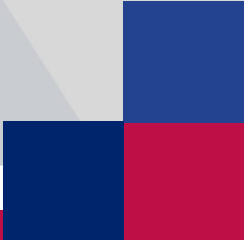
Let's see how you do with it.

Roadmap how your office would address 1 d





Questions?



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