THE CHANGING LEGAL LANDSCAPE FOR LGBTQIA STUDENTS IN HIGHER EDUCATION: TITLE IX, RELIGIOUS FREEDOM OF EXPRESSION, AND THE SPECIAL RELATIONSHIP DOCTRINE

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Abstract

LGBTQIA students are an important stakeholder group on college and university campuses, especially as both their visibility and expectations for support and empowerment on campus increase. But how ready is the field of higher education for litigation related to LGBTQIA issues, and how should student affairs practitioners prepare to address LGBTQIA students' possible negative campus experiences proactively? By reviewing details of cases that have set an important precedent and signal what might be coming with respect to LGBTQIA students' rights and experiences in higher education, this article seeks to provide detail and analysis of important legal areas that student affairs practitioners should be attuned to as they continue to educate thousands of LGBTQIA students each year. I explore how Title IX may be increasingly a route of redress for LGBTQIA students who have experienced discrimination; how rulings on religious freedom of expression may erode some of LGBTQIA students' rights on college and universities campuses; and the special relationship doctrine and how it may be applied to LGBTQIA students in mental health crisis.

Keywords: LGBTQIA students, LGBTQIA students' rights, LGBTQIA legal issues in higher education, legal analysis, Title IX, religious freedom of expression, special relationship doctrine

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LGBTQIA students[1] are an important stakeholder group on college and university campuses, especially as both their visibility and expectations for support and empowerment on campus increases (Hoover, 2022; O'Neill et al., 2022; Rankin et al., 2019). A recent Association of American Universities survey found that 17% of students in its sample of over 180,000 college students identified as gay, lesbian, bisexual, asexual, queer, or questioning, and 1.7% identified as transgender, non-binary, or genderqueer (AAU, 2020). Assuming theirs is a representative sample there may be close to three million LGBTQIA undergraduate students currently enrolled in the U.S. (Hanson, 2022).. Over 250 colleges and universities have a professionally staffed LGBTQIA resource center (Consortium of Higher Education LGBT Resource Professionals, n.d.), and the Consortium of Higher Education LGBT Resource Professionals comprises 1,186 members who work at 458 colleges and universities (Bazarsky et al., 2020). These figures all indicate that LGBTQIA students are a sizeable group of students that may have particular concerns and needs and that higher education institutions are increasingly investing in visible and significant resource commitments to LGBTQIA students.

Yet how ready is the field of higher education for litigation related to LGBTQIA issues, and how should campus leaders prepare to address LGBTQIA students' possible negative campus experiences proactively? This paper seeks to provide detail and analysis of important legal areas that student affairs practitioners should be attuned to as they continue to educate thousands of LGBTQIA students each year. I will offer an overview of trends in case law related to LGBTQIA college students; explore how Title IX may be increasingly a route of redress for LGBTQIA students who have experienced discrimination; discuss how rulings on religious freedom of expression may erode some of LGBTQIA students' rights on college and universities campuses; and explicate the special relationship doctrine and how it may be applied to LGBTQIA students in mental health crisis.

Overview of Case Law Relating to LGBTQIA College Students

Throughout the 1970s, 1980s, and 1990s, there were a number of significant legal cases involving LGBTQIA students in higher education. In particular, they centered on the rights of lesbian, gay, and bisexual students to create and receive funding for LGB campus student organizations at public institutions. Key cases impacting LGBTQIA students in the 2010s and 2020s focused on what rights religious students and professors have at public universities to exclude or not LGBTQIA people and topics from student organizations and class discourse. The reason for the high representation of public universities in LGBTQIA-related litigation is that public universities are bound by constitutional law to ensure students' right to freedom of expression on campus. In contrast, private institutions are not under the federal government's purview in the same way and have more latitude to determine their own policies for protections they provide related to speech and expression on campus.

The cases I selected to explicate in the following sections are ones that focus specifically on higher education law and LGBTQIA students' rights. The cases do not represent every single higher education- and LGBTQIA students-related case but are those that have set important precedent and/or signal which might be to come. Two cases I focus on are not directly centered on LGBTQIA students in higher education: the *Bostock v. Clayton Coun-*

[1]The terminology to describe minoritized sexual orientations and gender identities varies across communities and college and university campuses (e.g., LGBT, LGBTQ+, GLBT, queer and transgender, etc.). In this paper, I use the term LGBTQIA (lesbian, gay, bisexual, transgender, queer, intersexual, asexual) as an umbrella term for minoritized sexualities and gender identities, though I acknowledge that other terms may be relevant and affirming to people in the LGBTQIA community. This acronym should not be considered all-encompassing but rather a useful shorthand.

ty (2020) Supreme Court case related to discrimination in employment, and *Grimm v. Gloucester County School Board* (2020), a case in the K-12 arena. Though not higher education-specific, both have significant implications for how Title IX may be applied to LGBTQIA students in higher education contexts.

Title IX as Recourse for LGBTQIA College Students

Student affairs practitioners must be attuned to recent legal developments in Title IX of the Education Amendments of 1972 and how Title IX may newly be a path of recourse for LGBTQIA students who experience discriminatory treatment related to their sexual orientation and/or gender identity.

The most important case for the rights of LGBTQIA students in higher education may prove to be the of the employee discrimination-centric case of *Bostock v. Clayton County* (2020). The Supreme Court ruled 6-3 that the three employers in the *Bostock* (2020) case had all violated Title VII (which prohibits certain kinds of discrimination in employment) by discriminating against gay or transgender employees. Prior to the *Bostock* (2020) ruling, most federal courts did not allow plaintiffs to litigate sexual orientation and gender identity claims under Title VII (Kaplin et al., 2020). Most courts viewed the Title VII prohibition of sex discrimination to be specifically and only about biological sex. One important precedent towards changing the courts' determination of what constitutes sex discrimination was the *Price Waterhouse v. Hopkins* (1989) case, which expanded the understanding of Title VII to include sex and gender stereotyping. Then in the *Zarda v. Altitude Express Inc.* (2018) case (which was appealed and then included in the *Bostock* [2020] ruling), a federal appellate court extended the umbrella of sex discrimination to include sexual orientation, holding these three components to be true in its ruling: sexual orientation is indeed related to sex, sexual orientation discrimination is related to sex stereotyping, and sexual orientation discrimination is also a form of associational discrimination.

Bostock (2020) affirmed this analysis, with the Supreme Court ruling that Title VII includes sexual orientation and gender identity as components of sex. Therefore, employment discrimination related to sexual orientation and gender identity is illegal federally, not just in the state-by-state patchwork of laws from the past. This ruling also meant that Title IX could likely move to including sexual orientation and gender identity under the umbrella of what constitutes sex discrimination because Title VII and Title IX are often interpreted in parallel (Department of Education, 2021; Kaplin et al., 2020).

Not only is *Bostock* (2020) a watershed ruling for the civil rights of LGBTQIA employees, it is also critically important for the rights of LGBTQIA students. In June 2021, the U.S. Department of Education's Office for Civil Rights (OCR) issued guidance that interprets Title IX consistent with *Bostock* (2020). It says very plainly on the OCR description of the "Notice of Interpretation": "This notice clarifies that Title IX prohibits discrimination based on sexual orientation and gender identity" (OCR, 2021, para. On Notice of Interpretation)[2]. While this notice has important and material benefit for LGBTQIA students right now, it is important to stress that a different presidential administration could rescind this guidance in the future. University leaders and practitioners must stay attuned to what may develop here in the coming years because the law in this area is certainly not settled. *Bostock* (2020) is indeed a watershed case, but it did not resolve definitively whether Title IX will always cover sexuality and gender identity: only a Supreme Court decision can decisively determine how Title IX should be interpreted.

[2]Religious institutions of higher education may claim an exemption from Title IX, and this OCR guidance does not eliminate that exemption. More detail on the religious exemptions is included in the following section.

Two months after *Bostock* (2020) was decided, a final decision also came down in the *Grimm v. Gloucester County* (2020) case. While the case was in the K-12 realm, its decision signals how transgender college students' rights may be considered in higher education environments as well. At issue was the treatment of a transgender high school student who experienced distress, stigma, and physical issues stemming from a school board policy that forced him to use a single bathroom that no other students used instead of the boys' restrooms. The circuit judge's opinion begins with the statement: "At the heart of this appeal is whether equal protection and Title IX can protect transgender students from school bathroom policies that prohibit them from affirming their gender. We join a growing consensus of courts in holding that the answer is resoundingly yes." (*Grimm v. Gloucester County*, 2020, p. 593). The opinion indicates that future cases involving transgender students and their right to access facilities that align with their gender identity may use this precedent in both high school and college cases.

Prior to the recent Title IX rulings, LGBTQIA students who experienced harassment or discrimination on campus related to their sexual or gender identity had few options, with the most feasible being using their schools' internal process (Stingley, 2021). However, that recourse possibility was likely limited to schools that had sexual and gender identity in their non-discrimination policies—at least 1,072 institutions as of this writing, which represents just 16% of all 6,502 degree-granting higher education institutions in the United States (Campus Pride, n.d.; National Center for Education Statistics, 2021).

One of the few known cases brought by an LGBTQIA student against their college or university related to discrimination (as opposed to free expression, which will be covered in depth in the next section) is *Johnston v. University of Pittsburgh* (2015). The court ruled that the plaintiff—a transgender man who was expelled after being barred from but continued to use the men's bathrooms and locker rooms on campus—could not sue under Title IX. The court wrote:

> "This case presents one central question: whether a university, receiving federal funds, engages in unlawful discrimination, in violation of the United States Constitution and federal and state statutes, when it prohibits a transgender male student from using sex-segregated restrooms and locker rooms designated for men on a university campus. The simple answer is no" (*Johnston v. University of Pittsburgh*, 2015, p. 661).

The court said that transgender identity is related to gender, not sex. But since this 2015 case, litigation and important related precedents such as *Grimm* (2020) and *Bostock* (2020) have been set in the areas of K-12 and employment discrimination. Future cases in higher education related to transgender students' use of bathrooms and locker rooms are likely to favor transgender plaintiffs, especially now that Title IX is increasingly seen as covering gender identity. Schools that were not previously motivated to ensure transgender students have equitable access to bathroom and locker rooms that align with their gender identity ought to become motivated now, at least in order to avoid legal liability.

Tensions Between Religious Freedom of Expression and LGBTQIA Students' Rights

At the same time that protections for LGBTQIA students are expanding with coverage under Title IX for both sexual orientation and gender identity, there are also some recent cases that indicate schools must be prepared to navigate religious freedom of expression and religious exemptions as related to LGBTQIA students' rights and treatment on campus.

At public schools, student organizations have a constitutional right to freedom of association and freedom of expression. In the 1970-1990s, there were several important cases regarding LGBTQIA students' rights to free expression, many of which were decided in favor of the student plaintiffs. In

Gay Students Organization of the University of New Hampshire v. Bonner (1974), the GSO, a recognized student group, was told by the university leadership that it could not have social gatherings on campus any longer after receiving anti-gay pressure from the state governor. The court found for GSO, saying the students' freedom of expression and association had been violated. In *Gay and Lesbian Students Association v. Gohn* (1988), the court ruled for the student group when it was denied funding from the University of Arkansas, Fayetteville student senate. The student senate denied GLSA funding because the funds would go to education about homosexuality. When the GLSA objected, the university administration upheld the student senate's decision, and the GLSA sued the school. The court ruled that the university was at fault because it was not applying its student organization rules consistently: "The University need not supply funds to student organizations; but once having decided to do so, it is bound by the First Amendment to act without regard to the content of the ideas being expressed" (*GLSA v. Gohn*, 1988, p. 362).

Almost a decade later, an LGBTQIA student organization prevailed in court again in *Gay Lesbian Bisexual Alliance v. Pryor* (1997). The University of South Alabama refused to recognize or give funds to the Gay and Lesbian Bisexual Alliance (GLBA) due to an Alabama law that prohibited LGBTQIA advocacy in schools. The court ruled that the law was unconstitutional and violated students' free speech, calling it "blatant viewpoint discrimination" (*GLBA v. Pryor*, 1997, p. 1549). The *GLBA* (1997) ruling relied on the precedent of *Rosenberger v. Rectors and Visitors of the University of Virginia* (1995). In this case, a religious student group, Wide Awake Productions, was not allowed to use funds that other student groups had access to. This was because UVA, a public university, had a regulation specifying that student groups could not use school funds for religious and political activities because it was concerned that supporting a student religious group would violate the U.S. Constitution's prohibition against government funding of religion. The Supreme Court ruled that refusing funds to the religious student group was a violation of their free speech rights and was not government support for religion. The case extended student organizations' free speech and expression rights to include the right to access funds, not just to spaces and university recognition, which had been the focus in prior cases (Kaplin et al., 2020).

The *Rosenberger* (1995) and *GLBA* (1997) cases were certainly not the last time that religious and LGBTQIA student groups would have intersecting legal interests, even when the plaintiffs were seeking opposite rulings related to gender and sexual identity. A momentous decision for LGBTQIA and religious students alike was the Supreme Court's ruling in *Christian Legal Society v. Martinez* (2010). The court ruled for the university, upholding its determination that the Christian Legal Society chapter at UC Hastings College of Law, a public law school, could not be a recognized student organization because it did not follow the university's "all-comers" membership policy. The Christian Legal Society chapter had required members to sign a statement of faith, which specified that the group will "exclude from affiliation anyone who engages in 'unrepentant homosexual conduct' or holds religious convictions different from those in the Statement of Faith" (*Christian Legal Society v. Martinez*, 2010, p. 2974). UC Hastings said the student group's practices effectively barred LGBTQIA students and allies from being part of the group if they did not affirm the anti-LGBTQIA faith statement and that exclusion violated UC Hastings' non-discriminatory policy related to sexual orientation. Higher education institutions with all-comers student organization policies and non-discrimination policies may be more likely to prevail in court if they are sued for not giving money, recognition, or space to groups that have anti-LGBTQIA practices. However, most campuses *do* allow student groups to be selective, and those schools may have more challenges in

enforcing their non-discrimination policies in the student organization realm. The following case is an illustration of those challenges.

In *InterVarsity Christian Fellowship/USA v. Univ. of Iowa* (2021), at issue was that University of Iowa de-registered the InterVarsity student organization because its statement of faith requirement conflicted with the university's non-discrimination policy. Unlike UC Hastings, the school did not have an all-comers policy but rather allowed student groups to freely convene based on identity and therefore technically allowed groups to discriminate and sort their members by a variety of identities (religion, gender, etc.). No group besides InterVarsity and another Christian student group was de-registered, even though other groups also had specific criteria for members—including faith-based criteria, such as the Muslim student group, which was not de-registered. Because the University of Iowa had singled out InterVarsity, the court ruled that the school had failed the strict scrutiny test and InterVarsity must be reinstated because there was no compelling reason for the school to choose only InterVarsity for discipline. The University of Iowa could have worked to compromise with the group or regulated the other discriminatory student group practices consistently but did not do so.

Many public higher education institutions have student group policies that are more like University of Iowa than like UC Hastings, and therefore student affairs practitioners must make sure they are proactively thinking about how they can preserve the ability for students to gather in identity-alike groups and enforce their policies with consistency. Administrators at public institutions must "understand fully the concept of the 'all-comers' policy" and work with their legal team to determine whether they indeed have an all-comers policy or if they ought to have one (Kaplin et al., 2020, p. 715). If university leaders at public schools do not want to move to an all-comers policy, they must detail how affinity-based gathering is not the same as discrimination and make the policy and practices clear to all student groups (Kaplin et al., 2020). For example, schools may say that students can determine their members unless the determination process is contrary to the mission of the university or the group is not abiding by the clearly laid out school procedures. Students in private colleges and universities do not have the same constitutional right to freedom of expression in their campus student organizations, but many private institutions include protections for speech in their policies. Because private institutions do not necessarily need to be as specific in their policies, they may have more freedom than public institutions to chart a middle path between the type of protections the Constitution provides and more nuanced policies regarding student organization membership policies. This allows university leaders to address students' allegations of discrimination related to student groups in more holistic and less litigious ways.

In addition to attending to how non-discrimination policies and laws interplay with student organizations, the legal landscape regarding in-classroom experiences of LGBTQIA students is also important for higher education institutions to assess. The recent *Meriwether v. Hartop* (2021) case demonstrates the tension between religious belief and transgender students' rights. The court ruled for Meriwether, a professor who refused to use a transgender student's correct pronouns in class and was disciplined by Shawnee State University. The court was convinced that Meriwether's sincerely held religious belief was more important than the school's non-discrimination and pronoun usage policy.

The *Meriwether* (2021) ruling for the professor was a surprising one, especially given that *Bostock* (2020) and *Grimm* (2020) were decided prior to *Meriwether* (2021). It is possible that cases similar to both *Meriwether* (2021) and *InterVarsity* (2021) might be ruled on differently in the future—the Biden Administration is approaching Title IX as unambiguously covering LGBTQIA students, and that may have an impact on courts'

decision-making (Department of Education, 2021; Stingley, 2021). Higher education legal scholar Dr. Barbara Lee posited in a recent podcast discussion:

> Most agencies and most courts take the position that employers can enforce reasonable work conduct rules. And that it's not religious discrimination or a failure to accommodate sincerely held religious belief to require employees to treat each other with dignity and respect. (Stingley, 2021)

That line of reasoning may be taken on by future judges in *Meriwether* (2021)-like cases. But even if judges in some circuits are moving towards interpreting Title IX as covering sexual orientation and gender identity, there still remains the possibility that a different presidential administration could change course. Even more significant would be a Supreme Court case focusing on Title IX and the question of whether it covers sexuality and gender identity. The law is certainly not settled in this area.

Another complex dimension in this legal arena is the rights of LGBTQIA students at religious colleges and universities. Title IX allows religious, educational institutions to apply for a religious exemption. Unlike religious exemptions for employers under Title VII, in which the bar is high and relates specifically to the application of Title VII's employment protections in both hiring and terms and conditions of employment, "the Title IX religious exemption has been liberally granted…[A]n entity must only assert that compliance with Title IX is inconsistent with its religious tenets, without any inquiry in the sincerity of such beliefs" (Bryk, 2015, p. 778). Bryk's article decries three particularly egregious Title IX religious exemptions, but those were only the tip of the iceberg. As of early 2022, at least 79 religiously affiliated colleges and universities have already received exemptions from Title IX's prohibition on discrimination related to sexual orientation or gender identity (Movement Advancement Project & National Center for Transgender Equality, n.d.). Some LGBTQIA students want to attend religious colleges and universities, while others discover that they are LGBTQIA while enrolled at religious institutions. Bryk (2015) makes a compelling argument that the OCR should not trample these students' rights with the current ease with which religious schools can receive a religious exemption to Title IX. There is a class action lawsuit currently pending, *Hunter v. U.S. Department of Education* (2021), in which 33 LGBTQIA students allege negative and abusive experiences with a variety of religious colleges and universities and, on that basis, seek to invalidate the religious exemption to Title IX. This case will be instructive for higher education professionals to follow.

The existence of this exemption under Title IX for religious colleges is another example of the tension between the Constitution's guarantee of free exercise of religion for students and religious institutions on the one hand and the rights of LGBTQIA students on the other.

Suicidality and the Special Relationship Doctrine

A third legal area that has the potential to increasingly involve LGBTQIA students is the special relationship doctrine. When a college or university is aware that a student is at risk for a specific harm from themselves or others, the special relationship doctrine comes into play, and the school may have a duty to prevent that harm (*Nguyen v. Massachusetts Institute of Technology*, 2008). Given that institutions of higher education actively assume certain duties of care towards their students, they have a legal responsibility to insure they follow through on that special relationship, "beyond that which is normally present either in common law or through policy or procedure" (Pfahl, 2021, p. 99).

Student suicidality is an area where higher education institutions may have a legal duty to intervene and have legal liability if they do not fulfill their special relationship related to suicidality.

Due to discrimination, stigma, and other factors, LGBTQIA youth are at increased risk for suicidality than their heterosexual peers (Haas et al., 2011) and are more likely to experience a variety of types of harassment and assault related to their sexual and/or gender identity (Kosciw et al., 2010). In a recent national survey of 35,000 LGBTQIA youth who ranged in age from 13 to 24 years old, 42% reported serious suicidal thoughts in the past year (The Trevor Project, 2021). The number of suicide attempts reported by respondents was also significant and high, especially for respondents who are Native/Indigenous and LGBTQIA (31% reporting a suicide attempt), Black and LGBTQIA (21%), multi-racial and LGBTQIA (21%), trans and non-binary (20%) and Latinx and LGBTQIA (18%) (The Trevor Project, 2021). These youth include many students who will soon matriculate into higher education or are already enrolled. Further, a meta-analysis with a large sample of LGBTQIA college students showed that they are four times more likely than their non-LGBTQ peers to experience depression and have suicide ideation (Greathouse et al., 2018). Higher education leaders must be aware of both the mental health and the legal responsibilities they have towards this important constituency of students.

It is not LGBTQIA students' identities themselves that are the root cause of suicidal thoughts and attempts. Rather, what contributes to increased suicidality is "the social stigma, prejudice and discrimination associated with minority sexuality orientation," (Haas et al., 2011, p. 22). Student affairs practitioners must attend to the particular challenges and vulnerabilities that their LGBTQIA students currently or previously have endured so that LGBTQIA students have the opportunity for as positive and affirming a college experience as possible. Not only is it the right thing to do, but increasingly higher education institutions may also expose themselves to legal liability if they are not thinking intentionally and proactively about how to support the health and well-being of and equal access to facilities for their LGBTQIA students.

In the *Schieszler v. Ferrum College* (2002) case, Ferrum College was held liable for damages for a student's death by suicide because the court ruled that the student had given many signs that he was suicidal, and therefore the risk was foreseeable. Similarly, a court ruled that MIT could not be awarded summary judgement in the *Shin v. Massachusetts Institute of Technology* (2005) case because there could be a special relationship at play. In this case, employees of the institution knew the student had been suicidal in the past, which meant that MIT could reasonably anticipate the self-harm and the student and their family had a reasonable expectation of help from the college to prevent the student's self-harm (the case ended in a settlement). We have no information about the deceased students' sexual orientation and gender identity; however, we know from the research about suicidality that LGBTQIA students are disproportionately represented in attempted or completed suicides on college campuses (Greathouse et al., 2018; Haas et al., 2011; Horowitz et al., 2020; The Trevor Project, 2021). Future cases involving the special relationship doctrine could potentially come from the families of LGBTQIA students.

Implications for Student Affairs Practice

Student affairs practitioners across all campus units serve LGBTQIA students, and there are important implications for administrators to draw from regarding the legal trends covered in this article. LGBTQIA students may seek out support from a range of administrators and professors across campus, so university-wide training in early warning signs of suicide ideation is critical. A challenging complication for administrators and faculty seeking to support LGBTQIA students who may have suicide ideation is balancing the special relationship doctrine duty to take affirmative action with students' expressed wishes about whether or not to inform family members. Some family members of deceased students have argued in court that the schools had a duty to specifically warn them (*Jain v. State of Iowa*, 2000; *Schiesz-*

ler, 2002; *Nguyen*, 2008), and in the *Schieszler* (2002) case, the court agreed. Yet, in some of these cases, the students had explicitly said they did not want parents or advisors informed of any mental health challenges they were experiencing. Similarly, many LGBTQIA students do not want to (and it might be unsafe to) involve their family members in conversations related to their sexual or gender identity, especially when they are in distress. Therefore, student affairs practitioners and faculty who counsel or support LGBTQIA students need to balance honoring students' wishes for their health disclosures with determining whether informing parents or other family members about their suicidal thoughts would decrease their likelihood of committing suicide.

In my experience as an LGBTQIA student support administrator, this requires having a close and trusting relationship with the student, as well as having a support network of colleagues to discuss how to approach mental health distress disclosure or non-disclosure to family members. This is no easy task, but an area of great import for higher education leaders, student support practitioners, and legal counsel to all work on through case studies, table reads, and updating procedures.

Another major area with legal implications for student affairs practitioners is the need for those who advise and create policies for student groups to pay attention to the dynamics and tensions between LGBTQIA students' rights and religious students' rights. Firstly, LGBTQIA students and religious students are not mutually exclusive categories, and LGBTQIA students, religious students, and religious LGBTQIA students all deserve to have educational experiences free from discrimination. When issues of discrimination and freedom of expression come to a head, schools must make decisions with both ethical and legal frameworks in mind. While an all-comers student organization policy might help higher education institutions win or settle lawsuits in this arena, it would also reduce the number of intentional and affirming student spaces that are so important to the sense of belonging for students of different identities, especially marginalized identities. Religious students' ability to openly discuss the tenets of their faith is important, but so is the ability of LGBTQIA students of faith to seek out campus religious groups that do not ask them to reject their LGBTQIA identity in order to take part in the community. Administrators who work with student organizations need to have proactive conversations and work with their legal teams to determine what should and should not be explicitly delineated in student organization practices' handbooks. For private universities, giving more room for nuanced approaches may mean having less detail in handbooks and more in training and advising conversations with student group leaders. For public universities, the threat of litigation is more acute, and therefore more specificity in policies and handbooks may be necessary.

Finally, higher education administrators must also be attuned to instances in which transgender students are being barred from using bathroom and locker room facilities that correspond to their gender identity, whether it is an official policy or an unwritten rule and practice. The courts have recently signaled that transgender student plaintiffs are likely to prevail when they bring Title IX complaints related to facility access. However, most ideal would be for higher education institutions to operate in such a way that transgender students do not need to litigate to have their needs met. Instead, leaders and administrators should conduct proactive assessments of university facilities and restroom-related policies to insure that needs and rights of transgender students are addressed so students can focus on being students.

Conclusion

The legal landscape related to protection of LGBTQIA students' rights has been in flux for the last 40 years, with some rulings that expand LGBTQIA students' rights and others that may constrict their access to all groups and facilities on

college and university campuses.

The landmark *Bostock v. Clayton County* (2020) Supreme Court ruling and the *Grimm v. Gloucester* (2020) decision are making Title IX interpretation more clear, especially related to transgender students' access to facilities that align with their gender. Cases involving religious freedom of expression on campus are increasing and require proactive policy and practice analysis to ensure LGBTQIA students' experiences at colleges and universities are not diminished. The special relationship doctrine may increasingly be a route for families of LGBTQIA students who can show that the students' universities did not meet their duty to prevent LGBTQIA students' suicides.

If student affairs leaders and practitioners are not thinking through all of these important components of the legal landscape related to LGBTQIA students' campus experiences, they will neglect to serve LGBTQIA students well, and their institutions may be vulnerable to litigation. Using both ethical and legal frameworks, student affairs professionals can help guide their campuses to be or become the educational spaces that LGBTQIA students need and deserve.

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