



November 21, 2014 – Transmitted Electronically

Catherine Lhamon, Assistant Secretary
U.S. Department of Education
Office of Civil Rights
400 Maryland Avenue, SW
Washington, DC 20202-1100

Dear Ms. Lhamon:

Campus Pride is a non-profit organization for student leaders and campus groups working to create a safer college environment for lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ) students, and I have the privilege of serving as Coordinator of Campus Pride's Lambda 10 Project, a clearinghouse for information regarding sexual orientation and gender identity issues in fraternities and sororities.

In its efforts to make social fraternity and sorority membership more inclusive for transgender students, an obstacle that Campus Pride frequently faces is a perception by the national staff and board members of the inter/national social fraternal organizations that addressing the issue of transgender membership and potentially welcoming transgender members threatens their ability to operate as single-sex organizations. This perception, Campus Pride posits, is based on a prevalent misunderstanding of the relationship between the membership practices of social fraternal organizations and Title IX of the Education Amendments of 1972.

In light of the lack of clarity on this issue, Campus Pride and the Lambda 10 Project respectfully request guidance from the Office of Civil Rights on the limited issue of Title IX's role on the membership practices of social fraternal organizations on college and university campuses.¹

¹ For a detailed analysis on this issue that can provide guidance to the Office of Civil Rights, see Stevie V. Tran, Note, *Embracing Our Values: Title IX, The "Single-Sex Exemption," and Fraternities' Inclusion of Transgender Members*, 41 HOFSTRA L. REV. 503, 523-27 (2012). See also Stevie V. Tran, *Transgender Membership in Fraternities & Sororities and Title IX*, CAMPUS PRIDE, <http://www.campuspride.org/tools/transgender-membership-in-fraternities-sororities-and-title-ix/> (last visited Nov. 19, 2014).



Title IX and the 1974 Amendment

It is Campus Pride’s understanding that Title IX does not affect the membership practices of social fraternities and sororities. Rather, Title IX regulates the university or college only.

In 1972, Indiana Senator Birch Bayh sponsored Title IX of the Education Amendments of 1972 to address sex discrimination within educational institutions. In short, Title IX functioned as a gateway to the receipt of federal funds for educational institutions. If it wanted these funds, an educational institution could not discriminate on the basis of sex within education programs and activities.

In 1974, the Department of Health, Education, and Welfare tried to apply Title IX specifically to fraternities. In response, Senator Bayh—the law’s original sponsor—proposed an amendment to Title IX, exempting the membership practices of fraternal organizations from the statute’s reach. Senator Bayh made expressly clear in his numerous statements on the floor of Congress that “[f]raternities and sororities have been a tradition in the country for over 200 years . . . [and] must not be destroyed in misdirected effort to apply Title IX.”² Senator Bayh’s amendment became law.

The amendment states in relevant part: “[Title IX] shall not apply to membership practices--(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of title 26, the active membership of which consists primarily of students in attendance at an institution of higher education”³

Title IX Plays No Role in the Membership Practices of Social Fraternal Organizations

In light of the well-documented legislative history and the 1974 amendment to Title IX, Campus Pride submits that Title IX does not and cannot reach the membership practices of social fraternal organizations. As originally intended in 1972, Congress specifically designed Title IX to bind and regulate education institutions that receive federal funding. Because of Senator Bayh, the 1974 amendment explicitly limits the purview of Title IX, permitting a college or university to recognize social fraternal organizations without the risk of losing its federal funding.

Title IX’s language says nothing about social fraternal organizations and their single-sex status. Importantly, it does not impose any requirement on social fraternal organizations to remain single-sex to benefit under Title IX’s 1974 amendment. Rather, Title IX simply permits a university to recognize single-sex fraternities and sororities without violating the law and goes no further than that. *All* aspects of membership decisions, then, remain solely with the social fraternal organization—as these decisions have since the formation of fraternities in 1776.

² 120 CONG. REC. 39,993 (1974).

³ 20 U.S.C. § 1681(a)(6) (2006).

Campus Pride respectfully requests guidance from the Office of Civil Rights on the limited issue of Title IX's role on the membership practices of social fraternal organizations. Specifically, Campus Pride requests confirmation that Title IX plays no role in the membership practices of social fraternal organizations—as explicitly memorialized in the law's language. Written confirmation on the limited issue of the relationship between Title IX and the membership practices social fraternal organizations that we could distribute to fraternity and sorority headquarters would greatly assist us in moving the conversation forward regarding transgender membership within social fraternal organizations.

Sincerely,

A handwritten signature in cursive script that reads "Doug Case". The signature is written in black ink and is positioned below the word "Sincerely,".

Douglas Case, Coordinator
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cc: Shane Windmeyer, Campus Pride
Seth Galanter, Principal Deputy Assistant Secretary
Robert Kim, Deputy Executive Secretary