Your Title IX and Trans-Inclusivity Questions Answered
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Title IX and transgender inclusivity is a hot topic in the fraternity/sorority advising world and an area where many of us have questions. Jessica Pettitt and Stevie Tran have answers. Read on for answers to some of AFA members’ most burning questions about how we can support transgender students. The questions and responses are organized into three topics: recruitment, support/education, and policy writing.

Recruitment

What do you think is the biggest misconception about Title IX and how it affects recruitment for fraternities and sororities?

Jess: The biggest misconception is that Title IX is clear and actively enforcing this clarity on all gendered or single-sex organizations. Title IX uses unclear language, and fraternities and sororities are Title IX exempt. Fraternities and sororities literally make up their own rules and enforce their own rules.

Stevie: The biggest misconception about Title IX is that it affects recruitment. It does not. Title IX certainly has implications for all students, staff, and faculty when it comes to gender-based violence and harassment but no bearing on the issue of fraternity and sorority recruitment. Why?

Let’s look at the language of Title IX, specifically, the amendment added in 1974 to address fraternities and sororities. “[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 . . . .” 20 U.S.C. § 1681(a)(6) (2006). The language of the statute is clear: Title IX does not apply to the membership practices, including recruitment, of fraternities and sororities.

As a campus-based fraternity/sorority advisor, how would you recommend I advise a transgender student who has registered for fraternity or sorority recruitment? How would you recommend I advise/educate the chapters considering this student for membership?

Jess: There are a lot of things to think about for the student, advisor, chapter members, and interfraternal community.

First, is this student “out” about being trans? If not, no one must know. It is possible that this student transitioned long before registering for recruitment, and it does not need to be discussed or shared with anyone. This student’s documentation, institutional registration, and the like could be consistent with how this student currently expresses and identifies themselves. If this student is “out” as being trans, then this information becomes relevant for all involved parties. By being “out,” this student could have a discrepancy in documentation or institutional registration information and how they actually identify or express themselves. This student may not have any incongruence and just chooses to be vocal about their personal history, trans advocacy, or
gender equity. It is important for all people involved to be respectful of the student and their choice to be visible as trans or not. The students going through recruitment, leading the process, leading chapters, members of chapters, campus administrators, and inter/national organizational leadership must respect the student’s privacy and personal identity development.

Secondly, it is important to do your homework and listen. What is the current non-discrimination policy for your fraternity/sorority community, each chapter and council, campus, local community, and state? Fraternities and sororities are guests on campus and, in my opinion, ought to support campus, community, and state legislation. This isn’t always the case, but I think it is imperative. Over 700 colleges and universities have gender identity and expression in their non-discrimination statements. These conversations are taking place, and many more conversations need to be started. We are, literally, in this together.

Lastly, when looking to educate students and advisors, the best practice seems to be to start this process before it is needed. Stevie Tran, Beth Statzos, and I have started to have educational conversations at AFA, AFLV, and in online webinars so that campus professionals, student leaders, advisors and volunteers, and inter/national organization leaders can be comfortable having educated conversations about sex, gender, and sexual identity. These also often cross over to Title IX and the fraternal exemptions. If all people involved in the fraternal movement can have a dear understanding, then, and only then, can we lead the way and educate the students we advise. When having these conversations, I encourage folks to reach out for help so they can be confident when working with others that are fearful, confused, engaged, and in denial. Understanding how gender fits into siblinghood is one piece of this conversation, while being an ally is another significant piece. There are lots of educational tools and advocates that can help you prepare for these conversations. Often, I have even been called in to do basic language education prior to answering questions about advocacy and writing clear policy statements that support an organization’s values and membership stance. After an hour-long webinar, conversation, question and answer session, and/or editing session, usually, all parties are clear and feel encouraged to move forward with their decision.

Stevie: I echo Jess here. First, I want to focus on the idea of being out as a trans person. Jess hints on the subtle distinctions, but I want be very clear: it is not just a choice of being out or not out, and for those on campuses, this may already be where the questions begin.

A trans student who is not out could be (1) Trans Student’s identity documents are congruent – meaning that his or her driver’s license, institutional registration, birth certificate, and so forth all reflect Trans Student’s gender identity. Trans Student is currently enjoying college without revealing his or her trans identity. Trans Student who is not out could also mean (2) Trans Student is enjoying college without revealing his or her trans identity but his or her identity documents, all of them or just a few, do not reflect Trans Student’s gender identity. In addition, it could mean (3) Trans Student is enjoying college without publicly revealing his or her trans identity but, in confidence, reveals this information to a campus-based professional. In all three situations, Trans Student has decided to keep his or her trans identity a very private part of his or her life, and Trans Student is very selective about who has access to such information.

In contrast, a trans student who is out could mean (4) Trans Student, regardless of what his or her identity documents reflect, enjoys college and is very open about the fact that he or she is
trans. It could also mean (5) Trans Student is enjoying college without revealing his or her trans status, and a campus-based professional learns, based on looking through Trans Student’s identity documents, that Trans Student is trans.

I think that many campus-based professionals may have already advised a trans student about recruitment without knowing it — trans students in situation (1). Jess and I both agree that all fraternities and sororities have trans members, whether or not they know it. You do.

The issue really is for trans students who fall into situations (3) and (5): those who reveal in confidence that they are trans and those who are outed based on their identity documents. In both situations, the campus-based professional should be careful about communicating this information to others. Why?

First and foremost, respect and trust must govern your conversations with a trans student. Information about a student’s trans identity is private. I think, within the fraternity and sorority community, we all get that. Second, though, a campus-based professional has certain obligations and responsibilities to consider. The trans identity is inextricably tied to other sensitive topics, including private medical information. As Jess mentioned, you run across state, local, and institutional non-discrimination policies, as well as medical confidentiality and privacy laws. Courts have already held that trans people have a constitutional right to privacy regarding their trans identity. For example, in Powell v. Schriver, the court held that trans people “are among those who possess a constitutional right to maintain medical confidentiality” (1999). The court further stated that “[t]he Constitution does indeed protect the right to maintain the confidentiality of one’s transsexualism.” Id. Although the language, use of the word “transsexual”, is certainly outdated, the law is still valid. In light of the egregious levels of violence and discrimination against trans people, it should be understandable why a trans person may be hesitant to share his or her trans identity with others.

So what should you do when you find that a student interested in recruitment is trans? First, respect how he or she identifies—regardless of what his or her identity documents may say. It can be as easy as asking, “What are your preferred gender pronouns? Do you have a preferred name that you would like me to use?” Second, if you are clueless about what it means to be trans, begin a personal journey to learn more. Reach out to others. Third, determine each inter/national organization’s stance on transgender membership, generally. This is a conversation you can begin now that does not need to wait until a trans student walks through your door. If you do not receive an answer, keep at it. Fourth, determine what your state, locality, and institution all say about trans students—often by looking at nondiscrimination policies.

Please be aware that there is one thing that you should absolutely not do. I discuss further in the next question.

P.S.: there are certainly legal distinctions when you focus on whether or not a college or university is a private or public institution. I do not intend this to be the end-all, be-all on this conversation, but I think organizations and institutions wade into blurry legal territory when they begin to push the boundaries of what “rights” they have and do not have. I admit, the transgender conversation is quite blurry, too, but I have seen a remarkable shift, especially within the recent months, that recognizes, respects, and protects the trans community. I think the
acknowledgement of the trans identity, both institutional and personal, will only continue. On a personal level, I believe that respect will lead us all to the same general answer.

**As a campus-based professional, can I stop a trans or gender-nonconforming student from attending campus recruitment?**

**Stevie:** Okay, I am cheating a bit here. I made up this question myself. But it is certainly relevant, and it is necessary to lay the foundation for the rest of my answers.

The short answer is no. As a campus-based professional, you are employed by the college or university, not the inter/national fraternity or sorority. This is a key distinction.

Here’s why: the First Amendment right to association belongs to the fraternity and sorority, and they are the entities that have the constitutional right to determine who and who does not become a member of the organization. Specifically but still quite generally, fraternities and sororities have defined their First Amendment right by discriminating on the basis of sex and on the basis of a person’s values.

I have heard of a number of situations where campus-based professionals have tried to prevent students who identify outside of their sex assigned at birth from attending recruitment events. Be very, very careful. If you preemptively step in and take any action to prevent the student from participating in recruitment, you are acting on behalf of and incurring liability against the college or university.

You and your institution cannot discriminate on the basis of sex. Like Jess mentioned, the college or university most likely will have nondiscrimination policies that includes “sex,” and even “gender identity and/or expression,” which you could potentially be violating by preventing a student from attending recruitment. Throw in state and local nondiscrimination laws, and the picture gets a lot muddier.

In addition, as a campus-based professional, you may be triggering Title IX by preventing a trans or gender-nonconforming student from participating in campus recruitment. On April 29, 2014, the U.S. Department of Education unequivocally stated, “Title IX’s sex discrimination prohibition extends to claims of discrimination on gender identity or failure to conform to stereotypical notions of masculinity or femininity and [the Office of Civil Rights] accepts such complaints for investigation. Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a school’s obligations.” This definition under Title IX could certainly extend to any actions that you take regarding a trans or gender-nonconforming student’s involvement in recruitment.

So what can and should you do when a gender-nonconforming or trans person wants to go through recruitment? First, know that the student most likely has the right to participate. He or she has spent considerable time weighing the costs and benefits of going through recruitment, even in light of his or her gender identity. Although you may have legitimate concerns, the situation cannot be resolved by telling the student that he or she cannot participate. Second, begin conversations long beforehand with the organizations on campus so that they are prepared to handle the issue appropriately. These conversations should be framed about gender and trans
issues, generally, not “Individual Student A is coming on this date, so do not say anything to embarrass the community.” Third, reach out to resources like Jess and myself! Fourth, determine whether or not the inter/national organizations have taken a stance on transgender membership. Fifth, ensure that any denial of membership, just like an extension of membership, comes from the fraternity or sorority and not from you.

What ability/responsibility do you suggest we have to obtain information from potential new members (PNMs) in recruitment about their gender identity, in case someone who identifies as transgender registers and we want to provide support and education (both to the PNM and chapters)?

Jess: Let’s take ability and responsibility separately.

Ability – You can check the institutional registration information, state or federal identification, or birth certificates of every potential new member. However, this won’t give you 100% accurate information. Assuming you could easily run these reports, it leaves out anyone that changes their identification between birth and the issuing of these forms, and in some states, birth certificates can be updated (important to note that in some states it is illegal to update a birth certificate). If you do this, starting this fall, with all PNMs, you will not know every person you need to give support to because you don’t have this information for every current member, advisor, and alumnus. Also, institutional registration information may be completed by a parent or guardian and not be representative of a student’s history or current identity. Not every person has a state or federally issued identification, social security card (these also have a hidden gender marker in their record), or birth certificate. This leads us to responsibility.

Responsibility – I believe it is our responsibility to provide support and education even when, perhaps even more so when, we don’t know that it is needed. For those of us that are cisgender, meaning we do not identify as trans, our birth assigned sex and current gender identity and expression are congruent, have a responsibility to acknowledge our privilege and help other privileged folks to do the same.

Stevie: Should you obtain the gender identity of all PNMs? No. Even if you are able to do so, I would advise against it.

My understanding of recruitment works something like this: fraternities talk to people who look and act like men and tell them to attend recruitment, and sororities talk to people who look and act like women and do the same. The individual organizations then implement their own vetting processes, evaluating PNMs for membership and determining that PNMs are of the appropriate sex and appropriately qualified.

Just because you could theoretically look through every PNM’s institutional registration, birth certificate, driver’s license, and so forth, does not mean that you, as a campus-based professional, should be doing so. What is important to note is that fraternities and sororities are the entities that have the First Amendment right to determine who and who does not become a member through their own membership practices. Red lights should be going off when you hear about a campus-based professional becoming intermingled in a private organization’s membership practices.
To obtain the gender identity of all PNMs, you would be treading into an area of unknown liability. As discussed above, gender identity cannot be divorced from private medical information. One of the most obvious issues that you may encounter, as a result, are the medical confidentiality and privacy laws. Second, you are a part of the university, which means that you cannot discriminate on the basis of sex – which the U.S. Department of Education has explicitly defined to cover discrimination on the basis of gender identity and expression. Therefore, even if you had the ability to obtain this information, there is very little you could possibly do about it without the possibility of risk and liability. Even obtaining the gender identity of all PNMs to provide to the inter/national organizations raises serious concerns, including confidentiality. To be most safe, I would advise against asking for every PNM’s gender identity.

What can an inter/national fraternity or sorority do to support Transgender students who want to join their organization?

Jess: The best thing that an inter/national organization can do is to clearly state where they, as a single gendered organization, stand on trans inclusion. By clearly articulating how gender identity and/or expression are connected to the organization’s sense of and definition of brotherhood and sisterhood is the equivalent of accurate and clear marketing.

The example I use when I am doing trans educational trainings is the kayaking club. The kayaking club can state that to be a member of the club and gain access to boats, a member must be able to swim. There could be swimming tests, or required certifications or documentation upon membership and its renewal. What this says is: kayaking requires a certain level of comfort and/or skill underwater as the boats often flip upside down and the kayaker must right the boat themselves. This is enough for me to do a self-assessment and determine for myself that I don’t want to be a member of the kayaking club. Maybe someday I will be more comfortable or experienced, maybe even interested, but today, I do not identify as a strong swimmer. Thank you for letting me know. Even if the values of the kayaking club are a fit currently, I cannot be a member. I can express those values in different ways and in different places. If this kayaking club leadership is super supportive of me and the way I live the common values despite the fact that I do not identify as a strong swimmer, they could support me as I learn to swim, offer me places to learn to swim, or just talk to me in English class even though I am not a member of the kayaking club. If at one point in time I was a non-swimmer and now am a very strong swimmer, I would meet the requirements that are clearly stated and I could join today. I would not need to tell anyone that at one point I was a terrible swimmer and now am a strong swimmer, but this may come out as our relationship grows and we trade stories.

Inter/national organizations, I feel, have a responsibility to articulate who can join and clearly state what is required for membership prior to and after initiation or crossing. Who can stay in? I am happy to help.

Should a trans student be advised to share their identity with the organization they are choosing to pursue? I’m afraid matters can become complicated or even hostile if the organization finds out later on.
Jess: This goes back to the second question and things could get complicated or hostile. I do not think a trans student is obligated to out themselves—this is a private element of their identity. If a trans student “outs” themselves or is “outed” by someone else, it is important for campus and/or inter/national leadership to have a plan. This plan needs to be rooted in local, campus, state, national, and federal policies. Things are only complicated by fear and ignorance. Hostility is fear and ignorance plus action.

Stevie: Absolutely not. The trans community experiences discrimination, violence, and poverty at significantly higher rates than the general population (Grant et al., 2011). Even that fact alone should shed light into why a trans person may be hesitant to reveal to others his or her trans identity. Jess made some great suggestions in prior questions that can provide education and support without requiring a trans person to out himself or herself to others.

What role does the inter/national fraternity/sorority play when a chapter wants to initiate a transgender student?

Jess: When a chapter wants to initiate a trans student, the inter/national organization needs to be able to clearly state how this is supported or why this is not able to happen. Clear. Clean. Easy. I would also suggest that the inter/national organization be open to listening and learning from chapter leaders to stay progressive and counter the stereotype that they are out of touch. Passing the buck, so to speak, down to chapters, can be rooted in trust and needs leadership and support. Moreover, chapters and campuses should not just pass the buck up to the inter/national organization and wait for something to happen. Together, we need to have these conversations—starting now.

Stevie: Ultimately, the inter/national organization has the final say about where it stands on the issue of transgender membership. That decision provides guidance to individual chapters for any transgender students who seek membership during recruitment. Jess and I certainly are not advocating that all organizations throw open their doors to anyone and everyone—fraternities and sororities are private organizations, after all. In order to reduce risk, however, organizations should definitely be thinking about whether or not transgender members are in alignment with their histories, values, and governing documents. As the transgender community is rapidly gaining visibility, it is only a matter of time before a transgender young adult will, if they have not already, seek membership within your organization. I want all organizations to be prepared to appropriately address that situation by having the necessary conversations now.

What role does the collegiate chapter play in deciding to initiate a transgender student?

Jess: To my knowledge, collegiate chapters recruit members that best support the organizational standards and values for the rest of their life. This lifelong commitment is not to be taken lightly. If and when this opportunity is extended to an undergraduate or graduate student or a community member, it is the lifelong commitment that needs to be stressed, not that person’s anatomy, biology, or documentation. Prior to initiation or after, this person who lives the organization’s values may decide to transition or identify differently than they were labeled at birth. Ideally, this person’s sisters or brothers would be supportive; however, it is more common that the collegiate chapter members are not supportive, so disaffiliation or just “going missing” becomes part of this person’s journey as well. I, personally, cannot imagine how isolating it must
feel during a terribly difficult decision to have to deal with it by yourself—or worse—by yourself on the receiving end of hostility from people that at one point were your friends and family. Terrible.

Support/Education

How can campus professionals support chapters who have an initiated member considering transitioning?

Jess: Great question! First, recognize that this may have already happened and most will never know. When you do know, the most important piece is to ward off ignorance and transphobia. If you do not know already, find out what your campus and the chapters involved have as a non-discrimination policy. Sometimes, the student considering transition does not know these policies, and you can help them by doing the homework for them. If these policies include gender identity/expression, then the trans questioning student should be protected by the policy. This does not mean that everyone on campus nor the chapter knows this, and advocates may still be needed. If these policies do not include trans people, then you can be supportive or refer the student to someone on campus or in the local community that can be supportive. Often, a campus may have a staff member, if not full office, dedicated to serving LGBT students, staff, and faculty on campus, and there may be a specific Safe Zone/Safe Space program for LGBT Ally Development. There may also be LGBT Community Centers in your area or state. Even more accessible are online resources for the trans community. The more you can know or have access to before it is needed, the more comfortable you will be when you do need these resources.

Stevie: In my experience, students and individuals on the chapter level tend to be quite unfazed by and supportive of a transitioning member. I have heard stories of chapters being extremely protective of their trans members because they fear what could happen if the inter/national organization or the campus found out.

As a campus-based professional, you can try to assure chapters that a member who transitions will not lose his or her membership or jeopardize the chapter’s standing in any way. Some (not many, I admit) inter/national organizations have explicit trans-inclusive policies that could mitigate any of the chapter’s fears. Even if there is not clear policy on trans membership, inter/national organizations are certainly having the conversation. Ask an inter/national organization, generally of course, to tell you its stance on trans membership. If you do not receive an answer, keep at it.

Will a chapter remain recognized on campus? Will the chapter remain recognized in its respective council? Will the inter/national organization remove the chapter’s charter because of the trans member? You may encounter those who “feel” a trans member jeopardizes a chapter’s single-sex identity. I encourage you to take the conversation beyond mere feelings and ask: what policies are actually being violated? None, most likely.

Look to see if the local council has any requirement that members must stay “male” or “female” to remain recognized. Chances are that no such policy exists. Local councils may not even be able to restrict the membership practices of the chapters in the council. You will likely encounter the same absence of a policy when you look at local chapter bylaws.
The policies of inter/national councils most likely will not provide much guidance, either. In fact, inter/national councils likely cannot take such a stance on membership requirements because these determinations are left to the member inter/national organizations.

Finally, look to the inter/national organization governing documents to see if an already initiated member loses membership if he or she transitions. In most situations, most will not speak on the issue.

At the time of initiation, the member identified as male or female just like the rest of the initiates. If no policy says otherwise, my interpretation is that the member who makes the very personal decision to transition after initiation has not done anything to jeopardize his or her membership.

I would be remiss to ignore the few inter/national organizations that have taken a clear stance that transgender members will lose their membership. In that case, I think you, unfortunately, must help facilitate a very difficult conversation. On a positive note, maybe you could support a chapter as it advocates for long-term change within the organization.

**How does this topic affect inter/national organizations’ rules concerning required attire for ritual events?** For example, if a transgender member feels uncomfortable wearing a dress but is required to wear a white dress by ritual rules, how can staff members balance traditions and expectations with members’ comfort and inclusion?

**Jess:** I have never been asked this before – nice to get a new question from time to time. I would first answer that a member may not be comfortable wearing what is required for ritual currently, trans or not. It was not until recently that I was comfortable wearing a dress. Often, dresses did not fit my body correctly, and I am not typically comfortable expressing myself in a feminine way. I am not trans, but I was assigned female at birth, and I live as a woman that prefers more masculine clothes. Both times that I have attended Delta Gamma’s ritual, I wore white slacks and a nice shirt. I feel that this respects tradition, the organization’s expectations, and my own comfort. I would think this would apply to any member, trans or not. If it is not possible for someone to wear something that both respects the organization’s history and the person’s identity, the person can make that decision for themselves about joining this particular organization.

**Stevie:** Jess hit this nail on the head. Dress codes are certainly not a trans-specific issue. Like Jess, I was not keen on dresses until very recently; they were just not flattering on my body. That sentiment, I am sure, resonates within all of us. Is there a way to accommodate members of all shapes and sizes while continuing to respect the history and values of your organization?

**How do you propose starting the conversation with collegiate members about the topic of transgender members entering into our fraternity/sorority community?**

**Jess:** Really, I suggest just start. I offer a free recording of a [webinar](#) to help start the conversation. As an advisor, campus professional, student leader, and inter/national leader, it is a GREAT opportunity to engage in a conversation where you can learn together. This not only starts a conversation about gender; it leads to conversation about sexuality, oppression, privilege, and our shared responsibility to serve others. I find that these conversations all tie into
each organization’s values and our shared responsibility to improve our communities and the planet. We should start that now, even if we do not have a proven best practice-based script to follow.

**Stevie:** What Jess said.

**What can a chapter member do to support a sister or brother who has come out as transgender?**

**Jess:** Anyone that knows a trans person that has chosen to “come out” to them needs to first recognize that this is a gift of trust. No matter how inadequate you might feel, you may be the best resource the trans person has. It is important to be able to listen and make educated and supportive referrals. At no point does a trans person expect you to know everything or to diagnose them as trans—the trans person knows they are trans—now they have decided that you can help them with something. Listen to what they need. Often they just need someone to listen. Being an ally does not mean that you know everything, it just means you are willing to listen and make educated referrals.

**Stevie:** The most important thing I received from my chapter when I transitioned was the same thing I received before I transitioned: brotherhood. I think, naturally, people can be hesitant and unsure about how to communicate with a member who decides to transition, probably because they are afraid of being offensive and coming off as ignorant. And in my situation, no one understood exactly what I was going through. I certainly did not expect them to, though.

Instead of shunning me or making my gender identity the awkward elephant in the room, my chapter gave me the same opportunities to spend time and bond with my brothers, to attend chapter events, and to fully participate in the organization through various leadership positions. Certainly, bonding with my brothers meant opening up about my personal experiences, but it was no different than other brothers sharing their stories. The chapter saw me as just another member, despite my unique decision to transition.

In addition, I think what was helpful was that my national organization took a stance on the issue of transgender membership by developing the Policy on Gender. That policy provided guidance to the chapter on where a member like me, in the midst of my transition, stood within the organization. If there were any questions of doubt among individual members, the Policy on Gender provided all the necessary answers, allowing the chapter to focus on everyday chapter activities.

**Policy-Writing**

**What are some of the risks/liabilities for a campus or organization to not address the issue of inclusivity with their membership?**

**Jess:** This is a better question for Stevie! I would say that the main risk or liability is being ambiguous. Having a clear statement of membership requirements for potential, current, and alumni members is the best way to avoid risk or legal liability. Currently, gender identity and
expression is not a federally protected category, though there is pending legislation where this could change.

**Stevie:** The biggest risk is being inconsistent with unwritten policies.

On the inter/national level, this means taking so many positions on transgender membership from chapter to chapter that, from a First Amendment perspective, the inter/national organization is diluting the strength of its governing documents. On the campus level, this means potentially triggering very serious laws and regulations — Title IX and medical confidentiality and privacy laws. You may also be preventing someone who may be eligible for and may desire the lifelong benefits of membership in the fraternity and sorority community.

As briefly described in a prior question, an inter/national organization has a First Amendment right to determine who is and is not a member. In the same way that a fraternity can say “no women” and a sorority can say “no men,” both organizations may also say, “No men/women means no transgender members.” Therefore, an organization may decide that its history and its governing documents strongly oppose the idea of transgender membership on any level. If your organization does take this approach, keep a few things in mind.

First, the current constitutional test is extremely difficult to satisfy. In other words, you can always argue your constitutional right; you just may not win. Further, fraternal organizations must also be aware of the non-discrimination policies that affect the specific chapter wishing to offer membership to a transgender student.

Some states and localities and hundreds of colleges and universities have enacted laws and regulations prohibiting discrimination on the basis of “gender identity and expression.” Denying membership to a transgender student, therefore, may possibly violate one of these laws or regulations. In fact, many states and universities have challenged various organizations and their membership practices as violating their non-discrimination policies. In their defense, these organizations argued that they had a constitutional right to determine their membership, and most of them failed to pass constitutional muster. *See Bd. of Dirs. of Rotary Int’l v. Rotary Club of Duarte, 481 U.S. 537, 545 (1987); Roberts v. U.S. Jaycees, 468 U.S. 609, 618-19 (1984); Pi Lambda Phi Fraternity v. Univ. of Pittsburgh, 229 F.3d 435 (3d Cir. 2000); Alpha Epsilon Pi Fraternity v. City Univ. of N.Y., 502 F.3d 136 (2d Cir. 2007).*

Second, just because some colleges and universities and some states may not prohibit discrimination on the basis of “gender identity and expression” is not a strong basis to deny membership to a transgender student. Taking a state-by-state, university-by-university approach to transgender membership will create inconsistent results — opening up an inter/national organization to potential liability and arguably weakening its First Amendment claim. An inter/national organization’s governing documents should not be that malleable, with differing meanings from campus to campus and state to state.

Simply put, as a matter of policy, transgender students should not have to guess and hope their way into fair consideration for membership in fraternity or sorority. Organizations should make it clear what is required for transgender people to become members and to maintain membership as current members and alumni.
What are the risks/benefits for a fraternity/sorority to offer faux-membership (able to attend philanthropy/service, social events, eat at chapter facility, but not full initiation) to someone pre- or mid-transition?

Jess: I have never heard of this and my gut says this is like being sort of pregnant. You either are or are not a member.

Stevie: An individual is either a member or not a member. A student who happens to be trans does not make him or her more of a risk to the organization because being trans does not make a student more or less a member.

An organization runs the same risk if you let any non-member, trans or not, into organizational events. The risks, though, are due to the current First Amendment analysis for all private organizations with discriminatory membership practices, which I discussed in the previous question, not because a student is or is not transgender.

When considering making a decision or rule about transitioning students on my campus or in my organization, should sex or gender win out? Why?

Jess: Tricky question (yet another reason I love that Stevie is answering these questions, too). Title IX, and most of our policies, if not common language, use sex and gender as synonyms. Sex is chromosomes, hormones, and physical bodies. Gender is a socially-constructed element that gives meaning to our social roles, identities, and expressions. Ultimately, I would say (and again I am not a lawyer) that our organizations are single-gendered organizations. The gender expressions and expectations are tied to our organizational values to some degree in how we define sisterhood/brotherhood. The fraternal movement leadership is not, nor should it be, in a position to diagnose or collect blood samples, nor do we currently know the physical make up of all of our members. Gender would win.

Stevie: Both gender and sex win out. Before I explain why, I want to be clear about what I mean by the terms “sex” and “gender.”

Sex: a subjective determination of either “male” or “female” made by a third party — usually a medical professional — based on physical observations of the genitalia of the person. “Male” is often assigned to individuals observed to have a penis. “Female” is often assigned to individuals observed to have a vagina. When the determination is unclear, often known as an intersex condition, medical professionals may intervene with medical procedures to resolve the social emergency of ambiguous genitalia. As a result, many use the term “sex assigned at birth” to more accurately recognize the act of being given a sex by another person.

Gender: as Jess stated, gender is a socially constructed element that gives meaning to our social roles, identities, and expressions. However, gender also encompasses the terms “gender identity” and “gender expression.”

Gender identity: a person’s internal sense of self. Transgender people are keenly aware of their gender identity because it is incongruent with their sex assigned at birth. In contrast, “cisgender”
describes those whose gender identity aligns with their sex assigned at birth. As a result, cisgender people are not often conscious of their gender identity in the same way as transgender people.

Gender expression: the endless variety of ways in which a person expresses his or her gender identity—dress, hair style, body language, preferred gender pronouns, and so forth.

Now that I got the foundation out of the way, I want to explain why both sex and gender are relevant in making a decision or rule regarding transgender membership on the inter/national level.

Sex is certainly a relevant inquiry, in theory. After all, fraternities and sororities, as one of their membership practices, state that they discriminate on the basis of sex. And for the most part, it seems to be working.

But is it just sex? If it is sex that informs who and who does not become a member, suppose this: within your governing documents, is it the practice for all PNMs to actually show you their genitals to allow you to make a determination on sex? Probably not.

If not sex, then what? Like it or not, we all conflate gender with sex. We look at people—their clothes, their body structure, the length of their hair, the sound of their voice, whether or not they have facial hair, and so forth—and we use these indicators to inform us of what sex we think they are. For some, like campus-based professionals, you may also have the assistance of identity documents, which tell you what determination an institutional body has made regarding a person’s sex. Fun caveat here: a good number of identity documents actually say “gender” rather than “sex,” which, on its face, would mean that the institutional body looked at the person’s gender and gender expression, just like you did, and made a determination of what it thinks is in the person’s pants.

So, is it sex? Or is it gender? In theory, fraternities and sororities say “sex.” In practice, fraternities and sororities say “sex” by way of “gender.”

Head spinning yet? So what is an inter/national organization to do? By discussing the ways in which both sex and gender influence an organization’s membership practices, I certainly am not advocating for any organization to reinvent the wheel. What you have currently established in your governing documents, in fact, has worked in the vast majority of situations.

However, if I were to advise an inter/national organization, I would tell it to consider ALL situations and have a plan for each of them. Coming up with a plan for a number of scenarios is an effective way to reduce risk and liability and to avoid memorializing awkward, emotional gut reactions that are not well informed or well thought-out.

For illustrative purposes, consider that you are a fraternity for men. Consider whether or not the following individuals would qualify for membership in your organization:

- An individual with a male gender expression with a male gender identity with identity documents that reflect male.
• An individual with a feminine gender expression with a male gender identity with identity documents that reflect male.
• An individual with a male gender expression with a male gender identity with identity documents that reflect female.
• An individual with a male gender expression with a male gender identity with identity documents that reflect both male and female.

**Are you sure the “Title IX police” won’t come after us as an inter/national organization if we allow a transgendered student to join, even if they have no intention of transitioning?**

**Jess:** I don’t know that there is “Title IX Police” in the first place. The language in Title IX is currently problematic in that is uses sex and gender as synonyms, leading me to believe that this gives more, not less, room for fraternal organizations and Title IX-exempt organizations to create their own policies.

There hasn’t been a question yet about transition, so I will address that here. Transition is often brought up as a single linear process that could be the solution to trans inclusion. It is more complicated than this.

Transition is the term for the process of a person moving from “A” to “B” and includes documentation, hormones therapy, and physical surgery. It is important to mention that some trans people do not have legal access to this process while others have no interest in this process. A trans person can intend or desire an element of transition and not have access to it. A trans person can successfully “pass” without hormone treatment or physical surgery. To be thorough, some cisgender (not trans) people do not successfully “pass” as the gender they identify with either and are much more likely to have access to hormone therapy or other medical treatments.

To get back to the direct question – I don’t think the “Title IX Police” are any more educated than you are and therefore I am drawing the conclusion that if they are coming after you it would more likely be for something else.

**Stevie:** I need to lay a foundation before I can answer this question.

First, let’s understand what it means to transition. Transitioning is not a one-size-fits-all process; rather, it describes a trans person’s personal, individual journey to align his or her gender expression and, if desired, his or her sex with his or her gender identity. This could, but is not required to, include: choosing a preferred name and preferred gender pronouns, modifying his or her gender expression, filing for a legal name change, beginning hormone therapy, amending identity documents to reflect his or her gender identity, and even undergoing a variety of surgical procedures.

What is important to keep in mind is that not having completed one of these items on the “transition checklist” does not make a person more or less transgender. In addition, a transgender person who has just started transitioning is equally as transgender as someone who has completed transitioning. What remains constant among all transgender people is the incongruence between a person’s gender identity and sex assigned at birth.
As a result, I think stating that a transgender person has no intention of transitioning may be a bit of a misnomer. I think what this question truly reveals is a different set of expectations regarding a transgender person’s transition. Is the transgender person not going through the steps that the inter/national organization expects all transgender members go through?

This question brings me to my second point: what is the organization’s intent in implementing certain requirements on transgender membership?

If you are seeking solely to reduce risk, then the natural reaction may be to set the bar extremely high for transgender membership. For example, your organization could require that all transgender members: (1) have all identity documents reflect the appropriate gender marker; (2) undergo all procedures involved in gender-confirmation surgery; (3) start hormone therapy; and (4) legally change his or her name.

As a private organization, you have the right under the First Amendment right to association to determine the requirements of membership, which could certainly include all of these requirements. From a liability perspective, an organization minimizes significant short-term risk because the transgender member is, for all intents and purposes, who he or she says he or she is, and he or she has all the legal documentation to support that.

But the key word is short-term risk. What’s the catch? I will return with the long-term perspective in a little bit.

If your intent is to truly become trans-inclusive, then the answer is not as simple as what I discussed above. On the one hand, you are interested in preserving the single-sex status of your organization. On the other hand, you want to ensure that transgender members who qualify can enjoy the benefits of membership within your organization.

Some considerations to keep in mind:

Identity documents: What seems to be a simple change—a change of a single letter from “M” to “F”—can be and is often impossible. Many states do not allow a person to amend the gender marker on a birth certificate. Other states demand proof of medical intervention before changing a gender marker. Some require court intervention. Others even demand a combination: legal intervention, where a transgender person must prove to a court that he is “man enough” or that she is “woman enough.”

Gender-confirmation surgery: Because of technological advances, gender-confirmation surgery has grown into a grocery list of options. Some of these procedures are not possible for certain people due to how invasive the procedure is. Other procedures are simply too risky with little to no benefit. Some trans people may decide that any gender-confirmation surgery is simply unnecessary because it has no bearing on their gender identity. Others may adamantly desire it.

The point is that options and access are two completely different considerations. Although the options for trans people continue to grow, most in the community simply cannot access them. For a college student with limited means, accessing appropriate healthcare from a competent, respectful medical professional, and even the legal system, may not be practical.
As a result, a trans person may affirm that he is male and live openly with a male gender expression, even if some or none of his identity documents recognize him as such. From the perspective of the inter/national organization, is the organization willing to recognize the trans person as male, as well? If no, at what point would the organization be satisfied that the trans person is male? Regardless of where you fall on the issue, it is important to support the decision with a reasoned explanation.

Now, back to the discussion on short- and long-term risks... Setting the bar high for transgender membership—for example, implementing requirements (1), (2), (3), and (4) from above—is one option to mitigate short-term risk to the organization. It is a decision soundly supported by the First Amendment. However, I believe that no transgender PNM, even if he or she is interested, would ever make it into the organization, in light of the institutional and financial barriers to transitioning. This, as a result, may create issues in the long run.

I will use the Boy Scouts of America to illustrate my point. Although the U.S. Supreme Court found that the Boy Scouts of America had the constitutional right to discriminate on the basis of sexual orientation within its membership, the organization did not fare well in the court of public opinion.

When it comes to the transgender community, colleges, universities, states, and localities have all taken an interest in protecting the transgender community. In the past few months, in fact, an amazing number of states, localities, and institutions have taken steps to recognize and protect the transgender community. This shift is happening extremely quickly—more quickly than even I could have imagined. Therefore, an inter/national organization needs to ensure that its decisions regarding transgender membership are well-thought out and well-supported to avoid memorializing emotional gut reactions.

I work for my fraternity/sorority inter/national organization and am now learning that we have a diverse membership. I have no idea how to address this with my alumni/ae and undergraduates. Where should I start?

Jess: You are actually ahead of the game, not behind. I promise. Most members haven’t learned yet that they have a more gender diverse membership than they previously knew. Congratulations on being ahead! I recommend first working with your Board of Directors (or the equivalent) to develop language that states where your organization stands on gender inclusion. This language needs to address members or potential members that transition prior, during, and after affiliation. Here are a couple of examples that I have helped organization staff to write. I am happy to help you as well. This usually is a 30 minute phone call.

- Our organization is open to someone born (male or female) and lives as a (man or woman) that meets our standards and values.
- Our organization is open to someone living as a (woman or man) that meets our standards and values.
- Our organization is open to someone born (male or female) and meets our standards and values. Once affiliated, if a member no longer identifies as a (man or woman), and continues to support our organizational standards and values, we will continue to support the member.
• Our organization is open to any person that meets our standards and values for brotherhood/sisterhood.

Do transgender fraternities and sororities exist? If so, what council should they fall under?

Jess: There are several organizations that are inclusive of trans members. Some current NPC, NIC, NALFO, and NAPA organizations have adopted non-discrimination policies to be inclusive of collegiate and alumni members who are trans. (There could be more organizations from other councils that I just do not know about.) There are also a few organizations that were founded as trans inclusive organizations. A few years ago, Sarah Fielding and I published a resource guide where we interviewed a number of these organizations, if you are interested in reading more. Currently, I am the national advisor to Gamma Rho Lambda, which is 11 years old and was founded to be inclusive of lesbian, bi, ally women, and trans members. GRL was founded at Arizona State University as part of the Panhellenic Association and currently, most of the 13 chapters nationally align with the multi-cultural councils on their campuses largely, I believe, due to recruitment process policies. Stevie Tran is a current member of Sigma Phi Beta, also founded at ASU. I will let her talk about SPB.

Stevie: To my knowledge, no specifically transgender fraternity or sorority exists. Theoretically, if it were an organization for transgender women, I would suggest that they would join a council like Panhellenic. If it were an organization for transgender men, I would suggest the Interfraternity Council. But, as Jess stated, fraternities and sororities today have transgender members and are part of a local council.

To make clear what happens when a member transitions or when a transgender student wants to join my organization, Sigma Phi Beta has defined “male” within its governing documents. I think other inter/national organizations could do the same. Here is the language of Sigma Phi Beta:

1. “In an effort to clarify our identity, male is defined as any individual who self-identifies as male, regardless of his assigned sex at birth or his expression of the perceived expression of his gender.
2. “In order for an individual to be considered for or allowed membership in the Fraternity, he must be a college student who identifies as male, as previously defined.
3. “The Fraternity strives to uphold its gender identity, but first and foremost values brotherhood. Therefore, no member can lose his membership rights due to a change in gender, gender identity, or gender expression.
4. “Any circumstance that does not fall within this policy will be considered at the discretion of the Council in accordance with the Constitution and Bylaws of the Fraternity.
5. “In any case where an individual chapter wishes to induct or initiate an individual who does not identify as male, the decision to proceed would be at the discretion of the Council.
6. “Statement on Title IX: Federal and state law provide no clear and consistent definition of gender. Therefore, the Fraternity adopts the most expansive policy under present law in order to prevent exclusion and/or discharge of transgender members regardless of legal gender designation. This policy is not intended to change the all-male character of the Fraternity nor to waive the Fraternity’s rights under Title IX.”

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Simple, right? Not really. I am thankful to be a part of an organization that began the necessary conversations in preparation of transgender members. The process involved months of discussion with local and national transgender advocates. Sigma Phi Beta’s Policy on Gender has been in effect since May 2006, and it remains one of the more effective policies that I have seen. Why? The policy speaks directly to transgender membership and uses relevant, on-point language and terminology consistent within the lesbian, gay, bisexual, and transgender community.

Conclusion

Truly, “conclusion” is no way to end this article because it is meant to peak your interest, encourage additional research, and start a conversation on the subject of gender equity—it is the beginning.
References


Powell v. Schriver, 175 F.3d 107, 111 (2d Cir. 1999).