

University Title IX Requirements have Chilling Effect on Gender Discrimination Research: A Call for a More Nuanced Approach

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Abstract

The full extent of gender discrimination in university settings remains uncertain. More research is needed to understand the scope of gender discrimination experiences in universities and to develop effective prevention approaches. However, Title IX and Institutional Review Board policies may hinder researchers' abilities to study gender discrimination in university settings. In this paper, we describe our experience working with the Institutional Review Board and Title IX offices to obtain approval for researching gender discrimination in university settings. We provide recommendations for how universities can enable gender discrimination research and follow Title IX policies.

Keywords

Institutional Review Board, Title IX, gender discrimination, reporting requirements, qualitative research, university, college students

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Introduction

The #MeToo movement and university-level sexual harassment scandals generated significant interest to understand how gender discrimination¹ is experienced by college students. However, the scope of gender discrimination in universities is uncertain (Sulfaro & Gill, 2019) and understanding its full extent is necessary for effective prevention and awareness. Meaningful efforts by researchers to understand gender discrimination and solutions to prevent it can be hindered by university Title IX and Institutional Review Board policies (Potter & Edwards, 2015). We have direct experience: in 2019, we submitted an Institutional Review Board application to examine gender discrimination encountered by geology students during fieldwork courses in their undergraduate programs. The Institutional Review Board informed us that we would need to report any incident uncovered in our qualitative interviews to university Title IX officials, which led us to reflect on the implications of this requirement for gender discrimination research.

Our paper is intended to raise awareness about how Title IX and university Institutional Review Board policies intersect and how those policies may hinder researchers' ability to study gender discrimination in university settings. After providing a brief overview of Title IX, we describe our experiences with university Title IX and Institutional Review Board policies related to our study on gender discrimination. We also provide recommendations for researchers at other universities.

Title IX and Gender Discrimination Research

The U.S. Department of Education's Office for Civil Rights enacted Title IX in 1972 to "protect people from discrimination based on sex in education programs or activities that receive Federal financial assistance" (U.S. Department of Education, 2015). Since that time, Title IX policies have been modified to provide additional guidance and clarifications to universities (Federal Register, 2020; Melnick, 2018). As currently formulated, Title IX requires postsecondary institutions receiving federal funding to provide students and employees with avenues, information, and resources to report gender discrimination. Universities also are required to identify "responsible" employees who are mandated to report gender discrimination toward students and university employees that is made known to the responsible employee (Federal Register, 2020; U.S. Department of Education, 2001, 2014, 2015). Institutions have typically designated faculty and staff (including some student employees, like resident hall assistants) as responsible employees. In practice, this means that any faculty, staff member, or student designated as a responsible employee is obligated to report instances of

gender discrimination disclosed to them by university faculty, staff, or students to the designated institutional office (U.S. Department of Education, 2001). Universities can and do create their own gender discrimination policies to expand on those specified in Title IX. Depending on the specific university policy wording, a responsible employee may be considered in violation of institutional policy if they fail to report gender discrimination made known to them.

University researchers conducting gender discrimination research with participants from their own university may learn about gender discrimination experienced by university faculty, staff, or students. Those same university researchers are generally designated as responsible employees; therefore, they would be required to inform participants of their requirement to report incidents of gender discrimination and then report those incidents (including names of individuals) to Title IX officials on campus. If researchers are mandated to report gender discrimination disclosed to them during research, some participants may be less likely to participate in research and those participating may be reluctant to fully disclose their experiences (Potter & Edwards, 2015). Reluctance of participants to participate in or fully disclose gender discrimination can hinder research efforts to understand the types, nuances, and extent of gender discrimination in university settings. To address the required reporting mandate, some researchers avoid conducting interviews and instead administer anonymous surveys. Anonymous surveys have the benefit of allowing survey respondents to share their experiences without fear of being identified and can be administered to a large number of people. However, surveys only reveal some aspects of individuals' experiences (Swim et al., 2001). Interviews and other qualitative methods provide important avenues for participants to share their own experiences and enable researchers to explore the nuances and depth of gender discrimination (see Powell & Sang, 2015; Smith & Gayles, 2018; Swim et al., 2001). Yet, interviews and other qualitative methods generally are not anonymous and lead to a dilemma for researchers whose institutions may require them to report incidents shared by participants.

Navigating Institutional Review Board and Title IX Policies when Conducting Gender Discrimination Research

We are an interdisciplinary team of researchers (science education, sociology, gender studies, geoscience, anthropology, and applied statistics and research methods) from four universities studying the social climate and gender discrimination encountered by undergraduate geology students in 6-week

summer field courses occurring in isolated locations in the Western US. Geology summer field courses are designed for students in their junior or senior years. Undergraduate geology programs either require the courses as a requisite for graduation or strongly encourage students to complete the courses (Petcovic et al., 2014). During the courses, undergraduate students spend 8 to 12 hours most days conducting geology fieldwork individually and in small teams. Because of the remote location of the courses, most programs are residential with students and instructional staff generally living in shared cabins or dorms and eating in communal dining facilities. We are collecting survey and interview data from undergraduate geology students and instructors about their experiences during summer field courses. Because we are conducting interviews, our research data are not anonymous.

Potter and Edwards (2015) published a white paper providing guidance for researchers and universities for navigating gender discrimination research conducted in educational settings. They offered three recommendations for researchers: that researchers participate in trauma training; that the study consent form describe the reporting requirement (or lack of requirement) when the academic employee is acting in the role of researcher; and that the researchers provide information to participants on how to report incidents should the participant want to report an incident. Potter and Edwards (2015) also recommended that universities exempt academic employees from Title IX reporting when the employee is serving in a researcher role. Potter and Edwards stipulate that the exemption should only apply if a situation does not intersect with state laws (e.g., reporting instances related to child abuse) and if the research participants are not younger than 18 years. When we submitted our institutional review board (IRB) applications to each of our institutions, we incorporated the recommendations for researchers that Potter and Edwards (2015) suggested into our project design, included a copy of the Potter and Edwards white paper in the IRB proposal as a reference, and requested that our research team be exempt from reporting gender discrimination described by participants in our study to Title IX.

Title IX mandatory reporting guidelines for responsible employees are only required for incidences with individuals at their university. Since participants in our study would not be students or faculty at our respective universities, we thought the Potter and Edwards (2015) white paper recommendations would sufficiently demonstrate to our various IRBs that we should be exempt from reporting. The IRBs offices at all of our institutions informed us they were not aware of the Potter and Edwards (2015) white paper. The IRB offices at three of our institutions, including the IRB office with the main oversight, informed us that they could not exempt us from

reporting incidents of gender discrimination as it would violate Title IX. Therefore, we would have needed to report gender discrimination we learned about in our research study even though the research participants were not from our own institutions. The three IRBs did not clarify to whom we report gender discrimination if our participants were not at our institutions. If we agreed to the IRB decision then our options were to: (a) keep the interviews but inform participants that any shared information falling into the scope of Title IX would have to be reported; or (b) eliminate the interviews so that we were conducting anonymous research only. The fourth IRB office deferred decisions to the institution with the main IRB oversight of the project.

We did not want to eliminate interviews because they provide rich information about participants' experiences. Our previous gendered discrimination research demonstrates participants share different types of experiences in surveys and interviews; therefore, we knew eliminating interviews would result in incomplete, if not inaccurate, information about the full extent of gender discrimination in geology field courses. For example, in our previous work, a majority of geology students reported in surveys that they did not encounter gender discrimination in geology departments, but during interviews they revealed many examples of discrimination (Sexton et al., 2016). By eliminating the interviews, we would have lost important data describing the types of gender discrimination occurring in geology field courses, how pervasive those experiences were, and how those experiences affected students' academic and career choices. We also did not want to keep the interviews and inform participants that we would need to report any incidents they reported. We thought this would inhibit participants from sharing the full range of experiences they had. Also, it was unclear to whom we would report incidents because the research participants were not affiliated with our institutions.

The initial IRB decision led us to engage in conversations with our IRB offices. At the institution providing the main IRB oversight for the study, the IRB and Title IX offices agreed to work with us to find a solution. The solution developed by the IRB and Title IX offices allowed us to be exempt from reporting incidents in our role as researchers and included the following stipulations: (a) we needed to implement the recommendations suggested by Potter and Edwards (2015); and (b) we had to ensure that no individuals from our institutions were participants in the study. We received IRB approval emphasizing these stipulations. At the other three institutions, there were no conversations between the IRB and Title IX offices; however, the IRB offices at those institutions agreed to the same requirements as the

institution providing the main IRB oversight. The revised decision enabled us to move forward with the study and with assurances to research participants that they could share experiences without concern that we would report those incidents. We had already planned to implement the Potter and Edwards (2015) recommendations, but we modified our study design to provide additional emphasis that no individual from our respective institutions was involved in the study as a participant.

Concerns emerged as we navigated the IRB process. First, the IRB decision at three of our institutions to require reporting of any incidents of gender discrimination disclosed during the research does not align with Title IX policy. Title IX policy only covers gender discrimination occurring at a required reporter's own institution. Our research participants would not be at our own institutions; therefore, Title IX requirements for reporting does not apply in our context. Also, the reporting mechanism (to whom would we report) was not clear. Second, required reporting of gender discrimination shared by participants during research (either at our own or at other institutions) would prohibit meaningful research on gender discrimination. Gender discrimination is already underreported because victims are reluctant to report for reasons including fear of retribution, not wanting the perpetrator to get in trouble, and not recognizing the impact of gender discrimination (Spencer et al., 2017). Requiring researchers to inform participants that any incidents disclosed during research will be reported will lead participants to not participate in research or to participate but not share gender discrimination experiences. Third, although the Potter and Edwards white paper came out in 2015, it was unknown to our IRB and Title IX offices in 2019. This suggests that IRB and Title IX offices across the country may be unfamiliar with the white paper; suggesting that other researchers may face similar barriers to getting their research approved. Additionally, IRB offices that are unaware of the white paper may be approving gender discrimination research without requiring researchers to implement the recommendations suggested, recommendations we think are essential for researchers of gender discrimination to implement in their study. Finally, our four institutions had different approaches to handling the IRB process and approval, which makes multi-institution research challenging. Three of the IRBs (including the institution with main IRB oversight) initially required reporting under all circumstances. However, our fourth institution adopted official policies exempting researchers from required reporting responsibilities under the narrow scope of research. With varying approaches to handling gender discrimination research across our institutions, there was uncertainty that our study would be approved.

Recommendations for Gender Discrimination Researchers and Title IX Offices

We described how gender discrimination research may be hindered by IRB and Title IX institutional policies that require researchers to report experiences disclosed confidentially while conducting research. However, we want to be very clear: we are advocates for the policies of Title IX overall as a process to address gender discrimination and sexual violence on university campuses. This paper is not an attempt to undo Title IX protections for employees and students. However, we recommend that IRB and Title IX offices create formal policies providing clear guidance to researchers about when and if they need to report. We strongly advocate that institutions formally adopt the recommendations made by Potter and Edwards (2015). We agree with Potter and Edwards (2015): to gain a comprehensive understanding of gender discrimination on university campuses, academic researchers should be exempt from reporting when serving in this narrow role as researcher, studying this narrow type of research. Potter and Edwards (2015) show that narrowly defined exemptions of this nature follow the precedent established by the medical research community studying HIV, where mandatory reporting also exists. An exemption from reporting for gender discrimination researchers is necessary for protecting research participants who wish to fully disclose their experiences during research without fear of their experiences of being reported. However, we agree with Potter and Edwards (2015) that there should be exceptions to this exemption, which would need to be formalized through policies between Title IX and IRB. Examples of exceptions include situations that intersect with reporting laws of child abuse or neglect, participants who are minors, or situations involving violence towards a minor.

Continued research on gender discrimination is critical to improving the experiences of students, faculty, and staff as we move towards creating more equitable experiences in university settings. We encourage broader conversations between gender discrimination researchers and Title IX and IRB offices regarding strategies for conducting high-quality and ethical research on sensitive issues.

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Note

1. In this paper, we use the term ‘gender discrimination’ to encompass sexual harassment, sexual assault, and sexism generally.

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