

From: David Golub
Sent: Thu, 3 Jun 2021 00:42:59 +0000
To: T9PublicHearing
Cc: Edward Bartlett
Subject: Written Comment: Title IX Public Hearing (Autism and False Allegations)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dating and relationships can be a challenging aspect for life for many people, but this is especially true for those who are on the autism spectrum. In addition to the uncertainties that all people face, autistic individuals must confront certain additional questions: Will anyone want to date an unusual person like myself? How will the physical aspects of a romantic relationship interplay with my sensory integration issues, and will my partner be understanding of any special needs that I may have? Will she still love me when she learns that I'm autistic?

When the Department of Education's 2011 "Dear Colleague" letter interpreted Title IX to require that schools investigate and adjudicate allegations of sexual assault, many expressed concern that innocent men had been placed at greater risk of being punished for crimes that they did not commit. For those of us concerned with issues relating to autism, this begs the question of whether autistic students are disproportionately affected. While no research has yet been done on this question, there is nonetheless good reason to believe that autistic students are at greater risk than their neurotypical counterparts.

There is one case documented in the press where an autistic student was punished inappropriately (1). In 2015, (b)(6), then a student at (b)(6) College, saw a woman whom he mistakenly believed to be his friend, even though she was in fact a stranger. He hugged her and kissed the top of her head. The school treated this as a sexual assault and kicked him out.

Those unfamiliar with autism will likely not recognize what appears to have happened in this case. Many autistic people have a neurological deficit known as prosopagnosia in which a person's ability to recognize and remember the faces of others is severely impaired or, in the most extreme cases, completely missing. It is not the fault of a person with prosopagnosia if they fail to recognize someone or mistakenly believe that a stranger is someone that they know. This case should have been treated as an innocent misunderstanding, not as a violent crime. The school's failure to do so had the effect of discriminating against (b)(6) on the basis of his disability.

There is also good reason for concern that the affirmative consent policies used by many academic institutions may have a disparate impact on autistic students. Under these policies, both parties must explicitly express their consent prior to any sexual act in order for it to not be held to constitute sexual assault. While the exact definition of affirmative consent may vary from institution to institution, many policies require that consent must be "enthusiastic" (2) (3) in order to be valid or contain provisions that a verbal "yes" does not constitute valid consent if it is contradicted by nonverbal cues (4). While supporters of affirmative consent often call it "Yes Means Yes," this label is highly misleading as "yes" may actually mean "no" if the nonverbal communication does not match. Sexual consent educator

Jaclyn Friedman asserts that “men (and women!) are perfectly capable of understanding social cues, even ones where someone is saying ‘no’ without using that actual word” (5).

The problem is that this claim simply does not hold for many people on the autism spectrum. Autistic individuals often have impairments in various forms of nonverbal communication such as facial expressions, tone of voice, and body language. The semantic and pragmatic aspects of language, sometimes known more informally as “reading between the lines,” are also often an area of challenge. As such, if a woman says “yes” but signals nonverbally or through the context that she really means “no,” an autistic man may not be able to tell the difference and may genuinely believe that he has consent. To treat him as guilty of sexual assault in such cases is an injustice.

In seeking to ensure that autistic students are treated fairly under Title IX, it is important to recognize that not all people on the autism spectrum are diagnosed. While the stereotypical image of autism is a child with a severe developmental disability, often one who is unable to talk, many autistic people are high-functioning and do not receive a diagnosis until adulthood, sometimes many years or even decades into adulthood (6).

Prosopagnosia, the face recognition deficit discussed above, is not unique to autistic people. Research has found that as many as 1 in 50 people are born with this deficit, and the overwhelming majority remain undiagnosed (7). As such, if we wish to ensure that people with these disabilities are not thrown under the bus, relying on special treatment on the basis of a diagnosis simply won’t cut it. Our Title IX policies that are used across the board should be designed in a way that won’t subject individuals to being treated as criminals on account of autistic traits.

The Department of Education has initiated a rulemaking process to modify the regulations promulgated under the prior administration. These regulations substantially improved due process protections, and it is feared that that the changes will bring back many of the unfair policies that were in use under “Dear Colleague” letter. If so, these changes would be to the detriment of autistic students.

If we are serious about ensuring that all students have equal opportunity to learn, then the needs of autistic students must be taken into account. This will be best accomplished by further strengthening due process protections. Schools should be prohibited from using the affirmative consent standard, and they should be required to use a definition of sexual assault that is narrow enough to distinguish between a violent crime and an innocent mistake. Returning to the failed policies of the past would be a huge step backward.

1. <https://www.nbcdfw.com/news/local/student-with-autism-kicked-out-of-college/2101622/>
2. <https://uhs.berkeley.edu/sites/default/files/hp-consentdiscussionguide.pdf>
3. <https://health.columbia.edu/content/consent>
4. <https://www.wcsu.edu/womenscenter/definition/got-consent/>
5. <https://www.vox.com/first-person/2018/1/19/16907246/sexual-consent-educator-aziz-ansari>
6. <https://www.cnn.com/2008/HEALTH/conditions/03/28/autism.essay/index.html>
7. <https://news.harvard.edu/gazette/story/2006/06/face-blindness-disorder-may-not-be-so-rare/>

David Golub

(b)(6)

Volunteer, Stop Abusive and Violent Environments (SAVE), <https://www.saveservices.org>

Email: (b)(6)

This comment has also been published at <https://www.saveservices.org/2021/05/how-will-title-ix-policies-affect-autistic-students/>.