

Sexual Orientation and Gender Identity Additions to the ERSS Survey and a Name Change for the LGBT Section

by Mark Goldfarb

This past November, NALP announced changes to the ERSS survey (an annual survey about the employment and salaries of each graduating class submitted by law schools to NALP) to become effective for the coming Class of 2014 cycle. The changes add categories for gender identity and sexual orientation to the survey. As chair of the LGBT Section, I want to take a moment to discuss the reasons for these changes, the meaning of the categories, tips for collecting this information from your students and recent graduates, and the LGBT Section's corresponding coming name change to the Sexual Orientation & Gender Identity & Expression Section (SOGIE).

Reasons for Survey Additions

Part of NALP's mission is to "advocat[e] for diversity and inclusion in the legal profession." The new data collected from these additional questions will allow NALP to track employment data for lesbian, gay, bisexual, and transgender individuals. Just as we track data of recent graduates from other demographic backgrounds, this will allow NALP to ascertain whether, and to what extent, these individuals are securing positions in comparison to other law graduates, which will better allow us as career advisors and recruiting professionals to rectify possible inefficiencies if any issues exist. Second, the addition of these questions is a step toward making the survey more inclusive, especially for purposes of transgender individuals, who rarely receive a place on a survey.

The New Survey Questions:

C. GENDER IDENTITY

- C1. Male
 Female
 I do not identify as Male or Female

C2. I identify as Transgender

D. SEXUAL ORIENTATION

- Heterosexual
 Gay/Lesbian/Bisexual
 Other

The above questions and categories have been added to the ERSS survey. For the most part, they are straightforward (no pun intended). Everyone should recognize the categories "Male and Female" in C1 and "Heterosexual or Gay/Lesbian/Bisexual" in D. But beyond these, the survey may raise a few questions. Namely, why is question C bifurcated? And what is an "Other" sexual orientation?

Question C is broken into two questions for a number of reasons. First, to cite one example of gender differences, it has been estimated that approximately 200,000 individuals in the United States were born with atypical genitalia (see <http://www.isna.org/faq/frequency>). While sometimes these individuals choose to identify as either male or female, some do not. This survey question gives them that choice.

Second, the question permits transgender individuals to identify as they prefer, which may vary. For instance, a person born as what we may think of as female but who identifies as male may identify himself as both male and transgender. Or, he may not identify as male or female and identify simply as transgender. Or, he may identify himself as male and *not* check the “I identify as Transgender” option, rejecting the notion that he transitioned or crossed over to being a male. In his mind’s eye, he was always male.

Lastly, the “Other” sexual orientation exists because there are individuals who reject the notion that sexual orientations should fit within the tidy confines of heterosexual, bisexual, and homosexual categories, and because our categories may fall short of describing the panoply of sexual orientations.

Tips for Best Collection Practices

This brings us to the act of actually collecting this information from your students and alumni. You can encourage students to complete the survey on their own either via Symplicity or in exchange for graduation ceremony attire or tickets. For the remaining students, however, we all know that asking them for their salary can be awkward enough, which makes asking questions related to their sexual orientation and gender identity seem nearly impossible.

My advice in this instance is two-fold. First, do not wait until this point to gather information on sexual orientation and gender identity. I highly recommend reading Gary McGinnis’s article in the December 2013 *NALP Bulletin*, “Why Your School Should Track and Report LGBT Enrollment and Best Practices for Doing So” for suggestions for taking a proactive approach to collecting demographic information. He provides recommendations on how to regularly collect this type of data from students, beginning at matriculation.

Second, these questions are only as awkward as you make them. Most people have no qualms with sharing their sexual orientation and gender identity. The key is that each person must feel that he or she is in a welcoming, supportive environment. My recommendation is to preface the questions on gender identity, sexual orientation, race/ethnicity, and disability with a discussion of their purpose. For instance, “I am going to ask you some questions that are reported to NALP, an organization of career advisors and law recruitment professionals. Your answers will only be used in the aggregate for statistical purposes to identify hiring trends of recent graduates from law schools.” Then, give them the options. I do not recommend saying, “You’re straight, right?” or “You’re not transgender, are you?” This is an example of creating an unwelcoming environment. Alternatively, you can permit students to complete the ERSS survey on their own via the Symplicity module, via another electronic format, or in hard-copy form.

The Next Change — The Sexual Orientation & Gender Identity & Expression Section (SOGIE)

I hope this article begins to open your mind to questions of gender and sexual orientation in our society. As part of our section’s effort to ensure all members are included and not just those who fit into the neat L/G/B/T categories, our section recommended changing our name to the Sexual Orientation & Gender Identity & Expression Section or SOGIE. The Board approved this change, and we look forward to trying it on at the conference in April.

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