

United States Senate

WASHINGTON, DC 20510

July 28, 2022

VIA Federal Rulemaking Portal

The Honorable Miguel Cardona
Attn: Title IX Rulemaking
Secretary of Education
Department of Education Building
400 Maryland Ave, SW
Washington, DC 20202

RE:

Comments on Proposed Rule: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

Dear Secretary Cardona,

We write regarding the Department of Education's intention to unlawfully include "gender identity" as a protected category under Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681).¹ The Biden administration claims that Title IX, which was written to provide equal opportunities to women, protects men claiming to be women on the basis of their "gender identity."² Consequently, your department has suggested that schools which prohibit males from using women's bathrooms or playing women's sports could be guilty of unlawful "discrimination."³ Your interpretation of Title IX will undermine that law's very purpose by making schools and sports unsafe and unfair for women and girls.

Equally disturbing is the likelihood that your department will weaponize Title IX to force a radical gender ideology in K-12 classrooms. A number of troubling incidents suggest how your interpretation of Title IX could erode women's rights, free-speech rights, parental rights, and children's safety and innocence. Given these concerns, please respond to the following questions by Monday, August 15, 2022.

1. A middle school in Wisconsin recently filed a complaint under Title IX against three students for choosing not to refer to another student by her preferred pronouns.⁴ Would it

¹ Laura Meckler, "New Title IX Rules Set to Assert Rights of Transgender Students," *Washington Post*, March 30, 2022. <https://www.washingtonpost.com/education/2022/03/30/transgender-discrimination-title-ix-rule-students/>

² U.S. Department of Education, "The U.S. Department of Education Releases Proposed Changes to Title IX Regulations, Invites Public Comment," June 23, 2022. <https://www.ed.gov/news/press-releases/us-department-education-releases-proposed-changes-title-ix-regulations-invites-public-comment>

³ U.S. Department of Education Office of Civil Rights "Confronting Anti-LGBTQI+ Harassment in Schools," June 2021. <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>

⁴ James Gordon, "Wisconsin mom says son, 13, was accused of Sexual Harassment and hit with Title IX complaint for refusing to refer to non-binary classmate by 'they/them' pronouns," *Daily Mail*, March 14, 2022. <https://www.dailymail.co.uk/news/article-10814979/Wisconsin-school-district-files-Title-IX-complaint-against-3-middle-school-students.html>

be a potential violation of Title IX for a student to refuse to call someone by pronouns that do not correspond to their biological sex?

2. A school in Virginia suspended a teacher, Tanner Cross, for refusing to use a child's "preferred" pronouns and cited Title IX as one justification.⁵ Would it be "discriminatory" or a potential violation of Title IX for a school employee to refuse to refer to a student or colleague by their preferred name or pronouns? If yes, would teachers with religious or conscientious objections be given an exemption?
3. When Florida passed a law to protect K-3 students from inappropriate classroom instruction, you implied it might run afoul of Title IX.⁶ Would it be "discriminatory" or a potential violation of Title IX for a school, district, or state to limit a school employee's ability to discuss "gender identity" with young children? Would it be a potential violation of Title IX for any school, district, or state to discipline a teacher's or school employee's discussion of the aforementioned topic with young children?
4. Would it be a potential violation of Title IX for any school, district, or state to refuse to provide puberty blockers or cross-sex hormones to "affirm" a student's "gender identity" at a school health clinic?
5. In order to comply with the Obama administration's "Dear Colleague letter" on Title IX, a Chicago public school chose to treat a girl as a boy and override the parents' expressed wish to treat their daughter according to her biological sex.⁷ Would it be "discriminatory" or a potential violation of Title IX to treat a child according to their biological sex if the parents requested this, but the child preferred a different "gender identity"?
6. An alarming number of schools deceive parents about their child's "gender transition" by withholding information about their child's "gender identity." Your proposed rules favorably cite policies from California and Washoe County, Nevada, which forbid school staff from notifying parents about their child's "gender identity."⁸ Would it be "discriminatory" or a potential violation of Title IX for a school employee or student to notify or inform parents about their child's "gender transition" or alleged "gender identity"?
7. The Family Educational Rights and Privacy Act guarantees parents' "right to inspect and review the education records their children."⁹ Under your proposed rule, would a school

⁵ Loudon County School Board, "Upon a Petition for Review Under Code § 8.01-626 Justices Kelsey, McCullough, and Chafin," August 30, 2021. <https://adfmlegalfiles.blob.core.windows.net/files/CrossOrderVSC.pdf>

⁶ Natalie Colarossi, "Education Secretary Slams Florida's 'Don't Say Gay' Bill as 'Hateful,'" *Newsweek*, March 8, 2022. <https://www.newsweek.com/education-secretary-slams-floridas-dont-say-gay-bill-hateful-1686162>

⁷ Jay Keck, "My daughter thinks she's transgender. Her public school undermined my efforts to help her," *USA Today*, August 12 2019. <https://www.usatoday.com/story/opinion/voices/2019/08/12/transgender-daughter-school-undermines-parents-column/1546527001/>

⁸ Washoe County School District, "Gender Identity and Gender Non-Conformity- Students," Administrative Regulation 5161. https://www.wcsdpolicy.net/pdf_files/administrative_regulations/5161_Reg-Gender_Identity-v2.pdf ; <https://www.cde.ca.gov/re/di/eo/faqs.asp>

⁹ 20 U.S. Code § 1232g - Family educational and privacy rights," *Cornell Law School*. <https://www.law.cornell.edu/uscode/text/20/1232g>

be allowed to deny parents access to a child’s educational records, including sensitive information about their purported “gender identity,” for any reason? Under what circumstances could a school deny parents their right to inspect and review their children’s records?

8. In Loudon County, Virginia, a girl was raped in the girl’s bathroom by a boy who “identifies” as “gender fluid.”¹⁰ Would it be “discriminatory” or a potential violation of Title IX to deny a boy who claimed a different “gender identity” access to the girl’s bathroom?
9. A male student at the University of Pennsylvania who claims to be a woman, Lia Thomas, has caused discomfort through his presence and behavior in the women’s locker room. Would it be discriminatory or a violation of Title IX to deny a boy who claimed a “gender identity” that did not correspond with his biological sex to use a girl’s locker room?
10. You have claimed that your proposed rule will not address women’s sports, yet your agency appears to be enforcing Title IX to effectively end women’s sports teams. Last June, your department signed onto a statement of interest, led by the Department of Justice, arguing that West Virginia’s law to prevent biological males from participating in female athletics is a violation of Title IX.¹¹ Would it be a violation of Title IX to deny a biological male who claimed a “gender identity” that did not correspond with his biological sex to join a women’s sports team?

Thank you for your attention to this important matter.

Sincerely,



Tom Cotton
United States Senator



Marsha Blackburn
United States Senator



Ted Cruz
United States Senator



Josh Hawley
United States Senator

¹⁰ Caroline Downey, “Judge Rules Loudoun County Teen Sexually Assaulted Female Student in Girls’ Bathroom,” *National Review*, October 26, 2021. https://www.nationalreview.com/news/judge-rules-loudoun-county-teen-sexually-assaulted-female-student-in-girls-bathroom/?utm_source=email&utm_medium=breaking&utm_campaign=newstrack&utm_term=25468804

¹¹ *Heather Jackson vs. West Virginia State Board of Education*, Statement of Interest 454-475 (S.D. Wv. 2021) <https://www.justice.gov/crt/case-document/file/1405541/download>



Michael S. Lee
United States Senator



Marco Rubio
United States Senator