

CONCERNED
WOMEN *for* **AMERICA**
LEGISLATIVE ACTION COMMITTEE



A Guide for Commenting on Biden's Proposed Title IX Rule

Title IX is the federal civil rights law that prohibits discrimination on the basis of sex. For 50 years, Title IX has provided the basis for women and girls to receive equal opportunities and benefits in education. Quick facts about the positive impact of Title IX can be found in Concerned Women for America's [Title IX Anniversary Fact Sheet 2022](#).

Biden's Title IX Rule proposes to turn Title IX on its head. Prohibiting discrimination "on the basis of sex" would no longer be based on being male or female. The impact? Women and girls would be stripped of vital protections under the law based on their female status that have been guaranteed under Title IX until now.

The U.S. Department of Education is proposing a new Title IX Rule using unauthorized interpretations of Supreme Court rulings and its own LGBTQ agenda that has never been approved by Congress.

Writing your comment(s)

Federal rulemaking governed by the Administrative Procedures Act (APA) requires a public comment period. The Department of Education must count and consider individual comments and is required to address all objections before issuing a final Rule.

Your comment counts! Please write your comment using [Concerned Women for America's Action Center](#). Share why you are concerned with the impact of the proposed Rule outlined below.

- You are welcome to comment on one or more areas of concern in a single comment or in multiple comments up until the **deadline of September 12, 2022**.
- **Do any of the changes to Title IX raise questions for you about cost, impact or workability? Ask these questions in your comment!** Any question will require the Department of Education to justify an answer as part of their obligation under the APA.

General Points

- Being male and female is an unchangeable fact of the natural world that differentiates human beings from conception. This rule hinges discrimination not on biological sex, but on an impossible enforcement standard of perception or desire to be the opposite sex.
- Forcing a radical, new interpretation of sex under Title IX is a direct threat to every woman and girl in America. This proposed rule in practice does nothing less than erase female status and protections.
- Gender Identity policies are in direct conflict with women's rights. They erase the female dignity and have a demoralizing, dangerous, and disparate impact on girls: girls are being forced to share sex-separated school restrooms with males leading to [cases of sexual assault](#); males are given [access to women's locker rooms](#); female athletes are [losing their rightful opportunities](#) on sex-specific sports teams.
- Title IX should not be used to impose controversial gender ideology mandates under the guise of sex discrimination that will create chaos for schools, deny constitutional rights, and be harmful to students.

Specific Areas of Concern

- **Oppose the unauthorized new Scope of sex discrimination that includes “gender identity.”**

Biden's Title IX Rule imposes a sweeping new scope of sex discrimination which ignores the fundamental distinction of sex as male and female:

“Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.”

Under the Biden Title IX Rule, being male or female is no longer a relevant distinction for achieving equality based on sex. A person's sex is simply “assigned at birth.” A person's chosen “gender identity” would be the key factor for determining sex discrimination in educational programs and activities.

This turns Title IX upside down. The social construct of “gender identity” does not equal sex and should not be used to undermine Title IX protections for women and girls. “On the basis of sex” under Title IX should be based solely on the immutable objective fact of being male or female – not on gender perceptions, gender transitions, sex stereotyping, or sexual practices.

- **Oppose the sweeping new Application of Title IX sex discrimination (no longer based on biological sex!) which leaves no situation, program, activity, or location untouched.**
- A. Applied to “Gender Identity”: *“Proposed § 106.31(a)(2) would clarify that adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with their gender identity subjects a person to more than de minimis harm on the basis of sex.”*

- B. Applied Everywhere: “A recipient's education program or activity would also include all of its academic and other classes, extracurricular activities, athletics programs, and other aspects of the recipient's education program or activity, whether those programs or activities take place in the facilities of the recipient, via computer and internet networks, on digital platforms, with computer hardware or software owned, operated by, or used in the operations of the recipient, on a school bus, at a class or training program sponsored by the recipient at another location, or elsewhere.”

Under Biden's Rule, failing to treat males self-identifying as girls as “girls” is always harmful and would be a violation of Title IX. Many schools already promote the PRIDE agenda, encourage students in damaging gender transitions behind their parents' backs, and allow male bodies in female sports and spaces. Under this Rule, the federal government would require all educational programs and activities to teach, affirm, and accommodate gender identities over biological sex, in all education-related contexts, to comply with Title IX.

- **Oppose the new definition of “Parental Status” which could empower school authorities to act “in loco parentis” on matters of sexuality and gender identity.**

Biden's Title IX Rule includes seven alternatives for defining “parental status” in a new definition under Title IX, one being: “in loco parentis with respect to such a person.” Because Biden's Title IX Rule seeks to impose an extreme sexuality and “gender identity” agenda under the guise of Title IX discrimination, there is legitimate concern that the strict application of “in loco parentis” today (which requires schools to report child abuse) could be used to empower school personnel to act as parental authorities in matters of sexuality and gender without parental knowledge or consent.

- **Oppose the new definition of “Pregnancy or Related Conditions” that includes abortion.**

Under Biden's Title IX Rule, “termination of pregnancy” (i.e., abortion) is included in a new definition of “pregnancy or related conditions.” This gives abortion equal status to “pregnancy, childbirth and lactation” in the expanded scope of sex discrimination and extends an implicit right to abortion under Title IX. Schools could be required to provide access to abortion services and to ban any pro-life messages or activities on campuses.