

CONCERNED WOMEN *for* AMERICA

Statement to the Office of Management and Budget/ Office of Information and Regulatory Affairs

On Biden Administration's Title IX Rule

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We are meeting with you today on behalf of hundreds of thousands of women across America of all ages represented by Concerned Women for America (CWA) to underscore our strong opposition to the Title IX Rule advanced by the U.S. Department of Education: "Nondiscrimination on the Basis of Sex in Educational Programs and Activities Receiving Federal Financial Assistance."

This Rule rebels against the very intent of Title IX sex discrimination by eviscerating the plain meaning of sex as male and female. The expanded "scope" of sex-based harassment guts the very foundation of Title IX with a socially constructed, subjective category of "gender identity" and strips women of vital protections under civil rights law.

In fact, the Rule mandates a new form of sex discrimination against women and girls by erasing equal protections based on our sex. This is a flagrant violation of Title IX's intent and an affront to our dignity and humanity.

Regardless of what progressive orthodoxy wants to claim, being male and female is an immutable fact of the natural world that differentiates human beings from conception. It is part of our genetic and reproductive design. Any physical anomaly, a disorder of sexual development, is a rare defect that does not change the binary differentiation of the sexes. "Intersex" is not a third sex, and "gender identity" is not a sex either.

Under the Rule, the objective binary, immutable reality of sex is thrown out the window and reinterpreted as a psychological "identity." It overturns any standard application of "on the basis of sex" under Title IX law which Justice Ruth Bader Ginsburg reaffirmed in a landmark Title IX decision, stating that in prohibiting discrimination on account of sex, certain differences between the sexes are enduring.

I'll be clear: Redefining the fundamental meaning of sex under Title IX is not your right or your privilege.

No defensible interpretation of the Supreme Court decision in *Bostock vs. Clayton County* authorizes the Department to impose this hurricane of policy change. "Reasoning" is no defense, especially when Justice Ruth Bader Ginsburg specifically addressed the question of Title IX at the Court and the response

was, “It is a different statute with different standards.” Neither the Court nor congressional statute authorizes this radical change.

The gender ideology agenda at the center of this Rule is based on a policy preference that is opposed by majorities of Americans. Serious lawsuits are blanketing school districts across the country as a direct result of the “reinterpretation” the Department imposed on schools well before publishing this Rule. The lawsuits are a direct result of parents shut out by secret “gender transition plans” and denied the fundamental right to raise their children according to their values; of students being indoctrinated with controversial ideological viewpoints about sex and gender; of teachers being coerced to lie about students’ sex. Female students are endangered by policies forcing them to share locker rooms, restrooms, hotel rooms, and sports teams with males. Countless hours of instructional time have been lost by an obsession with “identity” that will only exponentially increase under this Rule.

The Rule turns back the clock of equal protections for women by erasing the very foundation of sex-based nondiscrimination law. As we are seeing, the impact falls disproportionately on the backs of women and girls – our rights to privacy, safety, and equality of opportunity. This is sex discrimination.

How do you justify the situations women are facing? Forced to share a bed with a trans identifying male on a school trip, forced to undress in the women’s lockers with a nude male, forced to be “inclusive” in speech and denying our unique dignity and identity as female, denied achievements in our own sports? All such real cases are a direct fallout of the misguided policies sought under this Rule.

And you want to impose it as a straitjacket on America? We implore you to end that crusade right here and right now.

This Rule is a direct assault against our daughters erasing their status and protection as female and perpetrating a destructive ideology that socializes students to believe they can be “born in the wrong body.” The women of CWA object to this Rule in the strongest of terms.

Your job as regulators is to clarify statutory intent, not overrule it. This Rule redefines the scope of sex and turns the fundamental, original meaning and purpose of Title IX on its head. That is not your job.

As such, this Rule is not a defensible or legitimate interpretation or application of law. The regulatory impact you are required to justify cannot be achieved:

- The Rule is completely arbitrary and capricious. It creates a conflicting, unworkable, and weaponized system of requirements and responsibilities for recipients under a radically expansive, ill-defined, and unbounded scope of what constitutes “sex-based harassment.” New categories of “sex” have no limitation. Any self-declaration has no standard of evidence. A gender identity” violation under a subjective claim of “more than de minimus harm” is entirely arbitrary and capricious.
- The Rule is unquestionably economically significant in untold and uncalculated way. The high cost on education programs and institutions and related liability to comply with a fabricated construct of sex discrimination is already inevitable. It will cause nothing but confusion and chaos.

It's time to stop the crusade to impose by executive fiat a controversial ideological agenda that the Administration could not achieve through constitutionally legitimate processes. The Equality Act has failed spectacularly in Congress for some of these same reasons.

OMB/OIRA must exercise its responsibility to uphold the legitimacy of rulemaking and reaffirm the plain meaning of sex under Title IX. You have an obligation to the American people and all recipients of federal financial assistance to prevent this erroneous interpretation of law from seeing the light of day and protect our communities from the exponential fallout of an ideologically-driven agenda through our schools that majorities oppose.

All students – created male and female – deserve the full protection afforded them under federal law, including Title IX.