**U.S. DEPARTMENT OF EDUCTION INTENDS TO**

**EXPAND TITLE IX TO INCLUDE SEXUAL ORIENTATION & GENDER IDENTITY**

Title IX of the Education Amendments was enacted by Congress in 1972 to eliminate discrimination based upon sex, against girls and women in particular, in education.[[1]](#footnote-1) It states:

No person in the United States shall, *on the basis of sex*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . . [[2]](#footnote-2)

When Title IX was passed, girls and women faced high barriers to pursuing educational opportunities, particularly in higher education.[[3]](#footnote-3) Title IX was designed to remove those barriers, and now represents 50 years of progress in education made by girls and women.

Title IX regulates every public K-12 school, college, and university in the nation, as well as every private school that takes federal funding. As a result, Title IX has wide-reaching implications for tens of millions of children and parents across the country. The regulations implementing Title IX were based on the binary nature of sex, recognizing biological distinctions where they matter and prohibiting discrimination based on biological sex as Congress intended. Until now.

On July 12, 2022, the United States Department of Education (“USDOE”) published in the Federal Register a Notice of Proposed Rulemaking to rewrite the federal regulations that implement Title IX. The proposed revised regulations would **expand the scope of Title IX, without Congressional approval, to include prohibiting “*discrimination of the bases of sexual orientation and gender identity*.”** This effective rewrite of Title IX’s fundamental purpose would have many devastating consequences for parental rights, Free Speech, Free Exercise of Religion, girls’ sports, and children’s health and safety. Members of the public will have 60 days, or until **September 12, 2022** to submit Comments to the USDOE outlining these harmful effects.

The proposed changes to Title IX’s regulations will be one of the largest social engineering over-reaches of the federal government in American history. Here is what these regulations will do:

* **Create a new category of “sex discrimination” based on sexual orientation and gender identity**

The proposed regulations will dramatically expand the scope of prohibited sex discrimination to include “discrimination on the basis of sexual orientation and gender identity” [Proposed §160.10]. Furthermore, the regulations state that *any policy or practice that prevents a student from participating in any education program or activity “consistent with the person’s gender identity”* ***subjects that student to harm*** on the basis of sex. [Proposed §160.31(a)(2)]

The regulations require schools to **take “prompt and effective action**” to stop any sex-based discrimination, including based on gender identity, that occurs in its programs or activities. [Proposed §106.44(a)]. That means that school officials who treat children according to their biological sex, but not their gender identity, could be guilty of “sex-based harassment.” To prevent such violations, school districts will be forced to adopt policies requiring gender affirmation, instituting adherence to gender identity ideology, otherwise risk loss of federal funding and/or lawsuits.

* **Make Upholding Biological Reality a Form of “Sex-based Harassment”**

In place of sexual harassment, the proposed regulations prohibit “***sex-based harassment***.” Such “sex-based harassment” would expand the definition of objectionable conduct to a lower and more subjective standard than what has been recognized by the U.S. Supreme Court for claiming sexual harassment against teachers, administrators, or other students. [Proposed §160.2]

Under this lower standard of proof, even innocent actions, like repeatedly using a child’s given name and biologically accurate pronouns instead of a preferred name and pronouns could be regarded as sex-based harassment.

* **Create a Head-On Collision With Parental Rights**

The proposed regulations will vastly increase the already widespread usurpation of parental authority by schools, teachers, counselors and administrators claiming they are obligated to endorse a child’s discordant identity without notice to or the consent of, and even over the objections of their parents.

The proposed regulations would allow children to **socially transition to a different gender at school** and require K-12 schools to affirm a child’s asserted gender identity as a matter of federal law. The regulations do not require notice to or the consent of the child’s parents, the involvement of medical professionals or legal documentation. Social transitioning of children involves life-altering decisions affecting the health and well-being of children that school officials are not qualified to make.

The proposed regulations also dramatically expand Title IX’s reach to include sex-based harassment that **occurs outside of school** if the behavior contributes to a “hostile environment” at school. [Proposed § 106.11] So if actions taken by parents at home result in a child being prevented from participating at school “consistent with” the child’s “gender identity” cooperating school officials could conceivably be found in violation of Title IX.

Furthermore, because the proposed regulations presume that preventing a student from participating in any education program or activity consistent with their gender identity subjects that child to harm, the proposed regulations could provide the basis for a **report to state child protective services** for parents who wish to uphold biological reality and refuse to allow school officials to endorse their child’s discordant gender identity.

Finally, upon being notified of conduct that may constitute sex-based discrimination, including based on gender identity, the proposed regulations would require the Title IX Coordinator to **provide “supportive measures**” to children, including counseling. [§§160.44(g), §160.44(g)(1)] Presumably that would include about gender identity issues. Again, there is no requirement of notification to a child’s parents or parental consent.

Section § 106.6(b) states that the obligation to comply with the proposed regulations is not “alleviated by any State or local law or other requirement.” Therefore, these regulations will create legal uncertainty about the enforceability of **state laws protecting parental rights** where they conflict with the new federal Title IX regulations. This will assuredly be exploited by activist officials and likely require expensive court action to obtain resolution to the conflicts.

These proposed regulations will harm children by driving a wedge between children and their parents, and their parents’ authority, at a time when children need their parents most.

* **Require Schools to Open Up Their Privacy Facilities Based on Gender Identity**

While schools can still have girls and boys restrooms, locker rooms and showers (privacy facilities), because the proposed regulations prohibit discrimination on the basis of gender identity schools would be required to permit biological males who identify as females to use privacy facilities set aside for females, and vice versa. [§§106.10 and 106.31(a)(2)] Girls and women who use these facilities would have to **surrender their right to privacy** and be placed at increased risk for harassment or assault by males who claim a female identity.

Policies that require privacy facility usage be based on how a child identifies instead of their sex have a **powerful indoctrinating effect** on students by mandating that they suspend reality and affirm that children of one sex can in fact become the opposite. Values of sexual privacy and for biological reality would be contradicted by school officials who require that children accept the presence of an opposite sex classmate in their restroom, locker room, or shower facility.

* **Threaten Religious Freedom and Free Speech in favor of Gender Indoctrination**

Given the expanded definition given “sex-based harassment” to include gender identity, the proposed regulations will give cover to schools adopting policies that compel children and staff, contrary to their sincerely held religious beliefs or biological reality, to refer to other students or employees as something other than their sex if that is how they identify. [§106.2, §106.10 and §106.31(a)(2)][[4]](#footnote-4)

The proposed regulations will create an irreconcilable clash between the newly created prohibition on “discrimination based on gender identity” and students’ and teachers’ First Amendment rights to speak freely and deal with others in a manner that is biologically accurate and consistent with the sincerely held beliefs and central tenets of several major religions.

* **Effectively Turn Title IX Coordinators into federal law enforcement officials**

The proposed regulations give Title IX Coordinators greater power. They require all K-12 employees to notify the Title IX Coordinator about any conduct that may constitute sex-based discrimination, including based on gender identity. [Proposed §160.4(c)(1)] They require schools to give Title IX Coordinators broad authority to take “prompt and effective steps” to ensure sex-based discrimination, including based on gender identity, does not occur. [Proposed §§106.44(a), 160.44(f)(6)]

The proposed regulations empower the Title IX Coordinator to decide whether to make a complaint against a school official or another student for conduct that constitutes sex discrimination based on gender identity, even if a child does not want to. [Proposed §160.44(f)(5)] They require Title IX Coordinators to provide “supportive measures” to aggrieved students, including counseling, but do not require parental consent. [Proposed § 106.44(g), 106.44(g)(1)]

* **Ultimately Jeopardize Girls’ and Women’s Athletic and Educational Opportunities**

The Department of Education has stated that it will engage in separate rulemaking to address Title IX’s application to the context of athletics. However, based on the expanded scope the proposed regulations give sex-based discrimination to include gender identity, and the Department’s recent actions in the sports context, it is expected that the Department will require that sex-separate athletics be available based upon how students self-identify, instead of their biological sex.

This would force girls and women to **compete on an unfair basis** for athletic opportunities and scholarships against males who have physical advantages that cannot be overcome by cross-sex hormones. This will also create significant risks of injury for girls and women. Furthermore, the proposed regulations will create legal uncertainty about the enforceability of **state laws protecting girls’ and women’s sports** where they conflict with the new federal regulations. [See § 106.6 discussed above.]

* **Normalize Gender Identity Ideology and Harm Children’s Health**

Of all the harms and transgressions wrought by the proposed new Title IX regulations, none are more egregious than the harm that will be done to gender dysphoric children themselves – and to all other children vulnerable to body dysphoria via the social contagion propagated by schools. Acting without legal authority and without scientifically credible evidence, the Department is proclaiming that the only acceptable response to children who state that they are experiencing a disconnect between their body and a perceived “gender identity” is **immediate and unquestioning affirmation** of a discordant gender identity.

Studies show that if children are not immediately and unquestioningly affirmed, from 61 to as high as 98 percent will come to terms with their biological sex.[[5]](#footnote-5) But, those who are immediately and unquestioningly affirmed by peers and teachers at school, as would be required under these regulations, will be far less likely to desist from their body dysphoria.[[6]](#footnote-6)

If socially transitioned, a high percentage of children will then pursue medical and surgical interventions which have irreversible life-altering consequences for school age children, like **sterility and life-long sexual dysfunction**. These interventions interrupt a child’s healthy growth and development and come with significant risks, including loss of bone density, infertility, cognitive impairment, dangerous blood clots, cardiovascular disease, and cancer.[[7]](#footnote-7) None have ever been approved by the FDA for this purpose and the long-term risks remain unknown.

In a humane society, children have certain basic human rights. These include the right to be taught the truth about science and biology, and the right to know their body is not their enemy and their sex is not a disease. They have the right to experience natural and healthy growth and development in harmony with their body and to reach adulthood with all the healthy body parts and bodily functions they were born with. This includes the right to **preserve their capacity to create children of their own some day** and pass on their genetic inheritance to the next generation.

Children have the right to be protected from unproven treatments, but instead to receive effective therapies that will explore and provide lasting relief for the true causes of their distress and body discomfort. They have the right to avoid unnecessarily becoming life-long medical patients, enriching medical providers at the expense of their physical and mental integrity.

They also have the right to compete fairly to win in the field of sports. And they have the right to natural guardians, i.e., **parents, empowered to make the best decisions on their behalf** to protect their mental, psychological, physical, and spiritual well-being for both the present and *the long-term*.

These proposed regulations will harm children vulnerable to the seductions of gender ideology because they will help sow and waterthe seeds of a lie – that **a child can be born into the “wrong body”** – by powerful authority figures in their lives. Every child comes into this world with just one possession – his or her body, which means their sex. The Department would rob school children of this most precious and fundamental gift by planting in their minds, through its new expanded mandates, the tares of an ideology that will choke the healthy physical, mental, and spiritual growth of every child.

None of these potential harms were contemplated by Congress when they enacted Title IX in 1972. These tares were sown while parents and leaders were asleep. But now we must awaken. Parents, faith and community leaders, and educators must speak out courageously and clearly about the many destructive consequences these regulations will have if implemented. *Below we explain how*.

* **Disproportionately Harm Minority and Other Disadvantaged Children**

While the proposed regulations would ensnare all children in a harmful ideology, they would disproportionately harm minority and other disadvantaged children who remain trapped in public schools as families who are able flee the system. Black and other minority communities, furthermore, have a long history of negative encounters with Child Protective Services. Under the proposed regulations, minority families will face increased intimidation by the threat of a report to CPS for parents who refuse to endorse a child’s trans identity promoted or affirmed at school.

In May, 2022, the U.S. Department of Agriculture announced that in order for schools to receive funds for free student lunches, breakfasts, and other food items, they must comply with its interpretation of Title IX and other food-related programs as prohibiting discrimination based sexual orientation and gender identity.[[8]](#footnote-8) To receive food assistance under the new rule, the Biden administration is forcing schools to comply with allowing boys to use girls’ changing and restroom facilities, and forcing teachers to use inaccurate pronouns for children who believe they are transgender. The National School Lunch Program [feeds](https://www.ers.usda.gov/topics/food-nutrition-assistance/child-nutrition-programs/national-school-lunch-program/) nearly 30 million children every day.

*Child & Parental Rights Campaign, Inc.* is a non-partisan not-for-profit public interest law firm founded to protect the well-being of children and defend parental rights against the impacts of gender identity ideology. Our attorneys and staff stand ready to assist with additional information, legal representation, or educating your network or organization.

You may visit our website at: [www.childparentrights.org](http://www.childparentrights.org) or contact us at 770.448.4525 or info@childparentrights.org.

1. *Neal v. Bd. of Trs. of Cal. State Univs.*, 198 F.3d 763, 766 (9th Cir. 1999). [↑](#footnote-ref-1)
2. 20 U.S.C. § 1681(a). [↑](#footnote-ref-2)
3. *North Haven Bod of Educ. V. Bell,* 456 U.S. 512, 526-27 (1982). [↑](#footnote-ref-3)
4. Section § 106.6(d) says that nothing in the regulations requires a school to “restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution.” However, recent interpretations of Title IX by activist school officials and the USDOE make clear that conduct or speech that is deemed “discrimination based on gender identity” would not be protected. [↑](#footnote-ref-4)
5. Declaration of James Cantor, PhD. (Psychologist) in *Eknes-Tucker v. Ivy,*  M.D.Ala. Case No 2:22-cv-00184-LCB-SRW, Dkt. #69-2 at 14-15. [↑](#footnote-ref-5)
6. Declaration of Michael Laidlaw, M.D. (Endocrinologist) in *Eknes-Tucker v. Ivy,*  M.D.Ala. Case No 2:22-cv-00184-LCB-SRW, Dkt. #69-3 at 11 [↑](#footnote-ref-6)
7. *Id.* at 5-6. [↑](#footnote-ref-7)
8. <https://www.fns.usda.gov/news-item/usda-0100.22>. [↑](#footnote-ref-8)