

From: President
Sent: Fri, 11 Jun 2021 19:30:52 +0000
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing
Attachments: Title IX Public Comments.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please find attached my public comments regarding Title IX.

Steve Pettit, President
Bob Jones University
Greenville, SC



BOB JONES UNIVERSITY

EST. 1927

June 11, 2021

Secretary of Education Miguel Cardona
Ms. Suzanne Goldberg
U.S. Department of Education
400 Maryland Ave SW
Washington, DC 20202

Submitted to: T9PublicHearing@ed.gov

RE: Notice for Public Hearing; Title IX of the Education Amendments of 1972;
Invitation for Written Comments

Federal Registry No: 2021-10629

Dear Secretary Cardona and Ms. Goldberg:

I am pleased to submit these public comments on behalf of Bob Jones University (BJU), a Christian liberal arts university located in Greenville, S.C., regarding the Department of Education's Office for Civil Rights "Announcement of Public Hearing; Title IX of the Education Amendments of 1972." We serve over 3,000 students, from nearly every state and more than 40 countries, and their families.

Since 1927, BJU has provided an academically rigorous, faith-based education to thousands of students. The University Creed, which outlines our foundational beliefs, encapsulates our religious mission and undergirds all we do.

As an organization that partners with local churches, educational institutions at every level, and our general constituency, we believe that Christian higher educational institutions are uniquely positioned to produce well-rounded students who contribute positively to society and, to that end, we must be allowed to maintain our religious identity and practice as we instruct them. Our First Amendment freedoms, including the guarantee of religious liberty, are vital to our mission.

We write to encourage the Department to retain its existing regulation (34 C.F.R. § 106.12) regarding Title IX's religious exemption. The regulation correctly clarifies that an institution need not seek assurance of its possession of the exemption from the

Assistant Secretary for Civil Rights. *Id.* at § 106.12(b). It may do so for the first time in response to a Title IX charge. This interpretation is consistent with—indeed, required by—the relevant statutory language.

The regulation also correctly clarifies how a religious institution may establish that it is controlled by a religious organization. *Id.* at § 106.12(c). The regulation embodies the proper understanding of the statutory language. Potential alternative interpretations, under which “independent” or non-denominational schools might be denied the exemption, would raise serious constitutional problems. There is no defensible policy justification for treating “independent” schools worse than denominationally connected ones.

We were initially encouraged by aspects of the Department’s June 7 filing in *Hunter v. Department of Education*, a case in which the constitutionality of Title IX’s religious exemption has been challenged. However, the Department’s amended filing is troubling. In it, the Department signals that it does not intend to vigorously defend the exemption. Worse, the filing indicates that the Department may not defend the existing implementing regulations at all. That the amended filing came in the wake of public criticism of the initial filing is disturbing, suggesting that the Department’s position in the litigation is based less on a principled commitment to religious liberty and the rule of law and more on activist pressure. Congress expressly included the exemption to preserve the exercise of religious liberty. In a pluralistic society, it is imperative to preserve the rights of disfavored religious groups and foster freedom of association.

We maintain President Biden’s executive orders on “Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation” (EO 13988) and “Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity” (EO 14021), while intended to prevent discrimination, is overly prescriptive and could interfere with the right of private, faith-based institutions to determine a code of conduct for students and employees, offer employee health plans in line with their faith, and provide appropriately sex-separated private facilities and student housing accommodations.

If the Department of Education’s proposal to eliminate “discrimination” on the basis of gender identity and sexual orientation is applied to all institutions without consideration for religious belief, the ability of higher educational institutions to operate according to biblical beliefs will be violated, especially if the Department erroneously alters the current (and longstanding) interpretation of the religious exemptions. If the Department modifies the existing exemption regulations, schools that do not comply with the Department’s standards for sex discrimination will be forced either to deny their religiously held beliefs or lose the ability to accept students in need of available government loans and grants that would allow them to receive an education in line with their beliefs and faith tradition. The Department’s actions create an untenable dilemma that violates several Supreme Court rulings and guarantees of the Constitution. [See *Trinity Lutheran v. Comer* (2017) and *Espinoza v. Montana Department of Revenue* (2019), in which the Court restates the fundamental principle

that religious schools and students cannot be denied generally available funds simply because of religious status. The recent ruling in *A.H. v. French* also confirms this bedrock principle.]

Beyond the serious religious liberty concerns these orders potentially pose to Christian institutions, they also potentially inflict widespread harm on children and families. Most notably, these regulations will decimate the significant gains made for women under Title IX. The impact of the elevation and proliferation of women's sports teams due to Title IX should be celebrated. Allowing biological men who identify as women to compete in some women's sports has already resulted in stripping women and girls from championship titles and scholarship opportunities which they had worked for years to attain. While Title IX gives women equal opportunity to participate in sports, these executive orders would remove this protection by giving biological men access to competitions and teams designed for biological women.

Another detrimental effect that would result from redefining sex in Title IX is found in the text of EO 13988. The EO states "children should be able to learn without worrying about whether they will be denied access to the restroom, the locker room, or school sports." The result of this directive will be the opening of all appropriately sex-segregated areas to members of the opposite sex, leaving millions of students vulnerable and their physical safety at risk from those who would take advantage of the removal of protective boundaries.

As a Christian liberal arts educational institution, we believe that each individual is uniquely created in the image of God. Therefore, we strive to show Christ's love to students by providing them an excellent education that teaches them how to reach their God-given potential, by living a productive and fulfilling life fully embracing their purpose and serving their communities. In order to continue the mission to advance Christian education with excellence, it is imperative that organizations remain free to offer services and help their communities without government interference in the most basic understandings of belief.

Thank you for the opportunity to comment on this essential matter. In summary, we ask that the Department of Education uphold the religious freedom of colleges and universities and the conscience rights of all Americans.

(b)(6)

