Please find attached my public comments regarding Title IX.

Steve Pettit, President
Bob Jones University
Greenville, SC
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.