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To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing and Affirming the Permissibility of Sex-Based Classifications with the Implementation of Executive Orders 13988 and 14021

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Bostock v. Clayton County ([140 S.Ct. 1731 \(2020\)](#)), the primary legal authority for E.O. 13988, clearly demonstrates how transgender people can be protected from discrimination without disturbing single sex classifications whose application and enforcement do *not* constitute discriminatory actions under existing law.

Sex and Gender Identity must not be conflated or equated.

Bostock relies explicitly on biological sex for its expansion of protection to LGBT persons. The Supreme Court made it clear: "We agree that homosexuality and transgender status are distinct concepts from sex" (140 S.Ct. at 1746-47). According to *Bostock*, then, neither transgender status nor sexual orientation may operate as legal substitutes for the concept of sex as "biological distinctions between male and female" (140 S.Ct. at 1739).

It is therefore perfectly consistent to protect students from discrimination on the basis of transgender status or gender identity and sexual orientation while simultaneously recognizing biological sex *where sex is important*.

Indeed, Title IX and its implementing regulations stipulate that **sometimes sex matters**. Existing statutory and regulatory provisions therefore permit schools to maintain single-sex admissions policies ([20 U.S.C. § 1681\(a\)\(1\)](#)), single sex housing ([34 C.F.R. § 106.32\(b\)](#)), athletic scholarships ([34 C.F.R. § 106.37\(c\)](#)), gym and health classes ([34 C.F.R. § 106.34\(b\)](#)), sports teams ([34 C.F.R. § 106.41\(b\)](#)), and locker rooms and bathrooms ([34 C.F.R. § 106.33](#)).