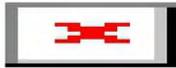


From: Joel Thornton
Sent: Fri, 11 Jun 2021 15:17:26 -0400
To: T9PublicHearing
Cc: Mary McAlister;Vernadette Broyles
Subject: Comments of Child and Parental Rights Campaign regarding Title IX issues
Attachments: US DOE Public Comments son Title IX 6-11-21 final.docx

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 our comments for the public hearing to gather information for the purpose of improving enforcement of Title IX. We are pleased to be able to take part in this democratic process. Sincerest regards,
Joel H. Thornton, Esq.
COO and Litigation Counsel



COO and Litigation Counsel
5805 State Bridge Rd. Suite G310
Johns Creek, GA 30097
+706.266.6836
jthornton@childparentrights.org
www.childparentrights.org



Child & Parental Rights

C A M P A I G N

Restore. Defend. Secure.

Vernadette R. Broyles, Esq.
President & General Counsel

ATLANTA, GA | LYNCHBURG, VA

June 11, 2021

U.S. Department of Education Office of Civil Rights
Lyndon Baines Johnson (LBJ)
Department of Education Building
400 Maryland Avenue, SW
Washington, DC 20202

Re: Comments on the Virtual Public Hearing to Gather Information for the Purpose of Improving Enforcement of Title IX

Dear Secretary Cardona,

Child & Parental Rights Campaign, Inc. is a non-profit public interest law firm whose mission is to protect the well-being of children and defend the fundamental rights of parents to guard and guide their children. We represent parents all over the country who are finding their constitutional rights violated by public school officials. Our attorneys have over 70 years of experience at all levels of the nation's legal systems. Our COO and Litigation Counsel formerly served four years as Chief of Staff for the Georgia State School Superintendent.

The interpretation of "sex" under Title IX, particularly with regard to children's educational and personal development and their parents' right to direct their upbringing is of utmost importance. Unfortunately, these critical aspects of the interpretation of Title IX are being blurred by ideologically driven arguments that do not take into account the best interests of children. Many advocates and their lawyers are embellishing existing legal authority to support their claims. This includes overstating the actual holding of the most recent Supreme Court case to fit their own desires. We respectfully submit this letter to clarify the reality of the state of the law as of this time.

In *Bostock v. Clayton County*, 140 S.Ct. 1731 (2020), the Supreme Court made it very clear that it **was not** determining the question of how "sex" is defined under either Title VII or Title IX. *Bostock*, 140 S.Ct. at 1753 (emphasis added). The Court specifically rejected employers' arguments that the decision would sweep so broadly as to affect all aspects of workplaces and even schools. *Id.*

The employers worry that our decision will sweep beyond Title VII to other federal or state laws that prohibit sex discrimination. And, under Title VII itself, they say sex-segregated bathrooms, locker rooms, and dress codes will prove unsustainable after our decision today. But none of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms,

and we do not prejudge any such question today. Under Title VII, too, we do not purport to address bathrooms, locker rooms, or anything else of the kind.

Id. (emphasis added). In the Court’s own words, “**the only question** before us is whether an employer who fires someone simply for being homosexual or transgender has discharged or otherwise discriminated against that individual ‘because of such individual’s sex.’” *Id.* (emphasis added).

Thus, the Supreme Court made clear in *Bostock* that it was **not** addressing policies related to students under Title IX. Therefore, there is no Supreme Court precedent that provides that “sex” discrimination under Title IX includes “gender identity.” In *Adams v. School Board of St. Johns County*, 968 F.3d 1286, 1292-93 (11th Cir. 2020), the 11th Circuit panel found that the district acted arbitrarily when it did not permit a child who had undergone medical transition and changed her legal documents to use a restroom that corresponded to the documents. The 11th Circuit panel did not rule on the meaning of “sex” under Title IX beyond the facts of that case and, in fact, upheld the district’s right to protect privacy by maintaining separate bathrooms for boys and girls. *Id.* at 1297.

Also, there is no duly enacted federal regulation that defines “sex” to include “gender identity” under Title IX for any purpose, and certainly not as to children in public schools. “The Department had issued a “Dear Colleague letter opining that sex should include gender identity in 2016, but that letter was rescinded in 2017 after a federal court invalidated the guidance.¹ More importantly, whatever the interpretation given Title IX, its proscriptions operate *against the government*, including public schools. Under no circumstances can it be used to authorize violating parents’ rights to protect and make decisions concerning their children directly or indirectly through policies mandating acceptance of gender identity.

Furthermore, if public education is going to survive in the United States, government must stop violating the constitutional rights of parents by requiring the teaching and acceptance of ideologies that, as important as they might be, have no place in the classroom. Issues related to sexual orientation and “gender identity” (SOGI) issues are among such issues. No child in Kindergarten through 8th grade, in particular, needs to be dealing with these complex adult issues in the classroom. These matters are best left to parents who are the rightful authority in the lives of their own children.

For nearly 100 years, the Supreme Court has established that there is a fundamental right of parents to direct the education and upbringing of their children. *Meyer v. Nebraska*, 262 U.S. 390 (1923), *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), *Troxel v. Granville*, 530 U.S. 57 (2000). In *Meyer*, the Supreme Court noted that the right to liberty guaranteed by the Constitution includes the right to “bring up children” as “essential to the orderly pursuit of happiness by free men.” 262 U.S. at 399. In *Pierce*, the Supreme Court confirmed

¹ U.S. Department of Education/ Department of Justice Dear Colleague Letter on Title IX May 13, 2016, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>; U.S. Department of Education/ Department of Justice Dear Colleague Letter on Title IX February 27, 2017, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf>; *Texas v. United States*, 201 F.Supp.3d 810, 836 (N.D. Tex. 2016)

that it is parents, not the state, who have the right to direct the upbringing and education of their children, and rejected the notion promoted in the Guide that a child is “the mere creature of the State.” 268 U.S. at 535.

The fact of the matter is that it is parents, not the state (including public schools), who are the decision makers regarding their children’s well-being. This is not an antiquated notion but continues to be protected as a fundamental right by the Supreme Court. *Troxel*, 530 U.S. at 66.

Moreover, the issue of a child’s gender confusion goes beyond any school district’s authority over pedagogical concerns. As well as encompassing educational decisions, parents’ fundamental right to direct the upbringing of their children includes the right to make medical and mental health decisions. *Parham v. J.R.*, 442 U.S. 584, 604 (1979). The Supreme Court has made clear parents retain a substantial, if not the dominant, role in medical and mental health care decisions for their children, absent a judicial finding of neglect or abuse. *Id.* Parents are presumed by this precedent to possess what children lack in maturity, experience, and capacity for judgment required for making life’s difficult decisions. *id.* A child who is struggling with gender confusion is dealing with physical and mental health issues which are clearly within the purview of the parents.

Simply because the decision of a parent is not agreeable to a child (or school administrators) does not transfer the power to make that decision from the parents to the child or to some employee of the state. *Id.*

The social engineering that is going on in schools across the country is setting a dangerous precedent should it continue to drive public policy. Parental rights in education are being eroded on a nearly daily basis. We represent parents who are being ignored by school officials across the country². In Massachusetts, Florida, Arizona, Georgia, Maine, California, Oregon, and more, the abuse of the right of parents to control the education of their children is becoming a common occurrence.

This includes the fact that school officials are now reaching into the personal lives of students, intentionally ignoring their parents’ constitutional rights, often backed by guidelines or district policy³, and treating students as if they are wards of the state. All for the sake of a “social justice agenda” that is encouraging and even training educators to deceive and/or ignore parents on these issues. This blatant disregard for parental rights as protected by the Constitution, and many states’ law, is absolutely unacceptable.

As an aside, the enclave that has been created by religious based schools is one of the only things preventing parents from calling for the end of the public school system. Right now, these schools are a sanctuary for parents who fundamentally disagree with the right of the

² We are happy to provide specific information about specific cases should the Department wish to learn firsthand how parents’ rights are being violated by school officials.

³ For instance, parents in Florida were told that school officials ignoring the parents’ express statement that they did not want their 11-year-old daughter being called by a boy’s name and addressed with male pronouns were doing so because of a district wide policy and they would not honor the parents’ wishes.

government to determine the religious and moral beliefs of their children, which include beliefs regarding SOGI and are held by a large percentage of the American people.

The Department of Education would be well advised to focus its policy efforts on educating our children to compete in the modern world academically and leave the moral raising of our children to their parents. The push to normalize SOGI beliefs by indoctrination in the classrooms of America is wrong. It is not a push for equality. It is a push to change the fundamental nature of our liberty as Americans and that is not within the purview of the federal government.

Those types of changes should be done with the full consent of the parents to whom these children belong, as these children certainly do not belong to the state. We clearly saw this truth played out with the recent pandemic and the closing of every school in the country for a prolonged period of time. Where were those children sent? Home to their parents.

Surely there is room for dissent in this area. Parents teaching their children their own values about SOGI is not discrimination, it is a fundamental freedom granted to those parents by the Constitution of the United States. As to private religious based schools, the Constitution of the United States is extremely clear on the rights of religious organizations to determine their own doctrine and to determine their own governance. Should the government decide to continue to violate the Constitutionally defined limitations of the rights of parents and rights of educators we believe you will see a powerful backlash and from parents and school officials at religious based schools that have sincerely held religious doctrine.

What you are looking at is the very thing our Founding Fathers wrote the Constitution and the Bill of Rights to protect us from. Therefore, we urge you to please stay in your lane and protect the constitutional rights of parents and religious based schools and refrain from attempting to impose any redefinition of “sex” under Title IX upon these schools and parents.

Sincerest regards,

(b)(6)

Vernadette Broyles

(b)(6)

Mary McAlister

(b)(6)



Joel Thornton