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To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing and Application of Executive Orders 13988 and 14021

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Female students are the intended beneficiaries of Title IX

Title IX was originally passed with the express purpose of providing women and girls with educational opportunities previously denied to them and offered only to male people. Legislative intent to equalize opportunities between male and female people remains an unrealized dream. As OCR considers changes to and new interpretations of Title IX's regulations, female people must be remembered as the designated beneficiaries of the legislation.

Historic inequities between male and female students continue today

Sexual assault of female students by male students in educational environments is ubiquitous across the nation. Sex-balancing has been devised to artificially cap female enrollments in college programs. As discussed above, women's athletic teams and opportunities remain underfunded compared to male athletic teams and opportunities. None of this can be resolved, and may even be exacerbated, by failing to distinguish between sex and gender identity in official interpretations of Title IX's regulations.

1. Title IX should maintain the centrality of the category of sex, and not 'gender identity', in relation to women's and girls' right to be free from discrimination.
2. Title IX should understand that the inclusion of men who claim to have a female 'gender identity' into the category of women in law, policies and practice constitutes discrimination against women by impairing the recognition of women's sex-based human rights. Title IX should understand that the inclusion of men who claim to have a female 'gender identity' in the category of women results in their inclusion in the category of lesbian, which constitutes a form of discrimination against women by impairing the recognition of the sex-based human rights of lesbians.
3. Title IX "shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men". (CEDAW, Article 3).
4. This should include policies and practice of the category of woman to mean adult human female, the category of lesbian to mean an adult human female whose sexual orientation is towards other adult human females, and the category of mother to mean a female

parent; and the exclusion of men who claim to have a female ‘gender identity’ from these categories.

5. Title IX should “condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women”. (CEDAW, Article 2).
6. This should include the elimination of that act and practice of discrimination against women which comprises the inclusion of men who claim to have a female ‘gender identity’ in the category of women. Such inclusion erodes women’s rights to safety, dignity and equality.
7. Title IX should ensure that the words ‘woman’, the word ‘girl’, and the terms traditionally used to refer to women’s body parts and bodily functions on the basis of sex continue to be those used in policy documents when referring to persons of the female sex. The meaning of the word ‘woman’ shall not be changed to include men.
8. Article 10 (g) of the CEDAW provides that Title IX shall ensure “[t]he same Opportunities to participate actively in sports and physical education” for girls and women as for boys and men. This should include the provision of opportunities for girls and women to participate in sports and physical education on a single-sex basis. To ensure fairness and safety for women and girls, the entry of boys and men who claim to have female ‘gender identities’ into teams, competitions, facilities, or changing rooms, inter alia, set aside for women and girls should be prohibited as a form of sex discrimination. Due to the physiological differences between women and men, the exercise of this right by women requires that certain sporting activities are single-sex. When men claiming female ‘gender identities’ are enabled to participate in women’s single-sex sporting activities, women are placed at an unfair competitive disadvantage, and may be placed at increased risk of physical injury. This undermines women’s and girls’ ability to have the same opportunities as men to participate in sports, and therefore constitutes a form of discrimination against women and girls, which should be eliminated.

In summary

Gender refers to “the roles, behaviors, activities, and attributes that a given society at a given time considers appropriate for men and women... These attributes, opportunities and relationships are socially constructed and are learned through socialization processes.” (Gender Equality Glossary, UN Women).

Recent changes replacing references to the category of sex, which is biological, with the language of ‘gender’, which refers to stereotyped sex roles, in United Nations documents, strategies, and actions, has led to confusion which ultimately risks undermining the protection of women’s human rights.

The confusion between sex and ‘gender’ has contributed to the increasing acceptability of the idea of innate ‘gender identities’, and has led to the promotion of a right to the protection of such ‘identities’, ultimately leading to the erosion of the gains made by women over decades. Women’s rights, which have been achieved on the basis of sex, are now being undermined by the incorporation into international documents of concepts such as ‘gender identity’ and ‘Sexual

Orientations and Gender Identities (SOGIES)’.

Sexual orientation rights are necessary in eliminating discrimination against those who are sexually attracted to persons of the same sex. Rights relating to sexual orientation are compatible with women’s sex-based rights, and are necessary to enable lesbians, whose sexual orientation is towards other women, to fully exercise their sex-based rights.

However, the concept of ‘gender identity’ makes socially constructed stereotypes, which organize and maintain women’s inequality, into essential and innate conditions, thereby undermining women’s sex-based rights.

Organizations that promote the concept of ‘gender identity’ challenge the right of women and girls to define themselves on the basis of sex, and to assemble and organize on the basis of their common interests as a sex. This includes challenging the rights of lesbians to define their sexual orientation on the basis of sex rather than ‘gender identity’, and to assemble and organize on the basis of their common sexual orientation.

Thank you,
Elan