

From: admin@feministstruggle.org
Sent: Thu, 10 Jun 2021 21:57:59 -0500
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing (gender identity and the rights of women and girls)
Attachments: Comment.TitleIX.FIST.06.11.21.pdf

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Written Comment: Title IX Public Hearing (gender identity and the rights of women and girls)

Feminists in Struggle ("FIST") is a women's liberation organization focused on protecting the rights and advancing the interests of women. We are concerned that Executive Order 13988 will be interpreted and applied in such a way as to disadvantage women and girls as a sex in academic environments. Although the rights of transgender-identifying males do not need to infringe on the rights of girls and women, when gender identity and sex are conflated and gender identity is allowed to override or supplant sex, the two have come into conflict. Since the objective of Title IX is to advance the status of those oppressed on the basis of their sex (i.e. women), FIST advocates an application of the Executive Order that does not compromise this objective. Our recommendation for fulfilling the directives of the Executive Order is as follows:

Sex-separated sports must remain an option for all students. This means that all students have the option to compete against only members of their own biological sex. Membership in these sports groups should not be attained by identifying as transgender or non-binary. The OCR should also direct schools to create co-ed sports groups and opportunities that are opt-in for students. This application of the Executive Order has many advantages that the previous applications of similar directives (the Obama Administration's Dear Colleague letter of 2016) lack. First, such a policy would preserve fairness in women's sports. The differences between the physical capabilities of male and females are multifarious. On average, women have smaller bodies, less maximum oxygen consumption, smaller and shorter bones, and a lower ratio of muscle mass to body weight. As a result of these physical differences, among many others, men are almost always faster and stronger than women within their peer group, while women have greater balance, flexibility, and endurance than their male peers. Under the Dear Colleague guidance of 2016, sports did not remain sex-separated, and transgender identifying male students were allowed to compete against female students. They exploited their natural biological advantages in strength, speed, and size to claim prizes that would have otherwise been won by female students. Female students missed out on qualifying spots for higher competitions, chances to compete in front of college recruiters, and scholarship opportunities. In contact sports such as soccer and wrestling, the safety of female students is compromised in addition to fairness, as women are lighter and weaker than their male counterparts and more prone to musculoskeletal injuries. Female-only teams are also important because women and girls still have less opportunity to

participate in sports and develop their potential as compared to their male counterparts. By preserving sex-separated sports as an option for all students, this application of Executive Order 13988 will preserve fairness and safety for female students, which should be a guiding principle for Title IX.

The creation of opt-in co-ed sports groups will also have many benefits. For one, it will reduce the “othering” of trans-identifying students and create a positive social environment in which they can compete. Because all participation is voluntary and open, the value of fairness is not an expectation in these sports groups, so it is not compromised by the presence of individuals of either sex. When the presence of trans-identifying male athletes is no longer a threat to sporting values such as fairness and safety, they can more freely enjoy the social, emotional, and physical benefits of sports.

FIST also suggests that the Executive Order be applied in such a way that maintains female students’ rights to sex-separated spaces such as restrooms and changing rooms where women and girls are in a state of undress and need their privacy and safety protected. Male children are more likely to engage in unprovoked physical aggression than female children are and male people overall commit the majority of sex crimes, including rape. Victims of sex crimes are largely female. The data available regarding the crime rate for trans-identifying males is limited, but the data that does exist shows that such males commit these crimes at the same rate as other males (i.e. retain a pattern of male criminality). Because of these factors, sex-separated spaces play a key role in preventing sexual assault and harassment in schools, which is a primary objective of Title IX. FIST recommends that girls continue to have access to women-only restrooms, and that all students including trans-identifying individuals, have access to a gender-neutral restroom. This application of Executive Order 13988 will reduce sexual harassment of trans-identifying students while also protecting the privacy and safety of female students.

In the event that the OCR chooses not to follow FIST’s recommendation on the application of Executive Order 13988, it is imperative that data be collected on the results of this change. FIST demands that the impact on female students be measured. Data such as female participation rates in sports, as well as the number of prizes collected by trans-identifying males competing in women’s sporting events, should be gathered. Incidents of sexual assault and harassment in schools should be collected and aggregated by place of assault, sex of victim and perpetrator, and gender identity (if any) of victim and perpetrator. Surveys should also be conducted to determine whether female students’ attitude towards the school or sporting environment have changed, particularly female students’ feelings about their own safety within school and fairness within their sports. This data is important public health information that can be used to guide policy in the future.

Respectfully submitted,

Feminists in Struggle

June 11, 2021



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result of these physical differences, among many others, men are almost always faster and stronger than women within their peer group, while women have greater balance, flexibility, and endurance than their male peers.¹ Under the Dear Colleague guidance of 2016, sports did not remain sex-separated, and transgender identifying male students were allowed to compete against female students. They exploited their natural biological advantages in strength, speed, and size to claim prizes that would have otherwise been won by female students.² Female students missed out on qualifying spots for higher competitions, chances to compete in front of college recruiters, and scholarship opportunities. In contact sports such as soccer and wrestling, the safety of female students is compromised in addition to fairness, as women are lighter and weaker than their male counterparts and more prone to musculoskeletal injuries.³ Female-only teams are also important because women and girls still have less opportunity to participate in sports and develop their potential as compared to their male counterparts. By preserving sex-separated sports as an option for all students, this application of Executive Order 13988 will preserve fairness and safety for female students, which should be a guiding principle for Title IX.

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¹ Richard J. Auchus, Endocrinology and Women’s Sports: The Diagnosis Matters, 80 *Law and Contemporary Problems* 127-138 (2017)

² Selina Soule. PragerU. (n.d.). <https://www.prageru.com/presenter/selina-soule/>.

³ Higher risk of some musculoskeletal injuries among women may be due to sex and gender differences beyond size and strength. Institute for Work & Health. (2016, June 23). <https://www.iwh.on.ca/media-room/news-releases/2016-jun-23>.

unprovoked physical aggression than female children are⁴ and male people overall commit the majority of sex crimes, including rape.⁵ Victims of sex crimes are largely female. The data available regarding the crime rate for trans-identifying males is limited, but the data that does exist shows that such males commit these crimes at the same rate as other males (i.e. retain a pattern of male criminality).⁶ Because of these factors, sex-separated spaces play a key role in preventing sexual assault and harassment in schools, which is a primary objective of Title IX. FIST recommends that girls continue to have access to women-only restrooms, and that all students including trans-identifying individuals, have access to a gender-neutral restroom. This application of Executive Order 13988 will reduce sexual harassment of trans-identifying students while also protecting the privacy and safety of female students.

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⁴ Card, N.A., Stucky, B.D., Sawalani, G.M. and Little, T.D. (2008), Direct and Indirect Aggression During Childhood and Adolescence: A Meta-Analytic Review of Gender Differences, Intercorrelations, and Relations to Maladjustment. *Child Development*, 79: 1185-1229. <https://doi.org/10.1111/j.1467-8624.2008.01184.x>

⁵ FBI: Criminal Justice Information Services Division. (2011). Arrests by Sex, 2011. Crime in the United States 2011. https://ucr.fbi.gov/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table_66_arrests_suburban_areas_by_sex_2011.xls.

⁶ Dhejne C, Lichtenstein P, Boman M, Johansson ALV, Långström N, Landén M (2011) Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden. *PLoS ONE* 6(2): e16885. <https://doi.org/10.1371/journal.pone.0016885>

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Feminists in Struggle