

**From:** Wren G  
**Sent:** Fri, 11 Jun 2021 15:14:31 -0400  
**To:** T9PublicHearing  
**Subject:** Written Comment: Title IX Public Hearing (Sex based protections)

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Dear U.S. Department of Education's  
Office for Civil Rights:

As someone who is enrolled in higher education for graduate studies as well as employed at a college campus, revisions to Title IX deeply concern me, not only for myself, but also for the sake of future generations. I have included information regarding my support for both gender identity as well as sex based protections.

In addition to the same concerns that others are airing to ensure both rights are protected, I would like to see elimination of the religious exemptions for Title IX. Young LGBT people enrolled in religious universities at behest of their parents are required to sign morality clauses that are often not in line with what Title IX protects, and the protections should extend even to young Christian or other religious LGBT students. A young student who enrolls at a university and takes out loans should not be made to leave due to their orientation or transgender status, or sign away the right to act upon their orientation or gender identity.

Enclosed are the arguments I support regarding sex based protections and gender identity from <https://sexandgender.us/titleixhearing/>

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I support the extension of Title IX's protections to claims of discrimination on the basis of sexual orientation and transgender status. I also agree, as stated in E.O. 14021:

"All students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including the discrimination on the basis of sexual orientation or gender identity."

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.

Gender identity is not equivalent  
to nor a substitute for sex.

*Bostock*

relies explicitly on biological sex for its expansion of protection to LGBT persons. The Supreme Court was careful not to conflate sexual orientation or transgender status with sex, stating: "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).

Transgender

students and sex-based classification

The

extension of *Bostock's*

reasoning to Title IX, via E.O. 13988, means that transgender and gender non-conforming students are entitled to legal protection from harmful sex-based discrimination in all educational environments and opportunities. This protection should not and *does not*

require denial of biological sex or the displacement of sex as a valid means of classification in contexts where sex matters.

Single

sex classification is sometimes reasonably necessary to ensure fairness, privacy, equality, safety, and/or dignity.

**Girls and women have valid legal interests in the continued legal permissibility of Title IX's sex-based classifications in educational settings including sports teams,<sup>[i]</sup> locker rooms, bathrooms, and student housing.**

Transgender

and non-binary identifying students must be given equal educational access *on the same basis as their peers*.

Where educational opportunities are separated by sex to protect legitimate rights of fairness, privacy, or equality, transgender students must *not*

be assessed by a different yardstick: gender identity. Individuals operating or speaking as if gender identity can *actually*

change sex is one thing, but institutionally moving these goal posts for the benefit of some students is not fair to the remaining students as it predictably deprives them of both opportunities and legal rights.

Thank

you for your time,

Wren