

From: Bethroot Gwynn
Sent: Fri, 11 Jun 2021 20:53:05 +0000 (UTC)
To: T9PublicHearing
Subject: Title IX Public Hearing (topic of comment)

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.

I am writing to urge you to reaffirm Title IX's protection of women's sex-based rights. Please resist the popular misconceptions that conflate sex and gender identity: biological sex matters, and it matters a lot in specific areas where women deserve protection and honor of their bodily integrity as people born female. Transgender and non-binary conforming individuals also deserve protection of their rights against discrimination and mistreatment. But their rights must not be misconstrued to override crucial biological protections in sex-based circumstances where women would be vulnerable to unfair competitive advantages or to invasive behavior from people born male.

I include the following parts of a letter from the Women's Collective on Law & Policy documenting support of these positions based on the Bostock rulings.

Sincerely,
Helen Gwynn

(b)(6)

"As the U.S. Department of Education's Office for Civil Rights (OCR) considers its responsibility to implement President Biden's "Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation" (E.O. 13988) and "Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity" (E.O. 14021), I urge you to provide guidance affirming the permissibility of sex-based classification in certain narrowly drawn circumstances described in Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) and its implementing regulations.

"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 eloquently stated in E.O. 14021: '[A]ll 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 discrimination on the basis of sexual orientation or gender identity.'

[Note: placing people by sex, as in women's sports, is not discrimination. I agree that trans people should not be mistreated, taunted, etc, and that is how I read this section. What follows explains the legal basis for this position more clearly]

"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).

"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."