

From: Laurie Fuchs
Sent: Fri, 11 Jun 2021 17:55:59 +0000 (UTC)
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing (On the basis of SEX -- Sex and Gender are Different; Women's Sports)

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The original intention of Title IX was to prohibit educational institutions that receive federal funding from discriminating "on the basis of sex" which clearly refers to the biological differences between males and females. Gender refers to socially constructed characteristics of women and men, such as norms, roles, and relationships of and between groups of women and men. These are two distinct and different terms.

However, as the result of Supreme Court decisions and guidance formulated by the US Department of Education, a biological fact – sex - has been conflated to mean the same as “gender,” a social construct. Thus, the original intention of Title IX has steadily drifted away from eliminating institutional barriers to educational opportunity for women and girls toward changing the way we think about sex differences, gender roles, and sexuality in general.

The 2016, Dear Colleague Letter (DCL) destroyed the mandate of Title IX. This letter required schools to allocate access to **sex-segregated facilities** such as bathrooms, showers, and dorm rooms on the **basis of students' gender identity** rather than their biological sex, thus conflating the two distinct terms. A mere DCL cannot change the biological differences between the sexes and it does not eliminate the necessity for the prohibition of discrimination on the “basis of sex.”

Additionally:

The Department of Education's Office of Civil Rights should make it clear that institutions governed by Title IX of the Education Amendments of 1972 (Title IX), the Ted Stevens Olympic and Amateur Sports Act (the Sports Act), and Title VII of the Civil Rights Act of 1964 (Title VII) will:

(1) continue to be obligated to provide males and females with equal sporting opportunities on the basis of biological sex, and

(2) be newly obligated to provide ways to include trans girls/women in girls'/women's sports that ensure competitive fairness and playing-safety without diminishing the protection of biological females.

This two-step approach safeguards the integrity of the existing competitive sport process in which millions of girls and women participate annually. It also incrementally and thoughtfully expands the development of additional sports opportunities for emerging trans girls/women.

Separate sex sport has always been an exception to our general non-discrimination laws. This exception is justified by real physical sex-linked differences that emerge from the onset of male puberty and that have significant implications for athletic performance and playing-safety. The lawfulness of this long-standing exception should be re-affirmed.

<https://scholarship.law.duke.edu/cgi/viewcontent.cgi...>

Sex Matters! Without maintaining protections based on Sex as a Class, Systemic Sexism and Inequality cannot be reversed. Ruth Bader Ginsberg advocated for this protection her entire judicial life.

Please do the right thing!

Laurie Fuchs

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