

From: (b)(6)
Sent: Fri, 11 Jun 2021 20:37:50 +0000 (UTC)
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing about discrimination on the basis of sex

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Since the Department of Education's Office of Civil Rights has the responsibility of implementing Executive Order 13988 which is intended to prevent discrimination on the basis of sex, sexual orientation, and gender identity, I urge you to define and preserve the *sex-based rights* described and intended in the passage of Title IX of the Education Amendments of 1972.

Gender identity is not the same as sex, and is not an equivalent substitution for sex as a category, especially with regard to ensuring equal opportunity for girls in matters pertaining to sex-based physiological differences in sport, and in relation to ensuring the preservation of the opportunities that Title IX was established to protect.

It is possible to prevent discrimination on the basis of sexual orientation and gender identity without eliminating single-sex classifications which are allowed under current law and were reaffirmed in the Supreme Court's Bostock ruling which relies on *biological sex* as its basis. Bostock clearly established that neither sexual orientation nor gender identity were legal substitutes for sex ("biological distinctions between male and female"). Extending the legal reasoning of Bostock to EO 13988, transgender & gender non-conforming students are entitled to legal protection from harmful sex-based discrimination, but should not and does not require the elimination of sex as a meaningful classification in the protections afforded by Title IX. In areas related to equality, safety, privacy, and fairness, the retention of single-sex classifications is necessary in order to preserve the protections intended by the enactment of Title IX. Protections afforded to transgender and gender non-conforming students should be granted on an equal and fair basis: that of sex.

Regardless of "gender identity," the physiological advantage of males over females cannot be reasonably contested; therefore, the inclusion of males in female sports is discriminatory towards girls and women. It eliminates a fair playing field in both the competitions and in the advantages gained by competitive excellence including scholarships -the only means by which many female athletes can access higher education. As it is, female athletes are already discriminated against in the distribution of scholarships, and forcing them to compete against males will only make the gap worse. Because of this, transgender students should be guaranteed the *equal* right to play on teams in accordance with their sex.

Because female students are subjected to harassment and assault by males, the maintenance of *single* sex accommodation should be preserved for the safety of women and girls. The introduction of males, regardless of their gender identities, into areas of vulnerability for girls such as bathrooms, changing rooms, and housing increases both risk and discomfort for girls, & may discourage girls and women from full participation in schools and social activities. There is no reason why equal, suitable accommodations cannot be established to preserve the safety and dignity of transgender students without compromising that of females. *Equal* accommodation does not necessitate the *same* accommodation, and in this case *same* can lead to unequal treatment.

Please preserve the original intention of Title IX, which was to ensure that girls and women had equal opportunities in education. America has a long way to go before there is parity between the sexes, and conflating gender identity with sex regarding sex-based protections will serve only to slow down or reverse the progress that we've made.

Sincerely,
Rebecca Huntington

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