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Sent: Thu, 10 Jun 2021 11:10:56 -0500
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing (don't equate sex with gender identity)

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I'm writing to urge you not to equate sex and gender identity for Title IX purposes but rather to continue to recognize and protect sex as biological sex and add separate protections for transgender and gender-nonconforming people.

An approach that recognizes sex and gender identity/expression separately is in accordance with *Bostock*, which 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).

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,^[i] locker rooms, bathrooms, and student housing.