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The Honorable Miguel Cardona
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW Washington, DC 20202
Via https://www.federalregister.gov

September 11, 2022

Reference (RIN): 1870-AA16 (Docket ID 2022-13734)

Dear Secretary Cardona,

We are writing in response to the Department of Education's Notice of Proposed Rulemaking, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," published on July 12, 2022.

According to the Department, the proposed amendments to the Title IX regulations are designed to "eliminate" sex discrimination by supposedly giving Title IX "a sweep as broad as its language" (citing the Supreme Court's 1982 ruling in New Haven Board of Education).[1] To that end, it proposes an expanded definition of sex discrimination that includes (not exhaustively) discrimination based on "sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity".[2]

Respectfully, we argue that the Department's case for its proposed regulation, specifically at proposed Section 106.31(a)(2), is based on faulty legal and procedural grounds. It overlooks significant costs and harms to taxpayers, medical professionals, religious institutions and religious employees, parents, and students, especially girls, women, and gender dysphoric youth.

Instead of providing clarity, the Department will, with this revised rule, create regulatory chaos by simultaneously failing to define sex and expanding its meaning to include an infinite number of non-observable personal self-identities the effect of which is to destroy the stable meaning of sex itself and violate the religious and conscience rights of tens of millions of Americans. All people deserve to be treated with dignity and respect, and we presume one purpose of this revision is a concern for the wellbeing of people who do not conform to rigid sex stereotypes. Contrary to its goal, however, the Department's proposed rule would greatly multiply discrimination and harm within federally funded educational programs and activities and beyond.

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[1] 456 U.S. 512, 521 (1982)

[2] 87 *Federal Register* 41393.

Erroneous Application of *Bostock*

The Department's proposal to expand sex discrimination is based upon an erroneous application of the Supreme Court's ruling in *Bostock v. Clayton County*. The Department cites the Supreme Court's decision in *Bostock v. Clayton County* as justification for its expansion of sex discrimination to include sexual orientation, gender identity, and other categories.

This conflicts with the Court's own reasoning, however. In *Bostock*, the Supreme Court proceeded "on the assumption that 'sex' signified what the employers suggest, referring only to biological distinctions between male and female." The ruling dealt with discrimination on the basis of sex in matters of employment according to Title VII of the Civil Rights Act. It did not redefine sex to include gender identity and sexual orientation. It also did not apply its ruling to any other part of the Civil Rights Act beyond Title VII.

The Supreme Court explicitly stated that Bostock v. Clayton County cannot be used to apply to matters beyond employment nondiscrimination under Title VII. As Justice Gorsuch wrote:

> The employers worry that our decision will sweep beyond Title VII to other federal or state laws that prohibit sex discrimination. And, under Title VII itself, they say sex-segregated bathrooms, locker rooms, and dress codes will prove unsustainable after our decision today.
>
> But none of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms, and we do not prejudge any such question today.
>
> Under Title VII, too, we do not purport to address bathrooms, locker rooms, or anything else of the kind. The only question before us is whether an employer who fires someone simply for being homosexual or transgender has discharged or otherwise discriminated against that individual 'because of such individual's sex.'?[3]

This is not simply lip-service. The court's logic applies to matters of employment under Title VII in ways that it does not apply to matters covered by Title IX. Many jobs may be performed equally well by qualified individuals regardless of sex. However, unlike matters of employment, sexual differences are acutely relevant when it comes to things like health care, facilities, and athletics. Amendments like Title IX were needed *because* biological differences matter in education, especially sports. Indeed, fairness and equal opportunity in such contexts depend on facilities and competitive leagues separated on the basis of biological sex.

The Department's attempt to apply *Bostock* to Title IX represents poor legal reasoning. It must justify its reasons for its proposed rule on other legal grounds.

[3] *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020)

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The Harms and Incoherence of Gender Ideology

The Department states that proposed Section 106.31(a)(2) is needed to eliminate harms to students. Specifically, the Department seeks to address "the historical and ongoing discrimination experienced by LGBTQI+ students, [and] recent enactment of State laws restricting transgender students from participating in school consistent with their gender identity."[4] The Department has proposed regulations that, so it argues, would eliminate discrimination.

However, the Department's reasoning prioritizes ideology over both scientific truth and religious freedom and would, contrary to its express purpose, serve to multiply discrimination and harm in education programs and activities.

In its latest proposal, the Department departs from the perennial, common sense and science-based understanding of sex. It thus departs from the original rule itself. Previously, the Department recognized that Title IX regulations "presuppose sex as a binary classification" as well as "physiological differences between the male and female sexes."[5] It is impossible to understand or consistently enforce Title IX without this basic presupposition.

This presupposition is consistent with what we know from biology. A human male is, minimally, a member of the human species that, under normal development, produces relatively small, mobile gametes—sperm—at some point in his life cycle, and has a reproductive and endocrine system oriented around the production of that gamete. A human female is, minimally, a member of the human species that, under normal development, produces a relatively large, relatively immobile gamete—eggs—at some point in her life cycle, and has a reproductive and endocrine system oriented around the production of that gamete.

Again, under normal development, a male has XY chromosomes, testes, and a penis. Females, under normal development, have XX chromosomes, a uterus, ovaries, a cervix, and a vagina. Under normal development, a female can carry, give birth to, and nurse offspring at some point during her life cycle. Males cannot. Males and females also differ in the prevalence of hormones such as testosterone and estrogen, respectively, and develop distinct secondary anatomical differences under the influence of these hormones especially during puberty.

There is no gamete, and no morphological organization, that corresponds to the recent and quite contentious category of "gender identity." (Gender identity, as a concept within modern gender and queer theory, is not at all the same thing as various disorders of sexual development—none of which are inconsistent with the reality of biological sex. In fact, they are described and understood by reference to normal sex development.) There is no neutral, empirical way even to discern a gender identity. It is entirely subjective. As a concept, it is an artifact of gender theory, not history or science.

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[4] 87 FR 41396

[5] 85 FR 30178

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In its proposed revised rule, the Department is clearly departing from a stable, empirical understanding of sex. Given its use of terms such as "gender identity," we surmise that it is drawing, wittingly or unwittingly, on gender and queer theory, which represents a repudiation of the perspective reflected in the original formulation of Title IX. According to prominent proponents of such theories, the notion of a "gender binary" is a social construct, not a biological fact. Does the Department now endorse this view? Is sex a biological reality that is observed, or a category imposed or "assigned at birth"? And if the latter, how is this compatible with Title IX itself, which "presuppose[s] sex as a binary classification"?[6]

The Department claims that it "does not propose adding a definition of 'sex'… because sex can encompass many traits and because it is not necessary for the regulations to define the term for all circumstances."[7] However, the Department is not being forthright. A clear definition of sex is precisely what is needed, especially given the original purpose of Title IX. Without such a definition, the rule can provide no coherent guidance. And as it happens, a closer look at the proposed rule reveals that the Department has not avoided defining sex. It has, rather, adopted an expansive, nebulous, and contradictory definition of sex, as evinced by its use of terms like "gender identity," "sexual orientation," "sex characteristics," and "sex stereotypes." Not one of these terms is even a partial synonym for sex as defined in Title IX.

Moreover, the Department's use of the term "includes" in proposed Section 106.10 indicates that its revised provision is not meant to be exhaustive.[8] It includes "nonbinary," "transgender," "cisgender," "intersex," "queer," "asexual," and "gender-nonconforming." With the exception of sex characteristics and sex stereotypes, the Department fails to define any of these terms. And none of these terms are defined in the text of the proposed rule.

None of these terms is uncontroversial or long-settled. Indeed, it's not clear that they refer to anything beyond a subjective feeling given and perhaps informed by an artificial label. The continual expansion of the set of "gender identities" suggests that this subjective feeling is highly susceptible to "semantic contagion," in which the very existence of a term gives rise to a new perception that would not exist without it.[9]

And no doubt many who, within gender ideology, would be labeled "cisgender" are unaware of the label and would reject it as an absurdity if they were aware of it. To say that someone is a "man" and knows himself to be such is not at all the same thing as saying he "identifies with his sex assigned at birth," any more than the fact that human beings are mammals means that someone "identifies as" his taxonomic class assigned at birth.

In fact, some of the putative gender "identities" fail the test of coherence. A key tenet of gender ideology (of which "gender identity" is an artifact) is that gender exists on a spectrum rather than

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[6] Ibid.

[7] 87 FR 41531

[8] Ibid, 41532.

[9] Ian Hacking, *Rewriting the Soul* (Princeton, NJ: Princeton University Press, 1995).

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as a binary. But if this is so, what could it mean to have a gender identity of "nonbinary"? As Rebecca Reilly-Cooper notes, "If gender really is a spectrum, doesn't this mean that every individual alive is non-binary, by definition? If so, then the label 'non-binary' to describe a specific gender identity would become redundant, because it would fail to pick out a special category of people."[10]

Other common "gender identities" include[11] "genderfluid," "gender queer," "omnigender," "polygender," and "two spirit." One of MedicineNet's seventy-two listed gender identities is "adamas gender."[12] This refers to a "gender that is indefinable or indomitable. People identifying with this gender refuse to be categorized in any particular gender identity." Does the Department's new definition of sex include "adamas gender"? If so, then sex, according to the Department of Education, would, in some cases, refer to an "indefinable gender identity."

In other words, the Department would propose a definition that includes within it an indefinable subset. This is particularly acute example of the sheer incoherence and chaos that would follow by incorporating a protean notion such as "gender identity" within a regulation intended to provide guidance for institutions made up exclusively of actual males and females. Recall that the Department's stated justification for revising Title IX is to provide "clarification," not chaos.

This is no merely philosophical dispute. Such semantic distortions in a regulation threaten the stability of institutions receiving Title IX funding and undermine the practicability of the proposed revisions.

For the sake of recipients' clarity, practice, and enforcement, the Department must provide clearer guidance—including both precise, non-circular definitions and a clear and non-arbitrary limiting principle. Given the obscurities and riddles described above, the Department has even more of an obligation to define these terms precisely and self-consistently, and to justify the inclusion or exclusion of putative "gender identities" as synonyms for "sex." This is especially pertinent since some of these explicitly deny the binary nature of biological sex, and so can hardly be considered species, as it were, of the larger conceptual genus of sex.

As it stands, such a nebulous and expansive use of "sex" seems far more informed by gender ideology than biology, and, as such, is manifestly subject to arbitrary and capricious interpretations.

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[10] Rebecca Reilly-Cooper, "Gender is Not a Spectrum," *Aeon*, June 28, 2016, https://aeon.co/essays/the-idea-that-gender-is-a-spectrum-is-a-new-gender-prison (accessed Sept 9, 2022).

[11] "What Are Some Different Types of Gender Identity?" *Medical News Today*, May 12, 2022, https://www.medicalnewstoday.com/articles/types-of-gender-identity#types-of-gender-identity (accessed Sept 9, 2022).

[12] "What Are the Other 72 Genders?" *Medical News Today*, Feb 2, 2022, https://www.medicinenet.com/what_are_the_72_other_genders/article.htm (accessed Sept 9, 2022)

"Gender Affirming Care"

Under the Department's proposal, compliance with Title IX would require that "a recipient must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than *de minimis* harm, unless otherwise permitted by Title IX or the regulations."[13] The Department's amendments clarify that "adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with their gender identity causes more than *de minimis* harm" and therefore violates Title IX.[14]

In practice, this means that institutions that receive federal funding under Title IX, as well as those who work, attend, or visit those institutions, would be required to accommodate individuals according to their self-professed gender identity. As the Department has made clear, at the very least this would require recipients of Title IX funding to allow such individuals to participate in programs and activities—as well as to use facilities—according to their subjective sense of gender. Maximally, however, the Department's policy could be interpreted as requiring recipients to help facilitate students' gender transitions, socially and/or surgically, under threat of civil rights litigation.

As noted, the Department states that proposed Section 106.31(a)(2) is needed to eliminate harms to students.[15] With respect to trans-identifying students, activists (even within this Administration) have claimed that refusal to assist with transitioning, whether social, chemical, or surgical, robs them of "life-saving care".[16] Specifically, they are referring to "gender-affirming care," an approach which helps patients transition and is claimed to reduce chances of suicide.[17] Proponents of such care cite a growing body of research finds gender transition is safe and preventative of suicide. But the evidence indicates the opposite. Far from reducing suicide or alleviating discomfort in one's own body, gender transition—whether social, chemical, or surgical—often leads to irreversible harms.

Social Transition

Most immediately, the Department's proposed regulation would help facilitate and accommodate social transition. Recipients of Title IX funding would be required to let students participate in programs and activities according to their self-professed gender identity, regardless of their sex, or any prior clinical diagnosis or medical procedures. Apart from more obvious problems with

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[13] 87 FR 41532

[14] 87 FR 41560

[15] 87 FR 41396

[16] Abigail Shrier, "Not a 'Kitchen Table Issue,' Jen Psaki?," April 7, 2022, https://abigailshrier.substack.com/p/not-a-kitchen-table-issue-jen-psaki (accessed Sept 9, 2022).

[17] See Jay Greene, "Puberty Blockers, Cross-Sex Hormones, and Youth Suicide," *The Heritage Foundation*, June 13, 2022, https://www.heritage.org/gender/report/puberty-blockers-cross-sex-hormones-and-youth-suicide (accessed Sept 9, 2022).

such policies (e.g., enabling predatory males to easily access female-only facilities), this would enable gender dysphoric students to socially transition with greater ease.

These consequences are not speculative. Where similar policies have been adopted at the local level, teachers and students have been forced to accommodate the self-professed gender identity. In Loudoun County, Virginia, the school board adopted a policy that requires not only faculty, but students act and speak in a manner consistent with a student's gender identity.[18] In other places, these policies have even required that staff create a separate set of files for the student, one for parents' reference (using the gender and pronouns they know the student by) and one for internal use only that uses the student's preferred gender and pronouns.[19]

Besides threatening free speech and parental rights, such policies threaten the health of the gender dysphoric student. Social transition is not "fully reversible," as some proponents claim. Apart from any chemical and surgical interventions,

> There is an obvious self-fulfilling nature to encouraging a young child with GD [gender dysphoria] to socially impersonate the opposite sex and then institute pubertal suppression. Purely from a social learning point of view, the repeated behavior of impersonating and being treated as the opposite sex will make identity alignment with the child's biologic sex less likely. This, together with the suppression of puberty that prevents further endogenous masculinization or feminization of the entire body and brain, causes the child to remain either a gender non-conforming pre-pubertal boy disguised as a pre-pubertal girl, or the reverse. Since their peers develop normally into young men or young women, these children are left psychosocially isolated. They will be less able to identify as being the biological male or female they actually are.[20]

Socially, treating a child according to their self-professed identity will only go on to cement that identity. Add to this the high statistical unlikelihood of desistance once puberty suppressing drugs are introduced,[21] and such policies as the Department proposes would create a virtually frictionless school to surgery "pipeline."[22]

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[18] Karen Graham, "Loudoun School Board passes transgender policy 8040," *Loudoun Times*, Aug 11, 2022, https://www.loudountimes.com/news/loudoun-school-board-passes-transgender-policy-8040/article_6a583872-faff-11eb-9a3f-e7f735eb41ab.html (accessed Sept 9, 2022); Jared Eckert and Makenna McCoy, "Paying Lip Service While Imposing Radical Gender Ideology," *Daily Signal*, July 9, 2021, https://www.heritage.org/gender/commentary/paying-lip-service-liberty-while-imposing-radical-gender-ideology (accessed Sept 9, 2022).

[19] See Abigail Shrier, *Irreversible Damage* (Washington, DC: Regnery Publishing, 2022).

[20] American College of Pediatricians, "Gender Dysphoria in Children," November 2018, https://acpeds.org/position-statements/gender-dysphoria-in-children.

[21] See *Bell and Another v The Tavistock and Portman NHS Foundation Trust*, EWHC 3274, Dec 1, 2020.

[22] See Jared Eckert and Emma-Sofia Mull, "Planned Parenthood Profits Big From Getting Kids Hooked On Transgender Hormones Through The School-To-Clinic Pipeline," *The Federalist*, May 12, 2022, https://thefederalist.com/2022/05/10/planned-parenthood-profits-big-from-getting-kids-hooked-on-transgender-hormones-through-the-school-to-clinic-pipeline/ (accessed Sept 9, 2022).

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Indeed, these "pipelines" are already being built in schools. In California, Planned Parenthood, which supports and provides gender transition services to minors,[23] has partnered with over 50 schools in the Los Angeles area to establish "wellbeing centers."[24] In each of these schools, Planned Parenthood would set up a health resource center designed, amongst other things, to support kids in their subjective sense of gender. Given Planned Parenthood's explicit support for "gender affirming care," the services of these centers are likely to include gender transition support plans and referrals.

The social and psychological effects of such policies and practices are not "reversible." The Department must account for the cost and harms of these irreversible effects of social transition for gender dysphoric students. Additionally, the Department must clarify the extent of the obligation imposed by its proposed regulations—for example, would it obligate recipients of Title IX funding to maximally accommodate a student's claimed gender identity, such that the school must establish a resource center and make referrals to assist with the student's transition? In addition to providing greater clarity on the extent of accommodation required, the Department must account for costs associated with this accommodation.

Cross-Sex Interventions

If a Title IX recipient's accommodation of a student's gender identity requires assistance with chemical or surgical transition—or cross-sex interventions—the Department must justify why it requires this and account for its cost.

As already mentioned, proponents of so-called "gender affirming care" claim that it is "life-saving." Citing the high suicide rates of those struggling with gender dysphoria, they claim that transitioning is the surest way to avoid suicide. While it is true that minors who experience psychological distress at their biological sex may are at higher risk of suicide,[25] the claim that gender transition has lifesaving effects is far from true.

First, the research cited in defense of gender transition is faulty. The largest database, compiled by Cornell University's "What We Know" project, is filled with poorly designed studies. Nathaniel Blake, Ph.D., has shown that much of the research often cited is methodologically

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[23] Ibid.

[24] Planned Parenthood, "Planned Parenthood Los Angeles Announces Landmark Program and Partnership of High School-Based Wellbeing Centers Across L.A. County," Dec 11, 2019, https://www.plannedparenthood.org/about-us/newsroom/press-releases/planned-parenthood-los-angeles-announces-landmark-program-and-partnership-of-high-school-based-wellbeing-centers-across-l-a-county (accessed Sept 9, 2022).

[25] Michelle M. Johns et al., "Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students—19 States and Large Urban School Districts, 2017," *Morbidity and Mortality Weekly Report*, Vol. 68, No. 3 (Jan 25, 2019), pp. 67–71, https://doi.org/10.15585/mmwr.mm6803a3.

weak.[26] Analyzing the studies linked in Cornell University's "What We Know Project," Blake found that only 10 percent of the fifty relevant papers had more than 300 subjects. This means that the other 90 percent are likely not representative of larger populations.

Moreover, several studies, large and small, reported results from surveys that recruited participants through transgender-supporting online groups and forums and offered some form of compensation or lottery prize for participating. Such self-selected, self-reported, often one-time surveys are "more anecdotal than authoritative."

Other clinical studies in the "What We Know" database were likewise fraught with problems. Not only were they small, non-representative, and self-reported; they lacked controls. Ultimately, studies that found immediate improvements in perceived well-being were consistent with accounts of regrets in the long-term. What is lacking is long-term follow up to determine the longitudinal health outcomes for those who pursue "gender-affirming" care.

Secondly, the best and longest-term research shows the opposite to be true. According to the DSM-5 as many as 98% of gender-confused boys and 88% of gender-confused girls eventually accept their biological sex after naturally passing through puberty.[27] For this reason, the "Dutch Approach" of "watchful waiting" has been most widely respected and widely used when it comes to treating children struggling with gender dysphoria.[28] The Dutch Approach is comprised of the following components: (a) no social transition before age 12; (b) no puberty blockers before age 12; (c) cross-sex hormones considered only after age 16; and (d) resolution of mental health issues before any transition.[29] In contrast, the longest-term data finds that those who undergo surgical interventions are 19 times more likely to commit suicide than their peers.[30] Moreover, in United States, those states where minors are allowed to access cross-sex interventions without parental consent, whether chemical or surgical, experience higher teen suicide rates.[31]

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[26] Nathaniel Blake, "What We Don't Know: Does Gender Transition Improve the Lives of People with Gender Dysphoria?" *Public Discourse*, April 30, 2019, https://www.thepublicdiscourse.com/2019/04/51524/ (accessed Sept 9, 2022).

[27] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition, Arlington, VA: American Psychiatric Association, 2013, pp. 451-459. See page 455 re: rates of persistence of gender dysphoria.

[28] Annelou L. C. de Vries and Peggy T. Cohen-Kettenis, "Clinical management of gender dysphoria in children and adolescents: The Dutch Approach," *Journal of Homosexuality* 59 (2012): 301–320.

[29] Ibid.

[30] Cecilia Dhejne, Paul Lichtenstein, Marcus Boman, Anna L. V. Johansson, Niklas Långström, Mikael Landén, "Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden," *PLOS ONE* 6, no. 2 (2011), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0016885.

[31] Greene, "Puberty Blockers, Cross-Sex Hormones, and Youth Suicide Rates."

Chemical Transition

This is to say nothing of the specific harms of these interventions. The most common forms of cross-sex interventions include puberty blocking drugs, cross-sex hormones, and surgical intervention. Each of these carries significant health risks.

Puberty blockers, as their name suggests, are drugs that halt the development of secondary sex characteristics during puberty. They are often claimed to be reversible. However, puberty suppression is not socially and statistically reversible.[32] Pubertal suppression stops the further endogenous masculinization of feminization of the patient. Suppressing the normal puberty of an adolescent is not *socially* reversible. Halting a child's physiological development as his or her peers undergo puberty can be psychosocially isolating. Pre-pubertal boys or girls will be less able to identify with members of their respective sex.

In addition to preventing the development of secondary sex traits, puberty suppressing drugs "arrest bone growth, decrease bone accretion, prevent the sex-steroid dependent organization and maturation of the adolescent brain, and inhibit fertility by preventing the development of gonadal tissue and mature gametes for the duration of treatment."[33]

Loss of bone density is especially concerning. Currently, the World Professional Association for Transgender Health's (WPATH) is drafting updated guidelines for gender dysphoric adolescents that acknowledge "concerns that delaying exposure to sex hormones (endogenous or exogenous) at a time of peak bone mineralization may lead to decreased bone mineral density."[34] An investigative report of Lupron, a drug prescribed to stop precocious puberty, found that many of those who had took the drug suffered from a range of problems related to decreased bone density.[35]

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[32] American College of Pediatricians, "Gender Dysphoria in Children," Nov 2018, https://acpeds.org/position-statements/gender-dysphoria-in-children (accessed Sept 9, 2022).

[33] Ibid. See also Lauren Schmidt and Rachel Levine, "Psychological outcomes and reproductive issues among gender dysphoric individuals," *Endocrinology and Metabolism Clinics of North America* 44, no. 4 (2015): 773-785; Wylie C Hembree, Peggy T. Cohen-Kettenis, Henriette A Delemarre-van de Waal, et al., "Endocrine treatment of transsexual persons: An Endocrine Society clinical practice guideline," *The Journal of Clinical Endocrinology & Metabolism* 94, no. 9 (2009): 3132-3154.

[34] WPATH, "Standards of Care 8, Chapter Draft for Public Comment – Adolescent," https://www.wpath.org/media/cms/Documents/SOC%20v8/SOC8%20Chapters%20for%20Public%20Comment/SOC8%20Chapter%20Draft%20for%20Public%20Comment%20-%20Adolescent.pdf?_t=1638731433 (accessed January 25, 2022).

[35] Christina Jewett, "Women Fear Drug They Used To Halt Puberty Led To Health Problems," *Kaiser Health News,* Feb 2, 2017, https://khn.org/news/women-fear-drug-they-used-to-halt-puberty-led-to-health-problems/.

The vast majority of those who begin puberty suppression go on to take cross sex hormones. In one study of those adolescents who started puberty blockers, only 1.9 percent of these chose not to undergo hormone therapy.[36]

Adverse effects of hormone therapy are real and apparent. According to a report from the American College of Pediatricians (ACPeds), most experts agree that males who take oral ethinyl estradiol have an increased risk for coronary artery disease.[37] For adult males who received female sex steroid therapy, they were at higher risk for: thrombosis/thromboembolism; cardiovascular disease; weight gain; hypertriglyceridemia; elevated blood pressure; decreased glucose tolerance; gallbladder disease; prolactinoma; depression; and breast cancer.

For adult females who received male sex steroid therapy, they were at higher risk for: low HDL and elevated triglycerides; increased homocysteine levels; hepatotoxicity; polycythemia; increased risk of sleep apnea; insulin resistance; and unknown effects on breast, endometrial and ovarian tissues.[38] Youth who receive cross-sex hormone therapy may be rendered infertile.[39] Additionally, as one report notes: "There are potentially long-term safety risks associated with hormone therapy but none have been proven or conclusively ruled out."[40]

Surgical Transition

Of those who receive cross-sex hormones, many go on to receive "sex reassignment" surgery. Indeed, surgical intervention marks the fulfillment of the transition process. Again, the goal of these surgeries is to reduce the psychological distress experienced by one's body. Besides physical health risks and long-term complications of surgery,[41] long-term follow up of those who have received hormone therapy and "gender-affirming" surgeries do not themselves yield significant improvement in mental health. Many recipients report "considerably lower general

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[36] Annelou L. C. de Vries, Thomas D. Steensma, Theo A. H. Doreleijers, and Peggy T. Cohen-Kettenis, "Puberty suppression in adolescents with gender identity disorder: a prospective follow-up study," *Journal of Sexual Medicine* 8 (2011): 2276-2283.

[37] American College of Pediatricians, "Gender Dysphoria in Children."

[38] Jamie Feldman, George R Brown, Madeline B Deutsch, et al., "Priorities for transgender medical and healthcare research," *Current Opinion in Endocrinology, Diabetes and Obesity* 23, no. 2 (2016):180-187; Vin Tangpricha and Joshua D. Safer, "Treatment of transsexualism," UpToDate.com, www.uptodate.com/contents/treatment-of-transsexualism?source=search_result& search=treatment+of+transsexualism&selectedTitle=1percent7E8; Eva Moore, Amy Wisniewski, Adrian Dobs, "Endocrine Treatment of Transsexual People: A Review of Treatment Regimens, Outcomes, and Adverse Effects," *The Journal of Clinical Endocrinology & Metabolism* 88, no. 8 (August 2003): 3467–3473, https://doi.org/10.1210/jc.2002-021967.

[39] American College of Pediatricians, "Gender Dysphoria in Children."

[40] Hayes, Inc., "Hormone therapy for the treatment of gender dysphoria," Hayes Medical Technology Directory (Lansdale, Pa: Winifred Hayes), May 19, 2014.

[41] For detailed descriptions of these procedures and associated risks, see American Society of Plastic Surgeons, "Gender Confirmation Surgeries," https://www.plasticsurgery.org/reconstructive-procedures/gender-confirmation-surgeries (accessed Sept 9, 2022).

health and general life satisfaction."[42] Other studies find a significant increased rate of suicide attempts and suicides.[43] These risks are an important reminder that gender reassignment, though it may relieve gender dysphoria for a time, "should not be considered a cure."[44]

To avoid being arbitrary and capricious, the Department must explain the extent to which Title IX funding recipients will be expected to accommodate students' declared gender identity. As currently written, the broad language of its proposed rule does not provide clarity on this point. Of concern here is the Administration's ideological bent and tendency to weaponize its authority to impose radical ideas about gender and sex that would needlessly target youth and students. Given the Department's commitment to give Title IX a "sweep as broad as its language" by expanding the definition of sex discrimination, it's hard to imagine anything but a maximalist approach that reduces sex to an artifact of social assignment, and "gender affirmation" as the sole legitimate response to gender dysphoria.

A totally "gender-affirming" approach raises a myriad of questions as well as procedural concerns. If recipients and participants will be expected to support cross-sex interventions, including social transition, why and how will the benefits outweigh the well-documented harms and controversy outlined above? The Department must justify and detail its reasoning. If the proposed rule applies to such an extent, on what authority does the Department deign to regulate matters outside its usual purview, such as health care?

To this latter point, it is highly doubtful that the Department has such sweeping authority. It should therefore consider a multi-agency rulemaking process if it wishes to truly give Title IX a "sweep as broad as its language."[45] Still more, if cross-sex interventions are the fulfillment of social transition, which, at the very least, this rule is clearly designed to facilitate, how does this affect the Department's economic impact analysis? If recipients are going to be expected to fully facilitate gender transition, then the Department's analysis will be incomplete without consideration of how many recipients will be expected to assist with cross-sex interventions, the liability involved, the estimated psychiatric, pharmaceutical, and surgical costs, and the impact the increased demand would have on the medical industry.

Harm to Parents

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[42] Kristen Clements-Nolle, Rani Marx, Robert Guzman et al., "HIV prevalence, risk behaviors, health care use and mental health status of transgender persons: implications for public health intervention," *American Journal of Public Health* 91, no. 6 (2001): 915-21.

[43] Dhejne et al., "Long-Term Follow-Up of Transsexual Persons"; Annette Kuhn , Christine Bodmer, Werner Stadlmayr, et al., "Quality of Life 15 years after sex reassignment surgery for transsexualism," *Fertility and Sterility* 92, no. 5 (2009): 1685-89

[44] Eva Moore, Amy Wisniewski, Adrian Dobs, "Endocrine Treatment of Transsexual People: A Review of Treatment Regimens, Outcomes, and Adverse Effects," *The Journal of Clinical Endocrinology & Metabolism* 88, no. 8 (Aug 2003): 3467–3473, https://doi.org/10.1210/jc.2002-021967.

[45] 87 FR 41528

The Department's proposal directly affects parents as well. The state has historically recognized that parents are best suited to care for their children. However, the Department's proposed regulation would empower school officials and administrators to promote controversial gender ideology. This will inevitably conflict with parents' values, freedoms, and responsibilities.

Under the new regulations, recipients would be empowered to promote gender ideology in the classroom and enshrine it in school policies. According to the proposed regulation, the expanded redefinition of sex discrimination would apply to events and interactions "outside [the school's] education program or activity or outside the United States."[46] This means that administrators and officials could easily label parental conduct in the home "discriminatory" if it does not align with the Department's expanded definition of sex discrimination. For instance, parents could be targeted for refusing to transition their child.

Within schools, the Department's proposal would require K-12 schools to affirm a child's self-professed gender identity (that is, to facilitate social transition) without the consent or notice of the students' parents or the guidance of a medical professional. To the extent to which recipients will be required to facilitate chemical and surgical transition, the proposal would even provide legal cover for a school counselor or nurse to refer the child for life-altering cross-sex interventions. Without notifying a student's parents or receiving their approval, school administrators would be legally compelled under Title IX to provide guidance for a student struggling with gender identity issues, allow the student to socially transition at various gradations at school, facilitate and monitor whether the child is living in an "accepting" home environment.

None of this should be dismissed as far-fetched. Already, without this policy, schools across the country are facilitating students' gender transitions without parental knowledge or consent. Consider just a couple of examples. In California, Child Protective Services recently removed a daughter from her parents because the parents were causing her "emotional damage." In short, the school reported the parents because they were not calling their daughter by her preferred male name.[47] Similarly, a school in Alaska used Title IX as the justification for changing a students' name and preferred pronouns on all documents except what was sent to parents.[48] All this was done without the parents' consent or knowledge.

The Department's proposal would be detrimental to parents' prerogative and freedom to raise their children according to their values. Parents have this prerogative because they are the ones who are primarily responsible for their children. Knowing their children best and how best to care for them, they should be empowered, not obstructed, from raising their children as they think best. Indeed, in states where parents are required to be involved with youth's health decisions, teen suicide rates are lower. By empowering schools to promote gender ideology and

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[46] 87 FR 41401

[47] Kaylee McGhee White, "Biden's new Title IX rules deputize teachers to override parents on gender identity," *New York Post*, Aug 15, 2022, https://nypost.com/2022/08/15/bidens-title-ix-rules-deputize-teachers-to-override-parents/ (accessed Sept 9, 2022).

[48] Ibid.

facilitate gender transition without parental consent, the Department would usurp parental rights, which would further harm children.

The Department cannot move forward with this rule until it performs adequate analysis of its impact on the family. According to Section 654 of the Fiscal Year 1999 Appropriations Act, proposed regulations must undergo an analysis of their impact on "family well-being."[49] In this case, given the obvious implications for families, the Department must detail how "the action strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children," in addition to the other requirements of the bill.[50]

Violations of an Individuals' Religious Freedom in Non-Religious Settings

While this Title IX revision promises to retain exemptions for institutions "controlled by religious organizations," it seems clear that religious individuals in other institutions such as public secondary schools and state universities, could face severe discrimination under this rule. The expansion of "sex" to include "gender identity," in particular, seems designed to conflict with the religious consciences of many Americans.

Consider Mary, a Catholic female student at a state university, who sincerely believes as a Catholic, that it would be immoral for her to cohabit with a male who is not her husband. Under the new rule, however, Kelly, a male student at the same university with a female "gender identity" would presumably be treated as if he were a female, and so could be housed in a girls' dorm. Would Mary have the right, on religious grounds, to object to being assigned a room with this male student? Would Mary be compelled to share a bathroom, or dorm suite with Kelly?

Would the university be guilty of discrimination under title IX if it accommodated Mary?

Though Mary's objection would be specifically religious, her recognition that human beings are mammals, and are either male or female, is consistent with universal human experience, and basic biological knowledge. Note that even the description of the dilemma above requires the use of terms drawn from mammalian biology, with its two sexes: "male" and "female." As a result, Mary's religious belief is hardly private, eccentric, or sectarian. Moreover, it has concrete public consequences, and the descriptive, if not the normative element of her belief, corresponds to our biological knowledge of the human species.

Indeed, gender identity as commonly if imprecisely understood, is considered by its proponents to be independent of the body and of biological sex. And yet gender identity can, presumably, *displace* biological sex. Hence, a male who "identifies as" a female is in some ineffable sense a female. According to the latest turn of gender ideology, this act of self-identification is, apparently, the only relevant criterion for being a female. And under the proposed revision of Title IX, such a male would legally be a female. Does the Department agree or disagree with this

[49] Pub. L. 105-277, 1999, https://www.govinfo.gov/content/pkg/PLAW-105publ277/pdf/PLAW-105publ277.pdf (accessed Sept 9, 2022).

[50] Ibid.

formulation? And if not, then what does it mean by "gender identity"? Failing to address these questions squarely would give the strong impression that this revision is arbitrary and capricious.

The proposed revision actually leaves unanswered another fundamental question, and thus leaves it to lawyers and courts and plaintiffs and defendants, no doubt for years to come, to answer. That question is: When there is a conflict between the religious and biological beliefs of a student such as Mary, and the professed gender identity of her fellow student Kelly, which should give way? Which should have marginal priority? Should Mary's belief, which is consistent with both biology and the original language of Title IX, or Kelly's professed belief that he is legally a female, which seems to follow from the inclusion of "gender identity" within the definition of sex in Title IX?

And what of Mary's *speech*? Would her objection itself—her opposition to sharing a dorm room with a male—constitute sexual harassment against Kelly—who "identifies as" a female? Perhaps Mary, on philosophical and theological grounds, also rejects the voluntarist and existentialist assumption embedded in gender theory,[51] which elevates will over intellect and implies that one's identity is dependent in some strong sense on self-designation. She may also reject the implication of gender ideology that a person's "inner feelings" determine or override biological reality.[52]

So, she would have multiple reasons for declining to speak as if Kelly is a female. Would Mary not, in this case, be "misgendering" Kelly under the logic of a revised Title IX? (Again, we are employing the current argot of gender ideology, without conceding its cogency or legitimacy.) And if so, then how would this revision not lead to a quite obvious violation of Mary's religious freedom and conscience, and her freedom of speech? How does this revision not depend upon a contentious metaphysical proposition that contradicts the philosophical and theological beliefs of tens of millions of Americans? And how does the Department plan to avoid compelling the speech of those same Americans?

What's more, the new rule would seem to undermine the original basis for sex segregated dorms, sports, and facilities. What justification could there be for separating (biological) males and females in housing, only to place biological males who "identity as" female in female dorms?

And the scenario described here is cartoonishly simple, since it involves a male who identifies as a female. If we include increasingly common gender identities such non-binary, asexual, gender queer, genderflux, agenderflux, autogender, astrogender, demigender, pangender, and so on, then the justification for sex-segregated dorms, bathrooms, and other spaces seems even more arbitrary and capricious.

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[51] Tony Jesse, "'The Problem with 'Gender Identity,'" *Catholic365*, April 11, 2018, https://www.catholic365.com/article/8683/the-problem-with-gender-identity.html (accessed Sept 9, 2022)

[52] Ryan Anderson, "Transgender Ideology is Riddled with Contradictions. Here are the Big Ones," The Heritage Foundation, Feb 9, 2018, https://www.heritage.org/gender/commentary/transgender-ideology-riddled-contradictions-here-are-the-big-ones (accessed Sept 9, 2022).

Note that many of these, such as "non-binary" and "asexual," explicitly deny the sexual binary which the original Title IX presupposed. Presumably, under the revised rule, college students will simply be assigned to the dorms and dorm rooms of their preference, irrespective of their biological sex. And what of students who continue to recognize the relevance of biological sex for housing and facilities? Will they be forced to comply, under the justification of "non-discrimination"?

Like Mary, teachers, counselors, and administrators in K-12 school districts will likely be compelled to refer to students as something other than their biological sex if they wish to retain their institutional standing. Title IX's proposed religious exemptions will not protect the First Amendment rights or the freedom of conscience of religious individuals at non-religious institutions. Under Title IX's proposed rule, students and teachers alike will lose their right to speak freely and treat others in a manner that is biologically accurate and consistent with their faith and philosophical beliefs.

The revisions pose similar threats to the free exercise of religion and of speech on the part of staff at institutions subject to Title IX, and which lack a religious exemption. We could explore likely scenarios for such staff, as we have done above for students, but will not do so, since the problems are quite similar.

Religious Freedom Protections Under Title IX

Under the current Religious Liberty and Free Inquiry Final Rule, Title IX "'shall not apply' to educational institutions that are 'controlled by a religious organization,' to the extent that application of Title IX 'would not be consistent with the religious tenets of such organization'... Likewise, federal regulations echo the fact that Title IX does not apply to certain schools 'controlled by a religious organization'... Neither Title IX nor its regulations define what it means for a school to be 'controlled by a religious organization.' Over the years, the Department of Education's Office for Civil Rights (OCR) has posted on its website several internal memoranda on this question."[53]

On April 19, 2021, the department announced it would conduct a review of the Religious Liberty and Free Inquiry Final Rule and that they expected to rescind aspects of it. Their review of the Final Rule is not published, nor is there guidance on how it will be reinterpreted. Importantly, the Religious Liberty and Free Inquiry Final Rule provides key definitions and clarity regarding the phrase "controlled by a religious organization." With these definitions currently under review, the department lacks clear guidance on how it will be defined or applied under the proposed language. The department fails to explain how they can adequately and reliably change Title IX's religious exemption without guidance from this review. Instead, the department should wait

[53] U.S. Department of Education, "Fact Sheet: Regarding a Proposed Rulemaking on Religious Liberty and Free Inquiry," https://www2.ed.gov/about/offices/list/ocr/docs/factsheet-religious-liberty.pdf (accessed Sept 9, 2022).

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until it publishes its review of the Religious Liberty and Free Inquiry Final Rule before changing Title IX's religious exemption.[54]

Heritage Foundation Senior Legal Fellow Sarah Perry remarks that "even though Title IX's religious exemption is firmly grounded in statutes, regulations, and judicial decisions, the recent draft Title IX regulation from the Biden administration removes the religious protections without providing any justification for the proposed change."[55]

Given the impact on religious institutions this will have, the Department should wait to finalize its rule until more guidance is given on how the Administration will relate to religious organizations.

Title IX's proposed rule violates recent judicial and regulatory precedents' for protecting religious institutions

Additionally, the Department's redefinition of 'sex' to include gender identity and the administration's removal of previously held religious freedom protections is a direct attack on religious liberty, which the courts continue to rigorously uphold.

The Department's rule ignores the Supreme Court's rulings. In *Espinoza v. Montana Department of Revenue*, Chief Justice Roberts affirmed that excluding religious K-12 schools from state program funding that would otherwise be available for private schools was unconstitutional.[56] Similarly, the Establishment Clause prohibits the government from establishing a particular religion or endorsing the beliefs of one faith group. The United States have long maintained that it is unconstitutional for the government to promote one religion, or inversely, to punish religious individuals or institutions when they exercise their religious beliefs. Even when those beliefs are counter to an agencies latest ruling on sex.

In the last year alone, two other key religious liberty cases were decided at the Supreme Court. In *Kennedy v. Bremerton School District,* the court ruled that public high school coal Joe Kennedy could privately pray at the 50-yard line.[57] Additionally, they overturned the "Lemon test" from *Lemon v. Kurtzman*, empowering future school officials to exercise their deeply held religious beliefs at school. The second is *Carson v. Makin* which affirmed that parents may use student-aid programs to send their children to a religious institution.[58] This ruling effectively nullified the

[54] Student Affairs Administrators in Higher Education, "The Other Final Rule in Which you Need to be Aware – Religious Liberty and Free Inquiry Final Rule," Oct 1, 2020, https://www.naspa.org/blog/the-other-final-rule-in-which-you-need-to-be-aware-religious-liberty-and-free-inquiry-final-rule (accessed Sept 9, 2022).

[55] Sarah Perry, "The Department of Education's Intended Revision of Title IX Fails Regulatory and Civil Rights Analyses," The Heritage Foundation, June 22, 2022, https://www.heritage.org/civil-rights/report/the-department-educations-intended-revision-title-ix-fails-regulatory-and-civil (accessed Sept 9, 2022).

[56] 140 S. Ct. 2246 (2020)

[57] 142 S. Ct. 857 (2022)

[58] 142 S. Ct. 1987 (2022)

Blaine Amendments to ensure that parents and students may exercise their religious faith without undue governmental constraints.

The Supreme Court and regulatory statutes have been steadily moving towards greater, not fewer, protections for religious institutions and individuals. Under a revised Title IX, however, religious freedom would be removed or limited under the guise of anti-discrimination laws that radically redefine sex.

Inconsistent With Freedom of Speech, Religion, and the Logic of Title IX Itself

There is thus a fundamental conflict between a religious belief in the sexual binary, and the biological understanding of the same sexual binary, on the one hand, and modern gender ideology with its concept of gender identity, on the other. Even to refer to "being male" or "being female" as a gender identity is itself a tendentious philosophical assertion at odds with biological knowledge.

Title IX as written in 1972 presupposed the biological reality of the sexual binary, and its empirical accessibility. And the amendment only makes coherent sense as part of the Civil Rights Act under that assumption. It is doubtful that any legislator who voted in favor of Title IX even comprehended the concept of gender identity in 1972. At the time, "gender identity" was scarcely an English-language formulation, still less a well-defined concept. For that matter, it is still not a well-defined concept in 2022.

Title IX is credited with the growth of women's sports, and of women's growing participation in college. It is not credited with the growth of high school and college sports opportunities for people who "identify as" women, but rather of opportunities for biological women.

Expanding Title IX's use of "sex" to include "gender identity," then, is to reduce the rule to a knot of contradictions and incoherencies in which, presumably, a recognition of the stable, observable, biological reality of sex must give way to the fickle and protean concept of gender identity. It represents not the fulfillment of the spirit of Title IX, but rather the dissolution of both its letter and its spirit.

In short, despite the Department of Education's stated intention of providing "greater clarity," the language especially of Section 106.31(a)(2) does precisely the opposite.

Necessity, Procedure, and Costs

Proven Need?

From a procedural standpoint, the Department lacks crucial data needed to determine the necessity for its proposed amendments. Executive Order 13563 requires an agency to propose

regulations on the basis of a "reasoned determination that their benefits justify their costs."[59] Part of this reasoning involves justifying the need for a regulation in the first place.

In the case of this proposed regulation, there are doubts as to its necessity due to a lack of crucial data. Indeed, the Department explicitly acknowledges that it lacks "recent, high quality, and comprehensive data" (despite requests for such data). According to the Department, the proposal relies primarily on a 2014 report surveying 440 Institutions of Higher Education (approximately 7 percent of all IHE's in the country) regarding sexual harassment investigations. The Department further notes that this report "did not address the prevalence of other forms of sex discrimination, including discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity."[60]

The lack of recent, high quality, comprehensive data on the prevalence of "other forms" of sex discrimination raises serious questions as to why the Department is proposing the rule in the first place. Until concrete data can be obtained and presented to the public, the Department lacks sufficient proof of the necessity of its proposed amendments and should not move forward with the proposed regulation until it can acquire more complete data.

Insufficient Regulatory Impact Analysis

The Department claims that "any costs associated with the shift away from its most recent prior interpretation [i.e. its 2020 rule] would be minimal."[61] It claims that apart from updating training materials or policies, it "would not require significant expenditures". The benefits of its reinterpretation "far outweigh any costs."[62]

The Department has identified a host of potential and anticipated costs. These costs include items like: time to review and revise policies, updates to training materials, training, supportive measures for victims of sexual harassment, adjudication, appeals and informal resolution, and record keeping. It also anticipates the cost of creating lactation spaces, pregnancy accommodations, and accommodations for transgender student. According to the Department, "Non-monetary benefits of providing clarity [on sex discrimination] … outweighs the costs".[63]

Despite accounting for these costs, the Department's economic impact analysis remains incomplete. As shown above, the impact of the Department's rule extends beyond simply affirming a student's gender identity. It would require recipients, especially schools, to help facilitate chemical and surgical transitions, empower recipients to call Child Protective Services in cases where the home is deemed a "hostile environment," amongst other things. Additionally, Title IX is bound up with other nondiscrimination law, like Section 1557 of the Affordable Care

[59] "Improving Regulation and Regulatory Review," Jan 18, 2011.

[60] 87 FR 41548

[61] Ibid, 41391

[62] Ibid, 41562.

[63] Ibid.

Act. If sex discrimination is redefined as the Department proposes, what are the costs in the medical field? Certainly, there would be increased costs for covering chemical and surgical transitions. And certainly there would be litigation costs for those medical professionals who object for conscientious, religious, or professional reasons.

Insofar as the Department fails to account for these or related costs, its economic impact analysis remains incomplete. Indeed, given the cross-cutting nature of Title IX, the Department should instead consider a multi-agency rule to allow for a more comprehensive, accurate, and complete economic impact analysis.

Conclusion

With its proposed revision of Title IX, the Department will create regulatory chaos in its expansion of sex to include subjective and protean concepts such as “gender identity.” By requiring recipients to help facilitate students’ social, chemical, and/or surgical transition, this proposal imposes a radical ideology that would cause long-lasting and irreversible harms to countless students’ physical and mental health. Still more, it would weaponize school administrators and teachers to override parental decision-making. This is a violation of parental rights and is an undeniable threat to religious freedom. When parents hold religious beliefs based on biological reality, Title IX will be used to violate their beliefs and the wellbeing of their child. Rather than imposing radical ideologies as state orthodoxy at the expense of students’ wellbeing and fundamental American freedoms, the agency should not finalize this rule but propose rules that actually promote and protect Americans’ health and freedoms.

Respectfully,

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Appendix: Studies on the effects of "gender-affirming care"

I. Recent Studies

Jack L. Turban, Dana King, Julia Kobe, Sari L. Reisner, Alex S. Keuroghlian, "Access to gender-affirming hormones during adolescence and mental health outcomes among transgender adults," ***PLOS ONE*** **17, no. 1 (Jan 2022), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0261039.**

Summary: Based on the data from the 2015 U.S. Transgender Survey, the study found that accessing "gender-affirming" hormones (GAH) "was associated with lower odds of past-year suicidal ideation." Those who accessed GAH during adolescence had "lower odds of past-year suicidal ideation when compared to accessing GAH during adulthood."

Analysis: The 2015 US Transgender Survey is a convenience sample. It lacks any control group and the data was collected online through "trans-affirming" organizations. It is not representative of the transgender population. This study also finds that "respondents who started these hormones as adults had higher odds of binge drinking and of illegal drug use--though this finding does not appear in the abstract, introduction or conclusion" (Comment by MichaelBiggs, Jan 19, 2022; see: https://journals.plos.org/plosone/article/comment?id=10.1371/annotation/dcc6a58e-592a-49d4-9b65-ff65df2aa8f6). See below for more analysis on the 2015 US Transgender Survey.

Amy E. Green, Jonah P. DeChants, Myeshia N. Price, and Carrie K. Davis, "Association of Gender-Affirming Hormone Therapy With Depression, Thoughts of Suicide, and Attempted Suicide Among Transgender and Nonbinary Youth," ***Journal of Adolescent Health,*** **Dec 14, 2021, https://www.jahonline.org/article/S1054-139X(21)00568-1/fulltext#secsectitle0010.**

Summary: This is a "study," reporting results of a survey of 34,759 youth aged 13-24, which found: (1) "half of transgender and nonbinary youth said they were not using GAHT [gender-affirming hormone therapy] but would like to"; and (2) "use of GAHT [gender-affirming hormone therapy] was associated with lower odds of recent depression and seriously considering suicide compared to those who wanted GAHT but did not receive it."

Analysis: This is a convenience sample. There is no control group. Data collected online and participants were recruited by targeted ads on Facebook, Instagram, and Snapchat.

II. What We Know Project (Bank of Studies at Cornell)

In general:

- Some have cited this as a "growing body of research" that "make it indisputable that gender transition has a positive effect on transgender well-being." (cf. Nathaniel Frank, "The Pentagon Is Wrong. Gender Transition Is Effective." *The New York Times,* April 9,

2018, https://www.nytimes.com/2018/04/09/opinion/pentagon-transgender.html; "Outlawing Trans Youth: State Legislatures and the Battle over Gender-Affirming Healthcare for Minors," *Harvard Law Review* 134, no. 6 (April 12, 2021), https://harvardlawreview.org/2021/04/outlawing-trans-youth-state-legislatures-and-the-battle-over-gender-affirming-healthcare-for-minors/.)

- However, a closer look at various studies finds that the research cited does not actually support these claims.
  - The bank includes 52 studies, two of which are irrelevant. One is double-counted and the other is a mathematical modeling of the cost and benefit of gender transition that is not original research.
  - Of the 50 relevant studies, only five had samples of over 300 and 26 had samples of less than 100. Seventeen studies had 50 or fewer, five of which had sample sizes less than 25.
- **The below analysis is taken from Nathaniel Blake's piece on the What We Know Project: Nathaniel Blake, "What We Don't Know: Does Gender Transition Improve the Lives of People with Gender Dysphoria?" *Public Discourse*, April 30, 2019, https://www.thepublicdiscourse.com/2019/04/51524/.**

Louis Bailey, Sonja J. Ellis, and Jay Mcneil, "Suicide risk in the UK Trans population and the role of gender transition in decreasing suicidal ideation and suicide attempt," *Mental Health Review Journal* 19, no. 4 (Dec 2014): 209-220, https://www.researchgate.net/publication/281441727_Suicide_risk_in_the_UK_Trans_population_and_the_role_of_gender_transition_in_decreasing_suicidal_ideation_and_suicide_attempt.

Summary: This paper presents findings from the "Trans Mental Health Study," the largest survey of "UK trans population to date." "The study revealed high rates of suicidal ideation (84 per cent lifetime prevalence) and attempted suicide (48 per cent lifetime prevalence) within this sample. A supportive environment for social transition and timely access to gender reassignment, for those who required it, emerged as key protective factors. Subsequently, gender dysphoria, confusion/denial about gender, fears around transitioning, gender reassignment treatment delays and refusals, and social stigma increased suicide risk within this sample."

Analysis: This is a 2012 online survey promoted by UK LGBT groups and support organizations. This survey may provide us with some data, but it is not reliable or representative scientific evidence for the efficacy of transition.

Colton M. St. Amand, Kara M. Fitzgerald, Seth T. Pardo, and Julia C. Babcock, "The Effects of Hormonal Gender Affirmation Treatment on Mental Health in Female-to-Male Transsexuals," *Journal of Gay & Lesbian Mental Health* 15, no. 3 (July 2011): 281-299, https://www.researchgate.net/publication/233068152_The_Effects_of_Hormonal_Gender_Affirmation_Treatment_on_Mental_Health_in_Female-to-Male_Transsexuals.

Summary: "Results of the study indicate that female-to-male transsexuals who receive testosterone have lower levels of depression, anxiety, and stress, and higher levels of social

support and health related quality of life. Testosterone use was not related to problems with drugs, alcohol, or suicidality. Overall findings provide clear evidence that HRT is associated with improved mental health outcomes in female-to-male transsexuals."

Analysis: 'This study recruited subjects for its online survey by advertising "on online groups and discussion forums that were dedicated to FTM [female-to-male] members. . . . Upon survey completion, participants were entered into a lottery drawing for cash prizes.' This survey may provide us with some data, but it is not reliable or representative scientific evidence for the efficacy of transition.

Emily Sarah Newfield, Tae L Hart, Suzanne Dibble, and Lori Kohler, "Female-to-male transgender quality of life," *Quality of Life Research* 15, no. 9 (Nov 2006): 1447-1457, https://www.researchgate.net/publication/7025219.

Summary: Survey results found "FTM transgender participants who received testosterone (67%) reported statistically significant higher quality of life scores ($p<0.01$) than those who had not received hormone therapy. FTM transgender participants reported significantly reduced mental health-related quality of life and require additional focus to determine the cause of this distress."

Analysis: This study used an online survey 'that recruited subjects online and via flyers and postcards in the San Francisco area, though in that case participants only "received a discount coupon redeemable at an Internet store."' This survey may provide us with some data, but it is not reliable or representative scientific evidence for the efficacy of transition.

Tiffany R. Glynn, Kristi E. Gamarel, Christopher W. Kahler, Mariko Iwamoto, Don Operario, and Tooru Nemoto, "The role of gender affirmation in psychological well-being among transgender women" *Psychology of sexual orientation and gender diversity* 3, no. 3 (Sept 2016): 336-344, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5061456/.

Published by American Psychological Association.

Summary: "A community sample of 573 transgender women with a history of sex work completed a one-time self-report survey that assessed demographic characteristics, gender affirmation, and mental health outcomes. In multivariate models, we found that social, psychological, and medical gender affirmation were significant predictors of lower depression and higher self-esteem while no domains of affirmation were significantly associated with suicidal ideation."

Analysis: This study consisted of '"1-time self-report survey" completed by a "community sample of 573 transgender women with a history of sex work" who "received financial compensation for their time."' This survey may provide us with some data, but it is not reliable or representative scientific evidence for the efficacy of transition.

Cecilia Dhejne, Katarina Oberg, Stefan Arver, Mikael Landen, "An Analysis of All Applications for Sex Reassignment Surgery in Sweden, 1960-2010: Prevalence, Incidence, and Regrets," ***Archives of Sexual Behavior*** **43, no. 8 (May 2014), https://www.researchgate.net/publication/262734734_An_Analysis_of_All_Applications_for_Sex_Reassignment_Surgery_in_Sweden_1960-2010_Prevalence_Incidence_and_Regrets.**

Summary: "The regret rate defined as application for reversal of the legal gender status among those who were sex reassigned was 2.2 percent for the whole period 1960–2010."

Analysis: Blake writes, "The first problem is that this methodology probably undercounts the regret rate, as its definition of regret overlooks those who were unhappy with their transition but did not apply to reverse it. It would not count those who succumbed to depression or addiction, or who lived unhappily after transition. Nor does the What We Know Projects note that a related study by some of the same researchers showed a horrifyingly high rate of suicide among its post-surgery subjects—nineteen times that of the general population. Finally, this data is drawn from a population with strict pre-transition screening, and the results likely do not apply where transition is less regulated. It is dangerous to assume that the regret rate of rigorously screened Swedish adults will apply to poorly screened American adolescents."

III. 2015 US Transgender Survey

In general:

- "This survey used convenience sampling, a methodology which generates low-quality data (Bornstein, Jager, & Putnick, 2013). Specifically, the participants were recruited through transgender advocacy organizations and subjects were asked to "pledge" to promote the survey among friends and family. This recruiting method yielded a large but highly skewed sample." From **Roberto D'Angelo, Ema Syrulnik, Sasha Ayad, et al., "One Size Does Not Fit All: In Support of Psychotherapy for Gender Dysphoria,"** ***Archives of Sexual Behavior*** **50 (2020): 8, https://doi.org/10.1007/s10508-020-01844-2.**

Jack L. Turban, Noor Beckwith, Sari L. Reisner, Alex S. Keuroghlian, "Association Between Recalled Exposure to Gender Identity Conversion Efforts and Psychological Distress and Suicide Attempts Among Transgender Adults," ***JAMA Psychiatry*** **77, no. 1 (2020): 68–76, https://jamanetwork.com/journals/jamapsychiatry/article-abstract/2749479.**

Summary: This study finds that "recalled exposure to gender identity conversion efforts was significantly associated with increased odds of severe psychological distress during the previous month and lifetime suicide attempts compared with transgender adults who had discussed gender identity with a professional but who were not exposed to conversion efforts. For transgender adults who recalled gender identity conversion efforts before age 10 years, exposure was significantly associated with an increase in the lifetime odds of suicide attempts."

Analysis: The 2015 US Transgender Survey is a convenience sample. It lacks any control group and the data was collected online through "trans-affirming" organizations.

Jack L. Turban, Dana King, Jeremi M. Carswell, Alex S. Keuroghlian, "Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation," ***Pediatrics*** **145, no. 2 (2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7073269/.**

Summary: Turban finds, using the 2015 US Transgender Survey, "those who received treatment with pubertal suppression, when compared with those who wanted pubertal suppression but did not receive it, had lower odds of lifetime suicidal ideation."

Analysis: This study is, retrospective and cross-sectional ("…cross-sectional design, which does not allow for determination of causation"). The data is drawn from self-reported history of adolescent puberty suppression. It did not control for other mental health factors. "…it is plausible that those without suicidal ideation had better mental health when seeking care and thus were more likely to be considered eligible for pubertal suppression." Those with worse mental health would often be denied puberty blockage. Desisters and regretters would not likely be in this study group, which also only included adults, so "it does not include outcomes for people who may have initiated pubertal suppression and subsequently no longer identify as transgender." In summary, this is a very limited group of respondents, and tells us little.

contra **Turban:**

Michael Biggs, "Puberty Blockers and Suicidality in Adolescents Suffering from Gender Dysphoria. Archives of Sexual Behavior," ***Archives of Sexual Behavior 49*** **(2020): 2227-2229, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8169497/.**

This article identifies weaknesses of both the Turban study (just above) and general use of the 2015 US Transgender Survey.

IV. Other Studies

Wiepjes CM, Nota NM, de Blok CJ, et al, "The Amsterdam Cohort of Gender Dysphoria Study (1972–2015): Trends in Prevalence, Treatment, and Regrets" ***The Journal of Sexual Medicine*** **15, no. 4 (2018): 582-90.**

Summary: Concluded "The percentage of people who regretted gonadectomy remained small and did not show a tendency to increase."

Analysis:
- "Not all data were available from the hospital registries, particularly older data or surgeries performed in other centers" (p. 590)
- "A large number of transgender people…were lost to follow-up. Although transgender people receive lifelong care, a large group (36%) did not return to our clinic after several years of treatment" (p. 589).

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- Regret only tabulated for those who had gonadectomies and then requested hormone therapy consist with biological sex "and expressed regret" (p.584); excluded all who died (p. 584).
- No uniform stats on average follow-up time and variance.
- Admitted average regret time was 130 months. Page 589 admission: "…it might be too early to examine regret rates in people who started with HT in the past 10 years." Many more patients came later in the study, counted as non-regret without allowing the expected time for such, which shifts results.

Joseph Tobin, Joanna Ting, Gary Butler, "The effect of GnRHa treatment on bone density in young adolescents with gender dysphoria: findings from a large national cohort," Endocrine Abstracts 58 (2018).

Summary: Although there was a decline in age-related Z-scores, there was no significant change in Bone Mineral Apparent Density (BMAD) after one year on GnRHa (puberty suppression) and no significant changes between DEXA scans for tBMD or BMAD when analyzed cross-sectionally or longitudinally over 3 years.

Analysis: For the 39 adolescent girls, "Initially, they were in the 40th percentile for bone density. By the end of two years, however, they were in the lower 3rd percentile for bone density."

Richard Bränström and John E. Pachankis, "Reduction in mental health treatment utilization among transgender individuals after gender-affirming surgeries: a total population study," ***American Journal of Psychiatry*** **177 (2020), 727–734, https://ajp.psychiatryonline.org/doi/10.1176/appi.ajp.2019.19010080.**

Summary: The study found that "gender-affirming surgeries" reduced mental health treatement use in transgender-identified individuals.

Analysis: The American Journal of Psychiatry issued a major correction retracting the study's main finding after a handful of letters were sent in expressing concerns. See, Ned H. Kalin, "Reassessing Mental Health Treatment Utilization Reduction in Transgender Individuals After Gender-Affirming Surgeries: A Comment by the Editor on the Process," American Journal of Psychiatry 177 (2020): 8, https://ajp.psychiatryonline.org/doi/10.1176/appi.ajp.2020.20060803.

Johanna Olson-Kennedy, Jonathan Warus, Vivian Okonta, Marvin Belzer, and Leslie F. Clark, "Chest Reconstruction and Chest Dysphoria in Transmasculine Minors and Young Adults: Comparisons of Nonsurgical and Postsurgical Cohorts" JAMA Pediatr 172, no. 5 (2018): 431–436, https://pubmed.ncbi.nlm.nih.gov/29507933/.

Summary: This study finds that, "Chest dysphoria was high among presurgical transmasculine youth, and surgical intervention positively affected both minors and young adults."

Analysis: "Chest dysphoria" is not a DSM-5 diagnosis and the "chest dysphoria scale" employed by the authors "is not yet validated."