



April 19, 2023

The Honorable Miguel Cardona
 Secretary of Education
 U.S. Department of Education
 400 Maryland Avenue, SW.
 Washington, DC 20202

Dear Mr. Secretary,

On behalf of our 25 organizations' 397,494 members, the undersigned groups write to you to express our deep concerns over the U.S. Department of Education's proposed rule regarding transgender participation in student sports under Title IX. We oppose the Department's efforts to coerce schools into allowing transgender athletes to participate on the team of their self-professed gender identity on the grounds that these changes will negatively impact the mental and physical well-being of biologically female student athletes, and also harm both parental rights and federalism – as well as the budgets of federal, state, and local education agencies across the country.

Although the Department of Education cites "fairness" and "safety" in its proposed changes, the notice of proposed rulemaking, to use a common phrase, "ignores the science." It is clearly established¹ that male and female bodies have different physiological traits – including but not limited to bone structure and muscle composition – which means that biological males participating in female athletics puts biological females at a

¹ Blair, Martha L. "Sex-based differences in physiology: what should we teach in the medical curriculum?" *Advances in Physiological Education*, Vol. 31 No. 1, January 1, 2007. <https://journals.physiology.org/doi/full/10.1152/advan.00118.2006> (accessed April 14, 2023)

higher risk for mental and physical setbacks from injury. As a result, such a change will significantly impede girls' ability to seek awards and scholarships.

All students deserve privacy and safety in sex-specific spaces such as locker rooms, restrooms, and medical facilities. Female athletes should not be forced to ask for special accommodations because of their biological sex, and to put minor students in that position marginalizes their voices and preferences.

Furthermore, this proposed rule is an overreach of executive power and an encroachment on federalism; it contradicts existing laws in 20 states that bar biological males from competing in female athletics. The executive branch's explicit invalidation of duly enacted state laws stomps on the will of elected representatives across the country – and if such a sweeping change be desired at the federal level, it should be enacted through Congress and not by administrative fiat.

The regulatory impact analysis accompanying the proposed rule estimates the potential cost of implementing this regulation will only cost taxpayers roughly \$24.4 million over 10 years;² however, the actual cost for accommodating transgender individuals to participate in biological female sports will likely be significantly higher, as America's more than 98,000 public schools³ will need to construct and/or retrofit facilities to accommodate transgender students while protecting the privacy and safety of biologically female minors. Indeed, Loudoun County Public Schools' pilot program to explore these changes at only 2 of its 18 high schools has been estimated to cost \$11 million⁴ - a district that also has 65 elementary schools and 21 middle schools that will also require renovations.

Last (but certainly not least), this proposed rule significantly infringes on parental rights to direct the upbringing of their children – as it limits the ability of families to make informed decisions about their child's safety and well-being in school sponsored athletic events.

Such a change is deeply unpopular with the American public; a July 2022 poll⁵ conducted by Parents Defending Education found that 71% of voters opposed requiring schools to let biological males play for girls' sports teams, while 72% of voters believed this could lead to increased rates of bodily injury among biological girls; 78% of Black voters, 73% of Hispanic voters, 71% of white voters, and 51% of Asian voters oppose biological males being allowed to use female bathrooms and locker rooms and vice versa.

The Department's proposed method of implementing this change is, to be blunt, cowardly. By giving schools the "discretion" to limit athletic participation to biological sex if the district can state an "important educational objective," it puts administrators in the unenviable position of either developing a detailed rationale for basing participation on biological sex for every sport at every athletic level – knowing full well that the federal government through the Department of Education's Office for Civil Rights can veto these decisions with federal

² Federal Register, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams," <https://www.federalregister.gov/documents/2023/04/13/2023-07601/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal> (accessed April 14, 2023)

³ National Center for Education Statistics, "Table 105.50. Number of educational institutions, by level and control of institution: Selected years, 1980-81 through 2017-18" https://nces.ed.gov/programs/digest/d19/tables/dt19_105.50.asp (accessed April 14, 2023)

⁴ Nick Minock, "Loudoun schools explore replacing boys and girls bathrooms with all-gender, single stalls," WJLA <https://wjla.com/news/crisis-in-the-classrooms/loudoun-county-public-schools-gender-expansive-transgender-nonbinary-bathroom-sex-equality-broad-run-valley-high-glenn-youngkin-drugs-fentanul-overdoses-safety-concerns> (accessed April 14, 2023)

⁵ Parents Defending Education, "Parents Defending Education Poll: 62% of voters think gender identity activists 'going too far,'" July 27, 2022 <https://defendinged.org/press-releases/parents-defending-education-poll-62-percent-of-voters-think-gender-identity-activists-going-too-far/>

funding hanging in the balance. We see this change for what it is: achieving the end goal of eliminating single-sex athletics by federal fiat.

Title IX of the 1972 Education Amendments was written to ensure that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Sadly, the sweeping changes to athletics under Title IX erode the very rights that protect all students - regardless of sex - and ensure a safe and equitable learning environment.

Sincerely,

Parents Defending Education
American Education Advocates
Army of Parents
Awake Illinois
CA Foundation for Educational Rights
CACAGNY
CAPA Nova
Colorado Parent Advocacy Network
West Valley Parents Uniting

Courage is a Habit
Fight for Schools
For Kids & Country
Protective Parent Coalition
Hope for PA
Moms for Liberty
New Trier Neighbors
No Left Turn in Education

Olentangy for Educational Integrity
Parents Unite
Parents United for Freedom
Poudre School District Parents for Change
Power2Parent
Push Back Idaho
Truth in Education
United Against Racism in Education