

**MARTINA WHITE, MEMBER  
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170<sup>TH</sup> LEGISLATIVE DISTRICT**

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September 12, 2022

United States Department of Education  
Office for Civil Rights  
*Via Federal eRulemaking Portal*

Dear Office for Civil Rights,

For 50 years, Title IX of the Education Amendments of 1972 has protected women and girls from discrimination in education. Title IX prohibits any student from being excluded, on the basis of sex, from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives federal financial assistance. Title IX has expanded both educational and athletic opportunities for women and girls in both K-12 and higher education.

But on the 50<sup>th</sup> anniversary of the passage of Title IX, the United States Department of Education (Department) released new proposed rules for Title IX, utilizing the federal regulatory process. These new Title IX regulations change the definition of sex to include “sex-stereotypes, sex-related characteristics, sexual orientation, and gender identity.” These proposed rule “changes” do not change Title IX, rather they end Title IX as we know it, erasing 50 years of progress towards gender equality and women’s academic and athletic achievement.

Redefining the term “sex” to include “gender identity” and “sexual orientation” will allow biological males to compete in women’s sports, placing women and girls at a disadvantage both on the field and in the competition for athletic scholarships. Biological males will be allowed in women’s spaces, as schools will be required to give biological men access to women’s restrooms, locker rooms, showers, and athletic facilities, violating women’s basic right to privacy and creating a high-risk environment for women and girls in what previously were safe spaces.

Not only do these proposed rules harm women and girls, but the Department does not even have the legal authority to make such substantive changes to Title IX utilizing the regulatory process. Executive agencies do not have the authority to fundamentally change a statute via regulation, and regulations cannot exceed the scope of the authority granted to the agency by Congress.

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These principles have been affirmed, and reaffirmed, by the Supreme Court of the United States in recent cases, including *West Virginia v. Environmental Protection Agency (2022)* and *Alabama Association of Realtors v. Department of Human Services (2021)*.

Title IX does not, and the Department's Title IX regulations have never, directly addressed the application of Title IX to discrimination based on sexual orientation or gender identity. The Department cites no statutory authority for interpreting "sex" to include "sexual orientation" and "gender identity", rather it relies on the Supreme Court's reasoning in *Bostock v. Clayton County (2020)*. This attempted justification is erroneous. In *Bostock*, the Court makes clear that their reasoning applies only to questions of employment under Title VII, and not in any other context:

*What are these consequences anyway? 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."*

Furthermore, this executive overreach is an attempt to circumvent the will of democratically elected state legislatures across the country, including Pennsylvania. On April 12, 2022, the Pennsylvania House of Representatives passed [The Fairness in Women's Sports Act \(HB 972\)](#) in an effort to protect women's sports in our Commonwealth. These proposed regulations seek to prevent legislation like HB 972, and other legislative efforts to defend the integrity of Title IX, from taking effect by seizing power from the people's elected representatives and placing it in the hands of a single federal agency, comprised of unelected bureaucrats.

Through its sweeping proclamations set forth by this proposed rulemaking, the Department seeks to advance, and force compliance with, its own political views and agenda on sexual orientation and gender identity. These proposed changes to Title IX represent one of the most aggressive,

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socially engineered overreaches of government in American history, which threatens parental rights; children's physical, mental and spiritual health; and constitutional civil liberties.

Accordingly, we, the signed members of the Pennsylvania House of Representatives, call upon the United States Department of Education to withdraw proposed regulations entitled "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance".

Thank you for your attention to this matter.

Sincerely,

Handwritten signature of Martina White in cursive.

Martina White, Republican Caucus Secretary  
170<sup>th</sup> District  
Pennsylvania House of Representatives

Handwritten signature of Bryan Cutler in cursive.

Bryan Cutler, Speaker of the House  
100<sup>th</sup> District  
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Kerry Benninghoff, House Majority Leader  
171<sup>st</sup> District  
Pennsylvania House of Representatives

Handwritten signature of Donna Oberlander in cursive.

Donna Oberlander, Majority Whip  
63<sup>rd</sup> District  
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George Dunbar, Majority Caucus Chair  
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Stan Saylor, Majority Chairman  
House Appropriations Committee  
94<sup>th</sup> District  
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Kurt Masser, Majority Caucus Administrator  
107<sup>th</sup> District  
Pennsylvania House of Representatives

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Marty Causer, Majority Policy Committee  
Chair  
67<sup>th</sup> District  
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Barbara Gleim  
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Valerie Gaydos  
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Handwritten signature of Carl Walker Metzgar in black ink.

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Jeff Wheeland  
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David Zimmerman  
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Ann Flood  
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Handwritten signature of Kate Klunk in black ink.

Kate Klunk  
169<sup>th</sup> District  
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Handwritten signature of Ryan Mackenzie in black ink.

Ryan Mackenzie  
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