

BACKGROUND

In 1972, after years of hard-fought legal battles, Congress enacted Title IX of the Education Amendments to ensure equal educational and athletic opportunities for all students regardless of their sex and to protect the rights of girls and women as fundamentally enshrined in our Declaration of Independence and Constitution of the United States. Prior to Title IX, 15% of college athletes were women, and only one in 27 girls played sports.¹

HISTORICAL PROGRESS

Today over 40% of college athletes are women, and two in five girls play sports. In fact, since “Title IX, 3 million more high school girls and 200,000 more college women have opportunities to play sports each year.”² High school girls who participate in sports are also less likely to drop out of school, smoke, drink, or become pregnant.³ Additionally, 94% of women who hold C-suite positions are former athletes, and 80% of female Fortune 500 executives played competitive sports.⁴

BIDEN ADMINISTRATION TIMELINE

The Biden Administration rescinded over 50 years of progress and equality of opportunity by radically redefining (biological) sex as “gender identity.” It’s a step backward for women’s rights, jeopardizes student safety and privacy, and destroys fairness in women’s sports. It essentially de-titles Title IX in its meaning and purpose.⁵ The Biden Administration timeline on upending and comprehensively altering Title IX is as follows:

- March 8, 2021: Biden issued an Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity.⁶
- June 23, 2022: New Title IX regulations were proposed. The Department of Education received a record number of public comments from parents, many who expressed concern about their children’s safety in schools, and what the amendments will mean for women’s sports.⁷
- April 19, 2024: The Biden Administration released new Unofficial Guidelines for Title IX, effective August 1, 2024.⁸

WHERE WE ARE NOW

With over 1,500 pages of regulations, the U.S. Department of Education has redefined the fundamental framework of Title IX without congressional authorization by expanding the definition of “sex” to include not just biological sex, but also “sex stereotypes, sex-related characteristics (including intersex traits), pregnancy or related conditions, sexual orientation, and gender identity.”⁹

The new Title IX regulations are unconstitutional, erase women and girls, eliminate due process, compel speech, and strip parents of their fundamental right to direct the upbringing of their child including decisions regarding their education, medical care, morality, and religion.

Title IX now requires:

- that schools treat students who suffer, or claim to suffer, from gender dysphoria as though they were the opposite sex.
- that a male student who identifies as a female must be allowed access to facilities designated for females such as bathrooms or locker rooms and to participate in women’s sports and organizations.
- teachers and students must refer to a gender dysphoric child by her preferred pronouns and alternative name.
- that no formal documentation be required to affirm gender identity. Additionally, if the administration has not provided a clear definition of gender identity, a male student could easily switch between identifying as male or female.

Other Title IX repercussions include:

- that when a female student opposes having a male on a team or in an organization intended only for women, or who feels uncomfortable sharing a locker room with a male, the female in opposition may now not only incur social stigma, but also the possibility of legal repercussions for her school, team, or organization.
- that while Title IX does not strictly require transitioning be kept secret from parents, in the event of a conflict between Title IX and the Family Education Rights and Privacy Act (FERPA), key words like “sex-based harassment” and “hostile environment sex-based harassment” overrides FERPA, thus opening the door to conceal the transitioning process.¹⁰

¹ “Title IX and the Rise of Female Athletes in America,” womenssportsfoundation.org, Women’s Sports Foundation, September 2, 2016, <https://www.womenssportsfoundation.org/education/title-ix-and-the-rise-of-female-athletes-in-america/>

² Lisa Kaplowitz, “Title IX increased opportunities for women athletes, but there’s still work to do,” Rutgers.edu, Rutgers Business School, June 23, 2022, <https://www.business.rutgers.edu/business-insights/title-ix-increased-opportunities-women-athletes-theres-still-work-to-do>

³ Title IX: 25 Years of Progress, A Report of the U.S. Department of Education, June 1997

⁴ Marianne Schnall, “Supporting Women In Sports Is Good Business”: Billie Jean King Teams Up With Tory Burch Foundation To Empower Women In Sports,” Forbes.com, Forbes Publishing, April 20, 2023, <https://www.forbes.com/sites/marianneschnall/2023/04/20/supporting-women-in-sports-is-good-business-billie-jean-king-teams-up-with-the-tory-burch-foundation-to-empower-women-in-sports/?sh=51adf30261b0>

⁵ Elen Weaver, “New Title IX Regulations,” State of South Carolina Department of Education, April 23, 2024

⁶ “Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity,” WH.GOV, March 8, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/08/executive-order-on-guaranteeing-an-educational-environment-free-from-discrimination-on-the-basis-of-sex-including-sexual-orientation-or-gender-identity/>

⁷ “Biden’s Controversial Title IX Rule Receives Record Breaking 163,000 Comments with Four Days Left in Public Comment Period,” dfipolicy.org, September 8, 2022, <https://dfipolicy.org/bidens-controversial-title-ix-rule-receives-record-breaking-163000-comments-with-four-days-left-in-public-comment-period/>

⁸ Title IX Unofficial Final Rule: “Nondiscrimination on the Basis of Sex Education Programs or Activities Receiving Federal Financial Assistance,” www2.ed.gov, Office for Civil Rights, Department of Education, April 19, 2024, <https://www2.ed.gov/about/offices/list/ocr/docs/t9-unofficial-final-rule-2024.pdf>

⁹ Ibid.

¹⁰ Jeremiah Poff, Florida Parents Sue School District Over Daughter’s Secret Gender Transition,” washingtonexaminer.com, January 26, 2022, <https://www.washingtonexaminer.com/news/2872212/florida-parents-sue-school-district-over-daughters-secret-gender-transition/>; Kelly Lyell, “PSD Faces Lawsuit After 2021 Gender and Sexualities Alliance meeting in Wellington,” coloradoan.com, May 4, 2023,

- the expectation that the federal government will argue that the newly proposed Title IX regulation will supersede all state laws safeguarding parental rights, particularly concerning gender identity and sexual orientation in public education.

WHAT COMES NEXT

Defense of Parental Rights: The policy of secretly socially transitioning students into a different "gender identity" will spread. Currently, there are cases across the country of parents suing school districts because their child was socially transitioned without their knowledge or consent. With this new rule, the Department is asserting that the same child who is deemed too young to make decisions like driving, smoking, drinking alcohol, or renting a car is capable of choosing their gender, with their decision mandated to be protected by school administrators, and conversely, mandated to be kept from parents who are unsupportive or performers of "hostile environment sex-based harassment."

Defense of Due Process: This new rule erases campus due process protections by changing "the process for investigations of sexual harassment or sexual misconduct on college campuses. Under this administration's rule we've now gone back to what's called . . . kangaroo courts."¹¹ The standard of review has gone from "clear and convincing" to "a (51%) preponderance of the evidence" with "the accused having no right to be represented by counsel, or to introduce contrary evidence to cross-examine witnesses."¹²

Defense of Free Speech: This rule, by forcing others to refer to an individual by her preferred pronouns and alternative name, "will exacerbate the free speech crisis on campus. Strong-armed by the federal government, school bureaucrats will now leverage the rule's wildly expansive definition of sex-based harassment to penalize students, faculty, and staff who voice uncomfortable or unpopular opinions and ideas."¹³

Defense of Federalism: The federal government is likely to assert that the new Title IX regulation overrides state laws protecting parental rights, especially regarding gender identity and sexual orientation in public education. Nineteen states have existing parental rights laws, including WV, KS, MT, TX, UT, CO, AZ, NV, VA, OK, ID, WY, FL, GA, ND, IA, AL, MI, and NC. Title IX has effectively overridden these state laws which safeguard parents' fundamental right to direct their child's upbringing.

CALLS TO ACTION

Federal: Beginning April 19, 2024, both chambers have 60 days to mount a Congressional Review Act challenge in the form of a joint resolution of disapproval of the Title IX rule changes. We recommend that you:

- review the CRA: <https://crsreports.congress.gov/product/pdf/IF/IF10023>
- send a [letter](#) to your Congressional Representative citing the "The Congressional Review Act."

State: In coming weeks, public interest litigators and/or attorneys general will bring legal action in the hopes of obtaining a preliminary injunction to stop the Department of Education from enforcing these new regulations.¹⁴ In the meantime,

- send a [letter](#) to your State Representative urging them to pass a [Parent Bill of Rights](#) to protect against this Title IX overreach.
- cite and send the April 24, 2024, Moms for Liberty [letter](#) to the National Governors Association Members to your governor and states attorney generals in order to encourage and empower them to protect parental rights by countering these unlawful changes.
- send one of the existing state superintendents [letters](#) to your state Superintendent of Education or Education Commissioner as a sample response to federal authorities, other state leaders, and local districts.
- state conservative education leaders and elected officials are [pushing back](#) against Biden Administration policy changes.

Local: Send a [letter](#) to your school board and CC your school district superintendent and school principal, strongly encouraging them to resist implementing these unconstitutional Title IX rule changes. Forward to your school site administrators.

No child is born in the wrong body. Boys and girls are perfect just as they are. Gender ideology has no place in public schools.

Your parental rights do not stop at the classroom door.

<https://www.coloradoan.com/story/news/2023/05/04/poudre-school-district-being-sued-over-transgender-policies/70183728007/>; Title IX Unofficial Final Rule: "Nondiscrimination on the Basis of Sex Education Programs in Education Programs or Activities Receiving Federal Financial Assistance," www2.ed.gov, Office for Civil Rights, Department of Education, April 19, 2024, <https://www2.ed.gov/about/offices/list/ocr/docs/t9-unofficial-final-rule-2024.pdf>.

¹¹ Sarah Parshall Perry, Heritage Foundation, April 23, 2024, Newsmax Television Interview.

¹² Sarah Parshall Perry, Title IX: @SarahPPerry & kimmiehermann weigh in w/ @4tiffanyjustice, x.com, April 24, 2024, <https://twitter.com/Moms4Liberty>.

¹³ Press Release, dfipolicy.org, April 19, 2024, Defense of Freedom Institute, <https://dfipolicy.org/statement-dfi-releases-statement-on-biden-administrations-final-title-ix-rule/>

¹⁴ Katherine Knott, "Why Conservatives Want New Title IX Rule Blocked," insidehighered.com, April 25, 2024, <https://www.insidehighered.com/news/government/2024/04/25/conservatives-plan-lawsuits-block-new-title-ix-rule>