

# Congress of the United States

Washington, DC 20515

November 16, 2023

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

Dear Secretary Cardona:

The Committees on Oversight and Accountability and Education and the Workforce are investigating the Department of Education's (the Department) decision to drastically revamp its Title IX regulations. The Committees are concerned that your efforts to gut due process protections for accused and accusing students, redefine "sex discrimination" to include "gender identity," and otherwise abandon established regulations protecting women and girls are improperly motivated and destructive to American students.

On July 12, 2022, the Department published a proposed rulemaking titled *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance* that amends the Department's implementing regulations for Title IX of the Education Amendments of 1972.<sup>1</sup> According to the Department, the proposed rewrite of the Title IX regulations is necessary to provide "greater clarity regarding the scope of sex discrimination."<sup>2</sup> Rather than providing clarity, the proposed regulations weaken essential protections for students that had been secured by Secretary Betsy DeVos and the Trump administration.

In May 2020, Secretary DeVos finalized regulations that reshaped the Department's Title IX regulations and provided procedural fairness for both the accused and the accusing students. The final regulations took nearly three years to develop and survived five court challenges from Democrat controlled states and the American Civil Liberties Union (ACLU).<sup>3</sup> Contrary to the proposed regulations that your Department has put forth, the Title IX regulations implemented under Secretary DeVos ensured that both the accuser and the accused were afforded essential due process protections.<sup>4</sup> These protections included giving the accused the right to an attorney, to review evidence produced against them, and to have a representative question the accuser.<sup>5</sup> The regulations implemented under Secretary DeVos also added a right of appeal, allowed the parties

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<sup>1</sup> *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 87 Fed. Reg. 41390 (proposed July 12, 2022) (to be codified at 34 C.F.R. § 106).

<sup>2</sup> *Id.*

<sup>3</sup> KC Johnson, *Expect the Title IX Inquisition*, TABLET (June 28, 2022).

<sup>4</sup> *Id.*

<sup>5</sup> Frederick M. Hess, *DeVos Gets Title IX Right*, AMERICAN ENTERPRISE INSTITUTE (May 7, 2020).

to opt for informal remediation, and permitted the institution to raise the level of evidence required from the de minimis standard “preponderance of evidence.”<sup>6</sup> Your Department’s proposed rewrite of the Title IX regulations will eviscerate the safeguards that ensured due process for all students.

For example, the proposed regulations would reinstate the “single-investigator model” for allegations of sexual assault that was employed during President Obama’s administration. Under this model, a lone Title IX investigator effectively takes on the role of investigator, jury, and judge, and leaves the accused student with little ability to put forward a defense.<sup>7</sup> The Obama Administration enforced the policy through a 2011 “Dear Colleague” letter that deprived students of any semblance of due process protections and placed universities on dubious legal footing.<sup>8</sup> In fact, of the approximately 300 lawsuits filed under President Obama’s 2011 policy, federal and state courts ruled against universities over half the time.<sup>9</sup>

Moreover, the proposed Title IX regulations contain a troubling provision that will harm women and girls across the country. Your Department’s proposed regulations redefine “sex discrimination” to include “discrimination on the basis of gender identity.”<sup>10</sup> By redefining “sex discrimination” to include “gender identity,” the proposed regulations, along with additional proposed regulations addressing athletics, will effectively wipe out female-only sports and spaces in every federally funded school. Sex discrimination that includes discrimination on the basis of “gender identity” will virtually ensure that young women will “lose out on opportunities, scholarships, and even their basic rights to privacy and safety.”<sup>11</sup> The regulations put forward under your leadership and at your direction, if finalized, will only serve to harm the women that Title IX was designed to protect.

The Committees are deeply concerned with the Department’s decision to alter its Title IX regulations and are investigating whether any external organizations played an outsized role in the development of the proposed regulations. In order to assist the Committees with their investigations, please provide the following documents and communications no later than November 30, 2023. The timeframe for these requests is January 1, 2021 – April 13, 2023.

1. All communications between Secretary Miguel Cardona and any external organizations, individuals, or entities relating to the Department’s May 2020 final rule *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, including any communications pertaining to due process protections and grievance procedures outlined in the Department’s Title IX regulations.
2. All communications between Chief of Staff Sheila Nix and any external organizations, individuals, or entities relating to the Department’s May 2020 final rule *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving*

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See U.S. Dep’t of Education, Office for Civil Rights, *Dear Colleague* (Sept. 22, 2017).

<sup>9</sup> See Frederick M. Hess, *DeVos Gets Title IX Right*, AMERICAN ENTERPRISE INSTITUTE (May 7, 2020).

<sup>10</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 Fed. Reg. 41390 (proposed July 12, 2022) (to be codified at 34 C.F.R. § 106) (Emphasis added).

<sup>11</sup> The Editors, *Biden’s Abusive Title IX Rewrite*, NATIONAL REVIEW (Sept. 22, 2022).

- Federal Financial Assistance*, including any communications pertaining to due process protections and grievance procedures outlined in the Department’s Title IX regulations.
3. All communications between Assistant Secretary Catherine Lhamon and any external organizations, individuals, or entities relating to the Department’s May 2020 final rule *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, including any communications pertaining to due process protections and grievance procedures outlined in the Department’s Title IX regulations.
  4. All communications between Chief of Staff (Office for Civil Rights) Sam Ames and any external organizations, individuals, or entities relating to the Department’s May 2020 final rule *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, including any communications pertaining to due process protections and grievance procedures outlined in the Department’s Title IX regulations.
  5. All communications between Deputy Assistant Secretary Randolph Wills and any external organizations, individuals, or entities relating to the Department’s May 2020 final rule *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, including any communications pertaining to due process protections and grievance procedures outlined in the Department’s Title IX regulations.
  6. All communications between Deputy Assistant Secretary Monique Dixon and any external organizations, individuals, or entities relating to the Department’s May 2020 final rule *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, including any communications pertaining to due process protections and grievance procedures outlined in the Department’s Title IX regulations.
  7. All agency records, guidance documents, enforcement policies, and presentations that pertain to the Department’s interpretation of Title IX and “gender identity.”
  8. All communications between Secretary Miguel Cardona and any external organizations, individuals, or entities relating to the Department’s enforcement, administration, or interpretation of Title IX on the basis of “gender identity.”
  9. All communications between Chief of Staff Sheila Nix and any external organizations, individuals, or entities relating to the Department’s enforcement, administration, or interpretation of Title IX on the basis of “gender identity.”
  10. All communications between Assistant Secretary Catherine Lhamon and any external organizations, individuals, or entities relating to the Department’s enforcement, administration, or interpretation of Title IX on the basis of “gender identity.”
  11. All communications between Chief of Staff (Office for Civil Rights) Sam Ames and any external organizations, individuals, or entities relating to the Department’s

The Honorable Miguel Cardona

Page 4 of 4

November 16, 2023

enforcement, administration, or interpretation of Title IX on the basis of “gender identity.”

12. All communications between Deputy Assistant Secretary Randolph Wills and any external organizations, individuals, or entities relating to the Department’s enforcement, administration, or interpretation of Title IX on the basis of “gender identity.”
13. All communications between Deputy Assistant Secretary Monique Dixon and any external organizations, individuals, or entities relating to the Department’s enforcement, administration, or interpretation of Title IX on the basis of “gender identity.”

To schedule the delivery of responsive documents or if you have questions regarding this request, please contact the Committee on Oversight and Accountability staff at (202) 225-5074 or the Committee on Education and the Workforce staff at (202) 225-4527. Attached are instructions for producing the documents and information to the Committees.

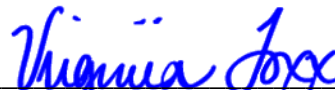
The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Further, the Committee on Education and the Workforce has legislative and oversight jurisdiction over the “organization, administration, and general management of the Department of Education” as well as over education matters described in the Rules of the Committee on Education and the Workforce and the Rules of the House of Representatives, 118th Congress.

Thank you for your prompt attention to this important investigation.

Sincerely,



Lisa McClain  
Chairwoman  
Subcommittee on Health Care and  
Financial Services  
Committee on Oversight and Accountability



Virginia Foxx  
Chairwoman  
Committee on Education and the  
Workforce

cc: The Honorable Katie Porter, Ranking Member  
Subcommittee on Health Care and Financial Services  
Committee on Oversight and Accountability

The Honorable Robert “Bobby” Scott, Ranking Member  
Committee on Education and the Workforce