

PARENT TOOLKIT

The 9 on Title IX

What you need to know about the Biden Administration's proposed changes to Title IX





AMERICA FIRST POLICY INSTITUTE

INTRODUCTION

This year marks the 50th anniversary of Title IX of the Education Amendments of 1972, legislation that applies to K-12 and postsecondary schools that received federal funding.

Title IX guarantees that “no person in the United States shall, on the basis of sex, be excluded from the participation in, be denied the benefits of, or be subject to discrimination in education and athletic programs on the basis of sex.”

The law’s legacy has been to equalize education opportunities for women, most famously in collegiate athletics. Title IX also requires schools to investigate instances of sexual harassment.

The Biden Administration’s proposed changes to Title IX regulations will reengineer K-12 and postsecondary education to advance a radical sexual identity agenda, harming students and families. By broadening the scope of sexual harassment to include sexual identity, sexual orientation, and sex stereotypes, the Biden Administration will **weaken parental rights, undermine female athletics by opening women’s competition to biological male athletes and deepen the campus free speech crisis.**

The rule also weakens due process protections for college students accused of sexual misconduct and is likely to be used to force colleges to provide medical treatment (and insurance) related to gender transition and termination of pregnancy.

What is the “9 on title IX?”

The Biden Administration proposed Title IX Changes Would:

1. Undermine parental rights and authority while empowering activist teachers promoting trans-ideology in our public schools.
2. Deny children basic protections for free speech and encourage investigations when students “misgender” classroom peers, jeopardizing religious liberty and freedom of speech.
3. Make schools unsafe or uncomfortable for women by opening intimate facilities like bathrooms and locker rooms to students based on gender identity.

4. Preempt state and local efforts to protect students from age-inappropriate sexual content.
5. Open K-12 girls' athletics competition to biological males, making competition unsafe and depriving young women of athletic and scholarship opportunities.
6. Destroy women's college athletics by allowing biological males to compete in female athletics and break women's records.
7. Permit colleges to reinstitute a "judge, jury, executioner" single-investigator disciplinary model that weakens due process protections for college students accused of sexual misconduct.
8. Require colleges to establish pronoun police, deepening the campus free speech crisis.
9. Require colleges to provide healthcare services related to "termination of pregnancy" and gender transition.

This toolkit overview 9 egregious ways the Biden Administration's Title IX proposed rule will impact children, families, and college students and what you can do to fight back!

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THE 9 ON TITLE IX

I. PARENTAL RIGHTS AND AUTHORITY

The Biden Administration’s Proposed Title IX Changes Would: Undermine parental rights and authority while empowering activist teachers promoting trans-ideology in our public schools.

The proposed regulation forbids discrimination based on gender identity or sex characteristics in K-12 schools. Experts [agree](#) that this provision of the rule will require school personnel to address students by their preferred pronouns and to extend gender-affirming counseling to children wrestling with their sexual identity. School-facilitated social transition can lead to medical transition at an early age, even before adulthood. Schools that do not support social transition are likely to be accused of discriminating based on gender identity, even if a student’s parents oppose affirming their son or daughter’s social transition. As a result, teachers could be forced to conceal information about students who change their names and pronouns from parents (or who visit the school counselor to talk about gender-related anxieties) if school personnel are concerned parents will not be supportive. To do otherwise would open the school to charges of unlawful sex discrimination and investigation by the Office of Civil Rights (OCR), putting federal funding at stake.

Don’t believe it? This is already happening around the country, including in Montgomery County, Maryland, where school district [policy](#) aims to affirm students’ gender identity even when “the family is nonsupportive [sic].” School staff is expressly required to deceive parents under some circumstances. As the policy explains, “the fact that students choose to disclose their status to staff members... does not authorize school staff members to disclose a student’s status to others, including parents/guardians.” The Biden Administration’s new Title IX regulation would force schools around the country to adopt [similar](#) policies. The Administration has already issued a [“Notice of Interpretation”](#) warning schools that it plans to use OCR to investigate reports of individuals “being harassed... or subjected to sex stereotyping... because of their... gender identity.”

II. INVESTIGATIONS OF CHILDREN FOR “MISGENDERING”

The Biden Administration’s Proposed Title IX Changes Would: Deny children basic protections for free speech and encourage investigations when students “misgender” classroom peers, jeopardizing religious liberty.

The new definition of sex-based harassment means that trans-identifying students will be able to complain to Title IX coordinators when students and teachers fail to use their preferred pronouns. Teasing and bullying related to gender identity or sex characteristics should, of course, be addressed by school officials. The proposed rule would make speech related to gender identity, sexual orientation, and sex characteristics that cause offenses reportable to Title IX coordinators (and the national Office of Civil Rights at the Department of Education), both of which are required to investigate all complaints. School districts around the country are already instituting policies that require compliance with trans students’ preferred pronouns. This means that young children can be disciplined for “sexual harassment” if they use pronouns that align with trans students’ biological sex but not their gender identity. In some cases, pronoun policies effectively compel students and teachers into speech that violates deeply held religious beliefs. The policies will also have the effect of chilling students’ speech on a range of issues related to gender identity, biological sex differences, and sexual orientation because no one will know what kind of conversations could get them reported and/or disciplined.

Don’t believe it? School district officials in Wisconsin filed a Title IX sexual harassment complaint against three *eighth-graders* who chose not to refer to a classmate using the plural pronouns “they” and “them.” A school district in Northern Virginia will start the fall 2022 term with a new rule in the student handbook: students in the fourth grade and above will be suspended for “malicious misgendering” and “malicious deadnaming.” A school teacher in Kansas was suspended for refusing to use a student’s preferred pronoun, even though she asked for an exception to the policy because it violates her religious beliefs.

III. UNSAFE SCHOOLS FOR WOMEN

The Biden Administration's Proposed Title IX Changes Would: Make schools unsafe for women by opening intimate facilities like bathrooms and locker rooms to students based on gender identity.

The new rule will force schools to open intimate facilities like bathrooms and locker rooms to students based on self-professed gender identity. We know from [Obama-era](#) guidance documents that creating private facilities for gender non-conforming students is not enough. This will create unacceptable safety risks for young women in the places they are most likely to feel most vulnerable. There have already been reports of violence in schools that have adopted such policies, including serious instances of sexual assault. When biological males are permitted to use women's change rooms, some young women will naturally choose not to take advantage of educational opportunities and facilities because they do not feel safe undressing around boys and men.

Don't believe it? In Loudon County, Virginia, a [transgender student sexually assaulted](#) a high school girl in the female restroom. Loudon County Public Schools was notified of the assault and failed to take appropriate action. School officials simply moved the offender to a different high school, where he committed an additional sexual assault, again, in a female bathroom. The Superintendent proceeded to lie to the public and deny any knowledge of this incident at a public-school board meeting. All-girls college preparatory schools, including [Harpeth Hall](#) in Nashville, Tennessee, have already come under intense pressure to admit biological male students who identify as female. Sex-separate adult spaces, including all-women colleges and prisons, have already been opened to trans-women who have not completed medical transition. In one instance, a female-identifying inmate at a women's prison [impregnated](#) two biological female inmates.

IV. AGE-INAPPROPRIATE SEXUAL CONTENT

The Biden Administration’s Proposed Title IX Changes Would: Preempt state and local efforts to protect students from age-inappropriate sexual content.

The proposed federal regulation is specifically designed to preempt state and local laws. This includes state and local initiatives designed to protect students from age-inappropriate sexual content. Title IX complaints will almost certainly be used to portray decisions about curricula and resources that do not satisfy activist demands for more instruction about gender identity and sexual orientation in early grade levels as “discriminatory.” The rule will also conflict with legislation designed to ensure schools are developing age-appropriate curricula as well as transparency legislation that empowers parents.

Don’t believe it? When Florida was debating its Parental Rights in Education Bill, a measure that prohibits classroom instruction regarding sexual orientation and gender identity in the K-3 public classroom, Secretary of Education Miguel Cardona issued a press release criticizing the legislation. The basis of his criticism was Title IX: “schools receiving federal funding must follow federal civil rights law, including Title IX’s protections against discrimination based on sexual orientation and gender identity.” When Florida passed the law in late March, Secretary Cardona issued a second press release encouraging “any student who believes they are experiencing discrimination, including harassment... [to] file a complaint with our Office for Civil Rights.” The new regulation would make it much easier for federal officials to investigate and penalize school districts and schools that put parental rights in education before trans-activist demands.

V. K-12 GIRLS' ATHLETICS COMPETITION

The Biden Administration's Proposed Title IX Changes Would: Open K-12 girls' athletics competition to biological males, making competition unsafe and depriving young women of educational opportunity.

Male athletes derive considerable athletic advantages from an androgenized body, including greater heart and lung capacity, additional muscle mass, higher bone density, and longer limbs. One [study](#) of elite male and female athletics performance found that “Just in the single year 2017, Olympic, World, and U.S. Champion Tori Bowie's 100 meters lifetime best of 10.78 was beaten 15,000 times by men and boys. (Yes, that’s the right number of zeros.)” Similar performance disparities were recorded in other sports; in some track and field events, hundreds of boys under the age of 18 outperformed the best adult female result posted in the study year. [Forcing women to compete against athletes who enjoy the performance advantages of male puberty is manifestly unfair. Additionally, it denies athletics opportunities \(including but not limited to scholarships\) to women, which Title IX was originally designed to expand.](#) This is the [reason 18 states](#) have taken action to protect girls' athletics. The Biden Administration's Title IX regulation would provide a basis for activists to challenge those laws and for the courts to invalidate them.

Don't believe it? The Biden Administration has already [filed](#) a “statement of interest” in a case challenging a West Virginia law that limits participation in single-sex female athletics competitions at the secondary and postsecondary levels to biological female athletes. The government argued that “A state law that limits or denies a particular class of people's ability to participate in public, federally funded educational programs... solely because their gender identity does not match their sex assigned at birth violates both Title IX and the Equal Protection Clause.” In other words, the federal government is *already* arguing that Title IX forbids state and local action to keep female-identifying biological male athletes out of women's sports.

VI. Women's College Athletics

The Biden Administration's Proposed Title IX Changes Would: Destroy women's college athletics by allowing biological males to compete in female athletics and break women's records.

Universities are already allowing female-identifying biological males to compete in female athletics. The current proposal states that “[a]dopting a policy... that prevents a person from participating in an education program or activity consistent with the person’s gender identity subjects a person to more than de minimis harm on the basis of sex”—i.e., it constitutes discrimination. Even though Congress allows sex separation in collegiate athletics, the proposed rule will encourage universities to open female athletics to trans-athletes, from intramurals to D-I competition, if national athletic federation eligibility rules do not forbid it. Where university administrators do not move fast enough, trans students will complain to Title IX offices. As biological male athletes compete against women in the pool and on the track in greater numbers, opportunities will be stripped from women, they will be less safe in competition, and women’s athletic scholarships could be awarded to biological male athletes. In this way, too, the Biden Administration’s proposed Title IX regulations are a betrayal of Title IX—legislation passed to *open* equal educational opportunities for women.

Don’t believe it? At the University of Pennsylvania, Lia Thomas became the first openly transgender athlete to win a Division-I National Collegiate Athletic Association (NCAA) national competition, smashing school and league records. U. Penn even nominated her for the NCAA “Woman of the Year” award, recognition that should have gone to a female athlete. The women on her team who have expressed concerns related to fairness and Thomas’s failure to cover her male genitalia in the women’s locker room have been bullied by diversity administrators and athletic staff into quiet compliance. While Lia Thomas is the highest profile example of a biological male trans-athlete competing in female athletics, there are dozens of other examples, spanning team sports from basketball, soccer, and volleyball to individual pursuits including cross-country and fencing. As more and more children are encouraged to transition their gender in K-12 classrooms, the number of biological males competing in women’s collegiate athletics will skyrocket.

VII. “JUDGE, JURY, EXECUTIONER” SINGLE-INVESTIGATOR DISCIPLINARY MODEL

The Biden Administration’s Proposed Title IX Changes Would: Permit colleges to reinstitute a “judge, jury, executioner” single-investigator disciplinary model and weakens due process protections for college students accused of sexual misconduct.

The Biden Administration’s proposed revision to Title IX would allow (and in some cases require) universities to revert to many features of the failed Obama Administration-era approach to investigating sexual assault, including the use of a judge-jury-executioner “single-investigator” model to investigate allegations of sexual assault and the error-prone “preponderance of the evidence” (more likely than not) standard of proof. That framework failed to meet rudimentary standards of due process and led to the discipline and expulsion of hundreds of students based on deeply flawed and sometimes biased investigations. The failures were so egregious that hundreds of students punished for sexual misconduct under the Obama Administration framework have sued their schools with overwhelming success in courts of law.

Don’t believe it? Courts are stepping in around the country to address appalling failures of due process. In a case involving Brandeis University, one judge characterized the university’s procedures—which school administrators said they established “in conformity to the various [Obama-era] guidance letters and policy statements”—as “closer to Salem 1792 than Boston, 2015.” Federal appeals courts have ruled that the Obama-era paradigm, which the Biden proposal would resurrect, did not protect students’ basic due process rights. As a result, the protections colleges are required to extend to students will vary widely depending on which federal appeals court has jurisdiction.

VIII. PRONOUN POLICE

The Biden Administration’s Proposed Title IX Changes Would: Require colleges to establish Pronoun Police, deepening the campus free speech crisis.

The framework proposed by the Biden Administration would require schools to investigate when students allege that speech regarding gender identity and sexual orientation has created an environment that negatively impacts learning opportunities. This will inevitably lead to student complaints about improper pronoun use and investigations into speech that challenge the Left’s narrative around sexual identity. When students can use the campus Title IX process to unleash burdensome and reputation-damaging investigations when others venture disfavored viewpoints, students and faculty stop exploring controversial views, and universities cease to play their truth-seeking role in society.

Don’t believe it? Students have complained to Title IX offices to punish faculty for criticizing Title IX administrators, for refusing to address male students by female pronouns, and even for academic research about the traditional family. A student at Michigan State University was [reported](#) for watching Ben Shapiro in his dorm room. At the University of Indiana, a student was [reported](#) for a “rude look” cast in the direction of a “trans feminine” student. The free speech crisis on college and university campuses has been well-documented by [large, empirical studies](#). Students—especially conservative students—self-censor at alarming rates fearing negative repercussions if they express their true opinions. The proposed Title IX regulation will make things even worse.

IX. COLLEGE HEALTHCARE SERVICES

The Biden Administration’s Proposed Title IX Changes Would: Require colleges to provide healthcare services related to “termination of pregnancy” and gender transition.

In addition to expanding the definition of sexual harassment to include “gender identity,” the Biden Administration’s proposed Title IX regulation redefines “pregnancy or related conditions” to include “medical conditions related to... termination of pregnancy” and “recovery from... termination of pregnancy.” As a result of the new definitions, students will be able to allege “sex discrimination” under Title IX if schools that provide medical services (or insurance) do not cover treatment related to gender transition and termination of pregnancy. This will be extremely challenging for many schools, particularly in states with strong protections for unborn life.

The changes could pose special difficulties for university employees working in healthcare roles who have religious objections to providing some forms of medical care related to abortion or gender transition. While the proposed regulation includes an important section exempting institutions that are controlled by a religious organization, a separate rulemaking to revise the Trump Administration’s “Free Inquiry and Religious Liberty” rule has been announced and is underway. That process could result in a new rule that rescinds or revises the religious liberty protections in Section 106.12 of the existing Title IX rule. The effect would be to force religious institutions to make medical care available to students that violates strongly held faith commitments.

Don’t believe it? The Biden Administration has already issued guidelines that expand the definition of sexual discrimination to prohibit hospitals, including those operated by religious organizations, from opting not to provide health services related to medical gender transition. Similarly, when the Obama Administration issued regulations defining the types of preventative care employers were required to cover for employees under the Patient Protection and Affordable Care Act, the list included sterilization procedures and contraceptives (including drugs that can induce abortion after fertilization). Catholic organizations, businesses, and universities fought the mandate. But it took years, a series of legal victories, and Trump Administration executive actions (including the “Free Inquiry and Religious Liberty” rule) to fully restore the free exercise rights of religious organizations and universities. If the Free Inquiry and Religious Liberty rule is rescinded or substantially weakened, the story will repeat on college and university campuses.

CALL TO ACTION—HOW TO GET INVOLVED

It is up to you—concerned parents and citizens—to protect the integrity of public education in the U.S. from a radical attempt to rewrite Title IX regulations. You can fight for our children and schools in the following ways:

1. Click [here](#) to comment on the Biden Administration’s proposed rule by September 12, 2022. Use this document for information and ideas on what to comment on! (Details on the comment process are below).
2. Share this fact sheet and the link to the comment portal: <https://www.federalregister.gov/documents/2022/07/12/2022-13734/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>
3. Utilize your social media accounts to alert others that the proposed Title IX regulation will harm women and girls and threaten parents’ rights.
4. Demand transparency from your local school board on what this would mean for your children and download AFPI’s [parent toolkit](#).
 - a. Email your local school board members
 - b. Call your school board members
 - c. Attend school board meetings and speak out
5. Educate federal lawmakers on the definition of “sex” according to biology in Title IX of the Education Amendments of 1972.

Make your voice heard and help protect public education. Concerned citizens have until ***September 12 to file a public comment*** opposing the rule change.

Public comments are important for several reasons:

- A high number of comments is a strong signal to the media, federal administrators who write regulations, and legislators that the issue is very important to the public.
- The Department of Education is legally required to take every comment into account. Thoughtful criticism can lead to important changes that improve the final rule.
- When agencies neglect to respond to comments or fail to address serious deficiencies highlighted during the comment period, courts can strike them down under the Administrative Procedures Act.

Visit the Federal Register [comment portal](#) for the proposed Title IX regulation to submit your public comment.

TIPS:

1. Personal insights and pointed questions make for effective submissions.
2. Public comments can be made anonymously for those who would like to share personal experiences.
3. **Be sure to include the Docket ID at the top of your comment: ED-2021-OCR-0166.**
4. Remember: comments are due September 12, 2022.

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