



September 12, 2022

Submitted electronically

Alejandro Reyes
Program Legal Director
U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, SW
PCP-6125
Washington, DC 20202

Re: Public comment regarding the proposed rule “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance”
RIN: 1870-AA16

Dear Director Reyes:

The Center for Human Dignity at Family Research Council (FRC) respectfully submits the following comments regarding the proposed rule issued by the U.S. Department of Education entitled, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.” This proposed rule is unnecessary and would negatively impact women working at or attending educational institutions.

On June 23, 1972, Title IX was passed to outlaw discrimination based on sex in education programs. The resulting influx of women into universities and, shortly thereafter, the workforce, should have resulted in an entirely new world that embraced women in their entirety—including their capacity to be mothers—and carved out space for them in the classroom and boardroom.

However, just seven months after Title IX was passed, the U.S. Supreme Court handed down *Roe v. Wade*, legalizing elective abortion. The grand societal transformation to embrace women as they never materialized to the extent that it should have. Instead, women were largely expected to conform to a man’s world, and abortion was presented as a means by which this was possible.

In its original form, Title IX was neutral on abortion. In 1988, language was added that made this neutrality explicit:

Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion (20 U.S.C. § 1688).

On June 24, 2022, the U.S. Supreme Court overturned *Roe* in *Dobbs v. Jackson Women's Health Organization*. In doing so, the Court removed a significant roadblock to the societal changes that ought to have happened with the passage of Title IX. Women have every right to actively participate in education and the workplace as they are, but *Roe* enabled the cultural expectation that women should end their pregnancies to participate in education and the workplace. Billed as “reproductive freedom,” the choice to abort was, for many women, a choice to keep their educational and career opportunities and a testament to their lack of autonomy in a society that catered to men and didn't make room for motherhood. Culture should be expected to adapt to support women who are mothers and to create a path for these women to actively contribute in schools and the workplace. After all, if the United States truly values women and their contributions to society, women who are mothers should also be valued.

Changing Title IX to include abortion imposes the current administration's views onto the American people. It also ensures that schools and workplaces will continue not embracing women in their entirety. Including abortion in Title IX is akin to telling women that in order to be of value in the educational sphere, they must be the same as men. This is demeaning and sexist.

The proposed rule changes give the termination of an unborn child's life equal status with pregnancy and childbearing. While abortion certainly is a traumatic event in a woman's life, equating it with giving birth and raising a child is nonsensical, as abortion does the complete opposite of these two things by ending a child's life.

Placing childbearing and abortion on equal ground indicates that the government believes killing an unborn child and bringing an unborn child into the world are equal goods in society. This is simply false. Children represent incalculable good. They have the opportunity to contribute to society, become model citizens, and change the world. Abortion, on the other hand, does irreparable harm. It ends the life of a unique, unrepeatably child and breaks the heart—and sometimes the body—of the mother. The proposed change requires seeing these two actions as morally equivalent and equally valuable. Abortion harms our society. Childbearing advances it. The two can never be seen as equal.

In addition to these issues, there are several questions we have with regard to the new Title IX regulations. These questions are outlined below:

1. There are colleges and universities that hold deep moral convictions and that were founded upon these beliefs. One such institution is Grove City College in Grove City, Pennsylvania, which was founded with the intent of providing a Christ-centered education to its students. Since the mid-1980s, Grove City has refused federal student aid in an effort to maintain its independence. Under this proposed rule, would Grove City and other institutions like it be forced to violate their deeply held moral convictions despite not receiving federal funds? Will other colleges and universities founded upon deeply held moral convictions be forced to decide between accepting students' federal student aid and upholding their deeply held moral beliefs? The agency must clarify whether this will be the case.
2. One of the hallmarks of university life is the ability to express ideas freely. Many institutions, such as the University of Maryland, which has an incredibly active pro-life student-led

organization, host numerous pro-life events and speakers throughout the year. These events serve to further thinking and conversation around one of the most hotly debated issues facing our nation. Under the proposed rule, will these events be terminated? Will they be considered harassment? Will the proposed change to Title IX dictate which speech is protected and which is not?

3. Professors, especially those in the sciences, often have chosen a career in academia because it allows them to continue to search for answers to life's unanswered questions. If their expertise leads to conclusions inconsistent with Title IX's proposed rule, will they be silenced? Will a biologist who speaks of the humanity of the unborn child in the womb jeopardize the university's Title IX funds? Will a neonatology professor's lesson on fetal pain be censored in order to keep the medical school's Title IX funds?
4. Currently, state abortion laws vary. Some states, like California, offer no protection for an unborn child. Other states, like Texas, provide full protection for an unborn child. Under the proposed rule, if a student from a California university wishes to get an abortion while attending a university event in Texas, will Title IX preempt Texas' pro-life laws?
5. Many students looking to enter the field of medicine do so with the desire to help others. For students of deeply held religious beliefs, this often includes attending a medical school that aligns with their religious values. Will this proposed rule require faith-based medical schools to provide training in abortion even if such procedures are directly opposed to the religious beliefs of said schools and their students?
6. We applaud the desire to support pregnant women and mothers and accommodate pregnancy and breastfeeding within educational contexts by requiring lactation rooms. However, we are asking for clarification as to whether these lactation rooms will be reserved for biological females only. Breastfeeding is an intimate act during which a mother and her baby are both extremely vulnerable. The presence of biological males in lactation rooms would threaten the comfort and potentially the safety of breastfeeding mothers.
7. There are a number of other steps that educational institutions can take to promote equality between men and women. Has the agency considered the additional provision of requiring changing tables in men's and women's restrooms? The inability to change a child in a dignified setting is a hindrance to many mothers and fathers who are attending school.
8. Is there any reason for the proposed change? Can the agency identify instances in which the current language of Title IX was insufficient for ensuring that men and women have the same educational opportunities?

The proposed changes to Title IX that equate abortion with childbearing and parenting will cause significant harm to women. The legalization of abortion in the United States has hindered—not helped—the advancement of women. It has given society an excuse to remain inert and expect women

to conform their lives to a status quo shaped by and better suited to men. Title IX is meant to provide more opportunities—to level the playing field—for women. The proposed changes do the opposite.

We look forward to your response.

Respectfully submitted,

/s/ Mary Szoch, M.Ed.
Director of the Center for Human Dignity

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