

June 17, 2024

The Honorable Virginia Foxx
Chairwoman
Committee on Education and the
Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Bobby Scott
Ranking Member
Committee on Education and the
Workforce
U.S. House of Representatives
2328 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Foxx and Ranking Member Scott:

The Defense of Freedom Institute for Policy Studies (DFI) wishes to register its support for H.J.Res. 165, which would repeal the Biden administration’s radical rewrite of Title IX of the Education Amendments of 1992. The U.S. Department of Education will begin to enforce the Biden Title IX rule as the law of the land beginning August 1, 2024, unless Congress and the courts act to stop them.

DFI is well versed in Title IX. DFI’s co-founders were directly involved in the development of the 2020 Title IX rule as senior advisors to former U.S. Secretary of Education Betsy DeVos; Bob Eitel was an architect of the 2020 rule. Currently, DFI’s litigation team is serving as co-counsel with the state Attorney General offices of Louisiana, Mississippi, Montana, and Idaho in a lawsuit against the Biden administration that successfully obtained the nation’s first preliminary injunction against the new Title IX rule.

Judge Doughty noted in his recent decision in *Louisiana v U.S. Department of Education*, “The Final [Biden] Rule is not a clarification of existing laws – it is a new law enacted by an administrative agency, not Congress.” He makes clear the Biden administration has once again abused the rule-making process to achieve an extremist agenda without regard for Congressional intent.

Here's how:

Biden’s final Title IX rule redefines “sex” to include gender identity. As the bipartisan [“Our Bodies Our Sports” coalition](#) of star female athletes has highlighted in its cross-country bus tour, this provision forces schools to allow boys and men who identify as female to compete against girls and women. This is



unfair, and it flies in the face of Congressional intent and the original meaning of Title IX. The administration took a law that helped women's sports flourish for 50 years and has distorted it into one that discriminates against female athletes.

From its public statements, the Biden administration seems to believe that it would be cruel and hateful to keep female-identifying males out of women's sports competitions. The fact is, allowing men to compete against women is cruel to female athletes.

Our concerns are not contrived. The Biden rule prohibits any policies that prevent students from taking part in a school's programs or activities that are "consistent with their gender identity." This would brand schools as violators of federal law if they block a man who identifies as female from playing on women's sports teams or accessing women's bathrooms and locker rooms.

Unfortunately, the Biden Title IX rule has other problems that go beyond ending protections for women's sports. The new rule also:

- **Tramples Parent Rights.** Biden's rule will allow schools, including public elementary and secondary schools, to affirm a student's gender identity without parental approval or knowledge. School officials will be able to provide undisclosed counseling to a child about gender identity issues and refer a child for medical attention.
- **Threatens Free Speech and Academic Freedom.** Biden's Title IX rule defines sexual harassment so broadly that teachers, professors, and other staff will be forced to police speech. Even misgendering (using the wrong pronoun) would constitute a Title IX violation.
- **Erodes Due Process Protections.** The DeVos rule of 2020 codifies a clear process for handling sexual assault cases, prioritizing the needs of victims while protecting the rights of the accused. The new rule removes clarity around due process and essentially invites colleges and universities to each invent their own. For example, a school could allow a student to review the evidence in a case, as required under the DeVos rule, or it might only provide a summary of the evidence.

The Biden rule even allows use of the notorious "single investigator" model, where a single individual using a minimal standard of proof is empowered to investigate, prosecute, and adjudicate a sexual harassment claim.



Ignoring binding court rulings, the Education Department also allows colleges and universities to dispense with hearings and cross examination by advisors in Title IX disciplinary proceedings.

The Defense of Freedom Institute—a nonpartisan organization founded in 2021 to defend and expand freedom in our schools, colleges and workplaces—will continue to fight on behalf of Congress’s non-discrimination goals in Title IX. Apart from the Biden Title IX rule, we would encourage Congress to take formal action to remove any ambiguity around its intentions regarding Title IX. Until that happens, schools and colleges will be at the mercy of the political back-and-forth in Washington, D.C.

Sincerely,

Robert S. Eitel
President & Co-founder

Jim Blew
Co-founder

cc: Members of the U.S. House of Representatives