



Women's Human Rights Campaign

March 17, 2021

Miguel Cardona

Secretary of Education

US Dept of Education

400 Maryland Avenue, SW
Washington, D.C. 20202

RE: Executive Order 13988: Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation

Dear Secretary Cardona:

I wrote to you previously, on March 8th, in my capacity as Chair of the US Chapter of the international Women's Human Rights Campaign. I would like to follow up with additional information about the legal and tangible harms posed to women and girls and urge you, as you conduct your review ordered by President Biden, to pause any proposed changes to regulations, policies, and guidances pending a thorough impact assessment. Treating males who "identify" as women and girls as if they are female has profound implications for women's education, sport, privacy, dignity and safety. Such far-reaching changes to Civil Rights law should not be undertaken in haste.

Sports

Passage of Title IX in 1972 banned discriminatory practices such as expelling girls from school for becoming pregnant, excluding women from some colleges and universities, using different admission criteria for women and men, and limiting the number of women admitted to professional programs such as medicine and law. These prohibitions, and others, dramatically improved educational attainment for women and girls. Males who "identify" as female do not face these discriminatory practices. They are interested, however, in competing in female sport and using private female spaces such as locker rooms and restrooms.

Title IX was a bonanza for female sport because it required educational institutions receiving public funds to equitably distribute resources to males and females. Prior to this time, girls and women did not have paid coaching, uniforms, funds for travel to competitions or fair access to athletic facilities. Making these resources available to women and girls enabled the growth and development of female sport and is a major factor in US dominance in international women's sports.

Proponents of female athletics argue that sports participation yields benefits beyond scholarships, health, and fitness. They cite statistics indicating that girls who participate in sports are less likely to become pregnant in high school, have more self confidence, and that 80% of female executives of Fortune 500 companies have a sports background.

Allowing males who “identify” as women and girls to compete in female sport will undermine the gains made in the last half century. Males have many advantages over females in sport, including, but not limited to, larger hearts, greater lung capacity, more fast-twitch muscle fibers, and longer and stronger bones. The performance gap is such that in 2017 alone, 744 high school boys bested the 100 meter record of the fastest female athlete of all time – Florence Griffith Joyner. These advantages are not significantly mitigated by temporary suppression of testosterone. A recent meta-analysis of 12 longitudinal studies of suppression of testosterone in males “identifying” as female found only a 5% reduction in muscle mass after a year. Males identifying as women retained 13-39% more muscle mass than females.

Further, many school boys who “identify” as girls have not undergone any medical “transition” treatment before competing in female sport. Andraya Yearwood, for example, had not undergone any medical treatment prior to competing against girls. Since 2017, Yearwood and another boy “identifying” as a girl, Terry Miller, have won between them 15 Connecticut girls’ track events. Last year, the Department of Education determined that allowing males claiming “female identity” to compete in women’s sport is a violation of Title IX.

Legal Considerations

In his executive order, President Biden asserts that the Supreme Court decision *Bostock v Clayton County* (2020), which involved a set of employment discrimination cases in violation of Title VII, also applies to Title IX. In January 2021 the Dept of Education legal counsel issued a memorandum explaining why *Bostock* does not apply to Title IX. In a significant passage concerning boys who “identify” as girls in female spaces such as locker rooms and restrooms, the memo states:

Title IX text is very different from Title VII text in many important respects. Title IX, for example, contains numerous exceptions authorizing or allowing sex-separate activities and intimate facilities to be provided separately on the basis of biological sex or for members of each biological sex.

President Biden has called for science-based and anti-discriminatory public policies. Dept of Education policies and practices that allow boys who “identify” as girls to

compete in female sport are scientifically unjustifiable, discriminate against girls, and are quite possibly illegal. Girls and women deserve fairness in sport as well as privacy, dignity, and safety in our private spaces. WHRC USA urges you to uphold the spirit and letter of Title IX and to pause any proposed changes to policy and regulations emerging from the Executive Order pending an impact assessment.

WHRC USA appreciates the opportunity to share with you our concerns, and I would be happy to answer any questions you might have about the necessity of protecting the sex-based rights of women and girls. Please contact me at info@womensdeclaration-usa.com if I can be of further assistance.

To learn more about our organization, visit www.womensdeclaration.com

Best regards,

A handwritten signature in black ink, appearing to read "Vajra Ma". The signature is fluid and cursive, with the first name "Vajra" being more prominent than the last name "Ma".

Vajra Ma

Chair, Women's Human Rights Campaign USA

Women's Human Rights Campaign-USA is the US chapter of an international organization dedicated to protecting women's sex-based rights. Our founding document, the *Declaration on Women's Sex-Based Rights*, re-affirms women and girls' sex-based rights as enumerated in the 1979 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and subsequent international agreements, and challenges the discrimination we experience from the replacement of the category of sex with that of 'gender identity'. The *Declaration* is a clear call to law and policy makers to retain the sex-based biological definition of woman. WHRC is a nonpartisan organization.