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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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March 20, 2024

VIA ELECTRONIC TRANSMISSION

Hon. Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Cardona:

Over the last three years, the Biden Administration has sought to rewrite the fundamental purpose of Title IX through agency guidance and the rulemaking process. It has done so through a Department of Justice Office of Civil Rights memorandum, a U.S. Department of Education (DepEd) notice of interpretation, and, mostly recently, through notice-and-comment rulemaking.¹

The U.S. Senate Committee on Health, Education, Labor, and Pensions (HELP) is continuing its investigation into the impact that the rollback of protections for women's sports has on female athletes. The findings from this investigation are extremely concerning, as they should be to the Biden Administration. Women who have competed against athletes who identify as transgender believe that the situation they face is profoundly unfair. Their needs have been sidelined, their privacy has been invaded, and their voices have been silenced. While some of these women have spoken out in the media, others feared retribution and retaliation.

Their concerns are justified. The Biden Administration's proposed Title IX athletics rule strikes a blow at the very heart of Title IX protections that Congress specifically enacted in order to ensure equal opportunities for women. Its proposed athletics rule promises to invalidate strong protections for women's sports that have recently been adopted by some states, and it imposes a burden of proof on institutions choosing to take the optional, difficult path of adopting protections to ensure safe and fair competition for female athletes. The Biden Administration owes these athletes an

¹ Memorandum from Principal Deputy Assistant Attorney Gen. Pamela S. Karlan, Civil Rights Div., U.S. Dep't of Justice to Federal Agency Civil Rights Directors and Gen. Counsels (Mar. 26, 2021), <https://www.justice.gov/crt/page/file/1383026/download>; Enforcement of Title IX of the Educ. Amendments of 1972 With Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*; 86 Fed. Reg. 32637 (June 22, 2021); 88 Fed. Reg. 22860 (Apr. 13, 2023).

explanation for why it attempting to strip away critical protections for women’s sports that have been in place for nearly 50 years.

During the investigation, a former DeptEd official explained to Committee staff that states, high school athletic associations, and other stakeholders regularly reach out to DeptEd to request technical assistance and feedback on proposed athletic policies to ensure that their proposed policies are consistent with federal law. DeptEd’s Outreach, Prevention, Education and Non-discrimination (OPEN) Center website states that DeptEd’s Office of Civil Rights (OCR) “provides technical assistance and support to schools, educators, families, and students to ensure better awareness of the requirements and protections of federal non-discrimination laws.”² Here, however, it is unclear whether the Biden Administration’s effort to rewrite the purpose of Title IX has extended to any technical assistance and/or feedback that DeptEd may have provided to states, athletic associations, and other stakeholders.

As Congress considers proposals to amend Title IX and protect women’s sports, it is imperative that it know what informal advice and feedback DeptEd has provided to stakeholders relating to requirements under Title IX. Accordingly, please respond to the following questions, on a question-by-question basis, no later than April 4, 2024.

1. Please provide a full and complete list of DeptEd offices and officials responsible for communicating with states, schools, athletic associations, and other stakeholders regarding their obligations under the Title IX athletics rule, 34 CFR 106.41.
2. Please provide a list of all stakeholders who have communicated with DeptEd offices or officials since January 20, 2021, concerning technical assistance or feedback on proposed athletic participation policies relating to athletes who identify as transgender. Please provide all related records, including all related electronic communications.
3. Has DeptEd provided any technical assistance or feedback to states, schools, athletic associations, or other stakeholders urging them to take actions consistent with the Biden Administration’s proposed, but not-yet-finalized, Title IX athletics rule? If so, which schools has DeptEd given technical assistance or feedback to, and was the assistance given before or after DeptEd’s April 13, 2023, notice of proposed rulemaking? Please produce all related records.
4. Please provide all communications between DeptEd and the National Collegiate Athletic Association (NCAA) from January 20, 2021 to the present.
5. When preparing its Title IX proposed rule, did DeptEd consult with female athletes, parents, coaches, and medical professionals to understand the psychological impact that competition with male athletes has on female athletes? If yes, please provide all related feedback. If not, why not?

² OCR’s Outreach, Prevention, Education and Non-discrimination (OPEN) Center U.S. DEPARTMENT OF EDUCATION, <https://www2.ed.gov/about/offices/list/ocr/open/index.html> (last visited February 6, 2024).

Thank you for your attention to this important matter.

Sincerely,

Bill Cassidy, M.D.

Bill Cassidy
Ranking Member
Senate Committee on Health, Education,
Labor and Pensions

A handwritten signature in blue ink, appearing to read "Tommy Tuberville". The signature is stylized and cursive.

Tommy Tuberville
Member
Senate Committee on Health, Education,
Labor and Pensions