



July 27, 2022

President Joseph R. Biden, Jr.  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President,

We write to you on behalf of the girls, women, and children in our states who will be impacted by the U.S. Department of Education’s (DOEd) and U.S. Department of Agriculture’s (USDA) proposed rule and policy changes with regard to the interpretation of Title IX.

Through both departments, your Administration proposed changes that misunderstand the purpose of Title IX, which was to prevent discrimination “on the basis of sex” in education programs, including activities such as athletic competitions. At the time of its passage 50 years ago, Title IX was intended to provide equal opportunity for biological females in the classroom and on the playing field. It created an avenue for so many young American girls to compete and achieve, experience the thrill of victory and learn the lessons of defeat, and open the door to scholarships and other paths towards greater opportunity.

Over the past two years, we have heard calls from many in our society to “trust the science” with regards to the COVID-19 pandemic. We ask your Administration to trust the science on human biology; realize that there are real, wonderful biological differences between women and men; understand that those differences impact us in many ways—some subtle, some profound; and recognize that athletic competition is one of the arenas in which these differences are the most striking. A strong majority of Americans recognize this reality with 62% of Americans responding that students should “play on teams that match birth gender” according to a 2021 Gallup poll.

Nevertheless, your Administration has continued to push misguided reinterpretations of Title IX that hurt girls, women, and all children across our country.

First, your USDA announced a purported “policy update” that now requires state and local agencies, program operators, and sponsors that receive funds from USDA for Food and Nutrition Services to investigate allegations of discrimination based on gender identity or sexual orientation. This change will have drastic impacts on the interpretation of Title IX for the purposes of the federal government’s National School Lunch Program as well as other programs administered by the USDA under the Supplemental Nutrition Assistance Program.

Shortly after the release of the USDA policy update, DOEd announced proposed rule changes that would also include sexual orientation and gender identity as protected classes under Title IX. We ask your

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Administration to immediately withdraw this USDA policy update and amend DOEd's proposed rule accordingly.

As Republican Attorneys General recently wrote to you, "[B]y vastly expanding the concept of 'discrimination on the basis of sex' to include gender identity and sexual orientation, the [USDA] Guidance does much more than offer direction. It imposes new—and unlawful—regulatory measures on state agencies and operators receiving federal financial assistance from the USDA."

During the ongoing national state of emergency for the COVID-19 pandemic, USDA extended the National School Lunch Program to all school age children. Before the pandemic, more than half of America's children were eligible for these dollars according to the National Center for Education Statistics. To be clear, your Administration would take lunch money away from our kids and grandkids in pursuit of a radical agenda that has no basis in science and is not supported by the vast majority of the American people.

The USDA's policy update was also announced in a manner that ignores the Administrative Procedures Act (APA). Under the APA, the public must be given notice and afforded the opportunity to comment when a government agency makes substantive new rules or policies or makes substantive changes to existing rules and policies. Though the USDA attempted to avoid this requirement by labeling its change as "guidance," and subsequently hiding the change in an old proposed regulation recycled to avoid the APA, this rule change would have far-reaching impacts on students in many states across the country.

Meanwhile, DOEd's proposed rule change would have far-reaching implications across K-12 and collegiate institutions. By expanding Title IX to include gender identity and sexual orientation, your Administration puts girls and women of all ages at risk. The DOEd rule would force any institution that receives federal financial aid to allow biological males to access women's and girls' locker rooms, bathrooms, and dorms, depriving them of privacy and safety at school. The rule ensures that a far-left ideology on gender will be taught in schools nationwide. And finally, while DOEd states that it "will engage in a separate rulemaking to address Title IX's application to athletics," the policy changes your Administration has already put forward leave us with no doubt that the Department intends to eliminate fairness in girls' sports, too.

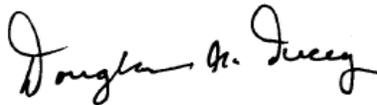
Both the USDA and DOEd based their changes on a misguided interpretation of the U.S. Supreme Court's *Bostock* decision, which specifically pertained only to enforcement of Title VII, which covers employment discrimination. The Court's decision in that case explicitly did not apply to "other federal or state laws that prohibit sex discrimination," such as Title IX. As such, these changes should be rejected based on this unwarranted interpretation of *Bostock*.

If your Administration chooses to move forward with these reinterpretations of Title IX, *Bostock*, and basic human biology, our states will have no choice but to pursue avenues to redress any harm that is done to our children as a result. We trust that you will give attention to the concerns we have outlined and look forward to an expedient resolution that will keep food in the mouths of our children and fairness on the playing field.

Sincerely,



Governor Kristi Noem  
State of South Dakota



Governor Doug Ducey  
State of Arizona



Governor Asa Hutchinson  
State of Arkansas



Governor Brian Kemp  
State of Georgia



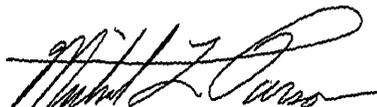
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