

**To:** Suzanne Goldberg, Office of Civil Rights, U.S. Department of Education

**From:** Lauren Adams, Legal Director, Women's Liberation Front

**Re:** Possible Regulations Relating to Executive Order 14021, "Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender identity" (March 8, 2021) ("Exec. Ord. 14021").

Dear Ms. Goldberg,

The Women's Liberation Front, or "WoLF," is a non-partisan radical feminist organization with members across the country. On behalf of WoLF, I am writing to ensure that the rights to equal opportunities for girls and women in education programs and activities are not sacrificed in the Department's efforts to comply with the letter and spirit of Exec. Ord. 14021.

The Department must not issue or amend Title IX regulations that undermine the legal permissibility of factually, objectively identifying people as males (boys and men) or females (girls and women) and, where legally appropriate, continuing to distinguish between individuals on the basis of sex when such distinctions are important for securing equal opportunities for women and girls to flourish in educational programs and activities.

Furthermore, the Department must ensure that any regulations and/or guidance issued regarding "discrimination on the basis of... gender identity" include or acknowledge that a person's sex is not determined or changed by the person's thoughts or beliefs, or by steps taken to emulate the physiology of the opposite sex. The Department must also ensure that if it chooses to codify the concept of "gender identity," it must include a coherent definition, such as "a person's belief that they have an internal sense of self-identification as male, female, both, or neither, that is incongruent with one's sex."

The Department must also ensure that any actions taken consider the following points.

Protection of LGB students from harassment by gender activists.

1. The Department must clarify that a lesbian who only dates female people, or a gay man who only dates male people, is not committing actionable discrimination based on "gender identity"

2. The Department must clarify that pressuring same-sex attracted people to accept opposite-sex partners (based on “gender identity”) is actionable sexual harassment under Title IX.
3. The Department must affirm that this behavior, when tacitly or explicitly encouraged or promoted by school officials, constitutes a form of conversion therapy or conversion efforts.

The Department must protect the right of lesbian and gay students to define their sexuality as same-sex attraction, and to exclude members of the opposite sex as potential partners without explanation or apology, regardless of personal identity.<sup>1</sup> As noted in Exec. Ord. 14021, LGB students are subject to disproportionate rates of sexual harassment and sexual violence. Lesbians in particular often experience immense pressure to accept male partners.<sup>2</sup> Some transgender activists and ‘influencers’ have coined the term “cotton ceiling” to refer to lesbians who do not accept transgender-identified men as sexual partners. This is an offensive play on the term “glass ceiling,” which refers to barriers experienced by women in employment (and education). In the “cotton ceiling,” cotton refers to a woman’s underwear, and the “cotton ceiling” refers to lesbians who “unjustly” withhold sex from men who identify as women.<sup>3</sup> This is not a fringe YouTube phenomenon - in 2012, Planned Parenthood held a workshop on “overcoming the cotton ceiling” (i.e. helping male individuals convince lesbian women to have sex with them).

#### Single-Sex Sports, Spaces, and Staff

4. The Department must affirm that the maintenance of single-sex spaces and sports does not constitute discrimination based on “gender identity.”
5. The Department must affirm that girls and young women have the right to be supervised in the shower or locker room, helped in the bathroom, or chaperoned on overnight trips by a female staff member.

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<sup>1</sup> Frankly, the Department should clarify that any person can reject any sexual partner at any time for any reason, including reasons that others may find objectionable... but given that these potential regulations are specific to sexual orientation and gender identity, and given the vulnerability of young same-sex attracted people, it is of critical and urgent importance that the Department stand in support of their sexual boundaries in particular.

<sup>2</sup> The late lesbian youtuber Magdalen Berns frequently discussed this phenomenon as it relates to ideas of gender identity, describing and responding to criticisms that lesbians should accept male partners if those partners identify as women. See “RE: ‘Are genital preferences transphobic?’ Give it up, Riley!”, found at [https://youtu.be/F\\_5FFGrGzJw?t=69](https://youtu.be/F_5FFGrGzJw?t=69) (March 30, 2017); “Re: ‘your dating preferences are discriminatory’” found at <https://youtu.be/eOqbwWymcTo?t=110> (December 5, 2016);

<sup>3</sup> Danielle, “The Cotton Ceiling: You don’t respect trans women if you don’t consider them women,” found at <https://youtu.be/nD9bSdmSn9U> (February 27, 2016).

In sports, the notion of allowing “gender-identity” to override sex denies the reality of differences which do exist between the sexes, almost universally to the disadvantage of women and girls. It is no more appropriate to separate teams by personal identity than it is to separate teams by sexual orientation or race. When forced to compete in de facto coed teams, female athletes are deprived of titles, records, medals, scholarships, and opportunities to participate fairly and safely. In one example, two male high school track runners in Connecticut blew away female competitors at the state track championship and smashed 15 records previously held by female competitors.

### First Amendment

6. The Department must protect students’ first amendment rights by affirming that actionable or unlawful harassment on the basis of sex does not include:
  - a. Stating the fact that humans are a sexually dimorphic species, that sex is an immutable biological characteristic, or similar factual statements;
  - b. Identifying or acknowledging a person’s sex, including by use of a person’s sex-based pronouns;
  - c. Expressing opinions, beliefs, or viewpoints critical or skeptical of the concept of “gender identity,” including the viewpoint that “gender identity” is a spiritual or metaphysical concept.

We cannot allow women and girls to be silenced by threats of discipline, suspension, or even expulsion for speaking the truth or for saying no. The Department should affirm that students are not required, nor should they be pressured into, making oaths of allegiance to ideologies that are contrary to their personal beliefs, nor to make statements that they know to be verifiably false.

Failure to heed these guidelines will devastate the legal ability of girls and women to exercise critical rights under Title IX and erase the progress toward sex equality in education that Title IX has achieved. Further actions by the Department to eliminate unfair treatment of persons who identify with a “gender identity” different from their sex must ensure that they do not eliminate, override, or conflict with the Title IX sex-based rights of women and girls, and the first amendment rights of all students. I urge the Office of Civil Rights to ensure the legacy of Title IX by continuing to enforce the law on the basis of sex, and to affirm that the first amendment

protects our right to discuss issues of public concern. Otherwise, we risk turning the clock back on 50 years of educational advancements for women and girls.

Thank you for soliciting public comments on this matter. It is vitally important that all voices be heard, especially the voices of women and girls who are particularly impacted by these proposed policy changes.

Sincerely,

Lauren Adams  
Legal Director  
Women's Liberation Front