

September 12, 2022

Dr. Miguel Cardona
Secretary
U.S. Department of Education
400 Maryl

The proposed rule also clarifies that all students must have access to school facilities consistent with their gender identity (where facilities are separated) as a component of their full participation in schools.³⁴ We further urge the Department to clarify in plain language that this standard applies to all sex-separated programs and activities, including, but not limited to, restrooms, locker rooms, and overnight accommodations for school trips.

The proposed rule importantly clarifies that harassment and bullying based on sexual orientation, gender identity, sex-related characteristics, and sex stereotypes is prohibited under Title IX. However, the proposed rule fails to explicitly address mocking, ridiculing or the persistent, intentional misuse of names, personal pronouns, or gendered titles as a form of sex-based harassment. Nearly 1 in 4 LGBTQ students in grades 6-12 report being prevented from using their chosen name and pronouns.³⁵ The use of gender-affirming language, including pronouns, is studies have shown that for transgender and nonbinary youth, having their pronouns respected improves mental health outcomes.³⁶ We strongly urge the Department to include guidance in the final rule that explicitly prohibits the persistent, intentional misuse of names, personal pronouns, or titles as a form of sex-based harassment under Title IX.

Secondly, the proposed rule does not provide regulatory guidance on dress and appearance codes, which effectively leaves room for discriminatory policies and enforcement practices in schools. Where gendered dress codes are enforced, students must be allowed to dress in accordance with their gender identity, and such policies should not be enforced more stringently on certain groups.³⁷ These clarifications are critical for LGBTQ+ students, particularly transgender and nonbinary students, who may face disciplinary measures for clothing perceived

³⁸ The Department should clearly communicate that, where dress or appearance codes are in use, gender-neutral codes best support

athlete bans in the first half of 2022 alone, and such bans are currently enacted in 18 states.³⁹ These discriminatory policies also harm students who do not conform to sex stereotypes, intersex students (whether transgender or cisgender), and will likely disproportionately harm Black women and girls and other women and girls of color owing to racist and sexist standards which associate femininity with whiteness.

We strongly urge the Department to move swiftly in their rulemaking on athletics affirming that all students, including transgender, nonbinary, and intersex students, have rights under Title IX to participate in school sports in accordance with their gender identity so that a single, consolidated rule may be finalized at the beginning of 2023. We further urge the Department to clarify in the final rule that state sports bans against transgender, intersex, or nonbinary students constitute prohibited sex discrimination under Title IX, and that Title IX preempts any state law or policy that categorically bans transgender, nonbinary, and intersex students from playing sports or their ability to play sports consistent with their gender identity.

III. Strengthen supports for pregnant and parenting students

Pregnant and parenting students continue to face discrimination and barriers in access to education, and are often steered toward separate, less rigorous schools or programs. More than 1 in 5 college students or nearly 4 million undergraduates are parents, including 1.7 million single mothers.⁴⁰ Student parents, 44 percent of whom work full time while enrolled,⁴¹ may also lack other vital supports like paid leave and affordable child care that make it harder for them to complete their education while supporting themselves and their families. Pregnant and parenting not only a gender equity issue but also a racial equity issue, as 51 percent of student parents are people of color.⁴² While parenting college students tend to have higher grade-point averages than their non-parenting peers,⁴³ they are less likely to graduate,⁴⁴ largely due to lack of institutional supports and other barriers to completion.

The proposed rule importantly improves regulatory language prohibiting discrimination on the pregnancy or related conditions,⁴⁵ including termination of pregnancy, childbirth, lactation, or recovery from any of these conditions. We urge the Department to pregnancy or related conditions, as well as explicitly add lactation, childbirth, and termination of pregnancy as a non-exhaustive list of

³⁹

<https://maps.glsen.org/trans-and-nonbinary-athletic-inclusion-policies/>.

⁴⁰ College by the Numbers, accessed September 7, 2022,

<https://iwpr.org/iwpr-issues/student-parent-success-initiative/parents-in-college-by-the-numbers/>.

⁴¹ U.S. Government Accountability Off9.29 Tm0 g0 G()JTJETQq0.00000912 0 612 792 reW*nBT/F1 0 G0 G(U.)-3(S.)-3(Go)-6(v)6(e

We further urge the Department to expressly state that schools
parental, family, marital, or *caregiver* status ⁴⁶ These clarifications would affirm protections for
perceived, expected, or past

information⁵¹ and would require Title IX coordinators to then notify the student of their rights.⁵² We ask the Department, however, to instruct schools in the final regulations and in supplemental guidance on how to protect student privacy to ensure that, in states where abortion is criminalized, school records, including school health records, are not used to prosecute students who have been documented as being pregnant in the past but are not currently pregnant. Finally, we urge the Department to clarify that it is a violation of Title IX to discipline or refer students to law enforcement based on termination of pregnancy.

We urge the Department to expand data collection on pregnant and parenting students, including experiences of harassment and discipline, in the Civil Rights Data Collection (CRDC) i

Conclusion

We urge the Department to implement the recommended changes as outlined in this comment and to finalize the proposed rule swiftly, as students across the country continue to be subject to the harmful Title IX regulations implemented in 2020 under the previous administration. We look forward to working with the Department on the implementation of the final Title IX rule.

Thank you for your consideration of our comment and recommendations for the proposed rule. Please do not hesitate to contact me at blackwellg@aauw.org if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Gloria L. Blackwell", is written over a horizontal line.

Gloria L. Blackwell
Chief Executive Officer, American Association of University Women