



March 31, 2023

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The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

Now Is the Time To Publish Title IX and Section 1557 Rules

Dear President Biden:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 230 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 15 undersigned organizations, **we urge you to finalize and publish the U.S. Department of Education's rules implementing Title IX of the Education Amendments of 1972¹ and the U.S. Department of Health and Human Services' rules implementing Section 1557 of the Affordable Care Act² without delay.** We have greatly appreciated the administration's commitment to equity and the transgender community. To that end, we also urge you in the strongest of terms to immediately publish a proposed Department of Education Title IX rule addressing participation in athletics that would clarify students' rights to participate in athletics consistent with their gender identity.³

The Title IX and Section 1557 final rules are critical components missing from the administration's ongoing efforts to protect the civil rights of all people in our nation, including transgender people. Leadership and action from the Biden-Harris administration can — and must — include enforcing civil rights laws, meaningfully responding to discrimination on the basis of sex (including sexual orientation, gender identity, transgender

¹ The notice of proposed rulemaking was first published on July 12, 2022, RIN 1870-AA16. In September 2022, The Leadership Conference and 43 organizations called on the U.S. Department of Education to restore and strengthen Title IX to ensure an educational environment free from discrimination, protect against sex-based harassment (including sexual harassment), protect against retaliation, ensure fair disciplinary procedures, clarify and strengthen the role of Title IX coordinators, and ensure appropriate implementation of Title IX's religious exemption:

<https://civilrights.org/resource/civil-rights-community-comment-urging-strong-title-ix-rule/>

² The notice of proposed rulemaking was first published on August 4, 2022, RIN 0945-AA17. In October 2022, The Leadership Conference and 100 organizations submitted comments emphasizing the importance of a strong rule: <https://civilrights.org/resource/comments-on-section-1557-proposed-rule-from-the-leadership-conference-and-100-organizations/#>

³ In announcing the proposed rule on July 23, 2022, the department said, "The Department will engage in a separate rulemaking to address Title IX's application to athletics." No related draft rule has been published in the nine months since that commitment was made.

status, sex stereotypes, sex characteristics, and pregnancy and related conditions), and advancing laws and policies that protect LGBTQI+ people from discrimination. Especially given the onslaught of state legislation targeting transgender people for discrimination and further marginalization, transgender people should not have to wait any longer for strong and decisive action from the Biden-Harris administration.⁴ Now is the time to finalize and publish the Title IX⁵ and Section 1557 rules.

As the civil and human rights community, we care deeply about ending sex-based discrimination, ensuring equal opportunities in education and health care, and supporting laws and policies that protect transgender people from discrimination in all aspects of their lives. Both Title IX's and Section 1557's potential has yet to be fully realized. Your administration's proposed changes to regulations implementing both of these laws are a crucial step towards reaching that potential.

For too long we have been left with the heartless actions of the previous administration and its disregard for the intent and purpose of our civil rights laws.⁶ In spite of commitments made in multiple executive orders,⁷ the Biden-Harris administration is left enforcing those wrongheaded policies until they are replaced with new final rules. While we appreciate efforts to ameliorate some of the harms of the past, the administration must urgently fulfill its regulatory duties.⁸

⁴ Transgender and nonbinary students commonly face barriers to accessing separate gender programs, activities, and school facilities and recent state actions have exacerbated, encouraged, and even mandated such discrimination. In June 2022, The Leadership Conference and 152 organizations wrote an open letter calling for the full inclusion, protection, and celebration of transgender and nonbinary youth, including access to extracurricular activities such as athletics and to school facilities, safe and inclusive school environments, accurate and inclusive curriculum, and gender-affirming school health services. <https://civilrights.org/resource/open-letter-supporting-the-full-inclusion-of-transgender-and-all-lgbtqi-youth/>

⁵ In addition to the urgent need to end discrimination immediately for people in schools, health care facilities, and everywhere, there is a specific urgency for the Title IX rule given the nature of the school year. To provide clarity for schools and communities ahead of the 2023-2024 school year and to ensure an educational environment free from sex discrimination, we urge that the Title IX rule be finalized and released as quickly as possible so that it will be in effect before the upcoming school year.

⁶ The Leadership Conference on Civil and Human Rights promoted timely and strong regulations that would implement Section 1557 of the Affordable Care Act (ACA) to ensure that the ACA would benefit everyone in the United States, regardless of race, color, national origin (including language), age, sex (including sexual orientation and gender identity), and disability. We worked closely with HHS, the White House, and others to ensure the promises of Section 1557 would become reality. In 2016, the Obama-Biden administration finalized long-awaited regulations implementing Section 1557. In 2020, the Trump administration finalized new regulations drastically rewriting the Obama-era regulations and severely limited Section 1557's application.

⁷ Including Executive Order 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, and Executive Order 14091: Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.

⁸ In addition to clarifying essential civil rights protections for pregnant and parenting students and LGBTQI+ students, we are pleased that the Department of Education is working to undo many of the harmful pieces of the Trump administration's 2020 regulations, which rolled back the gains achieved by those organizing for robust enforcement of their civil rights against sex-based harassment. The Trump administration's Title IX regulations upend decades of Department of Education Title IX policy, undermine student survivors' civil rights, and subvert Title IX's aims of broadly protecting students and eliminating sex discrimination in federally funded programs. The harms from the Trump regulations especially fall on women and girls of color, disabled survivors, LGBTQI+ survivors, and pregnant and parenting survivors, all of whom are more vulnerable to experiencing sexual harassment

Health care is a human right. Every person in our nation — including transgender people — should be free to safely access health care without fear of discrimination, harassment, or persecution. Unfortunately, discriminatory health care systems and policies play an outsized role in the ability of people to access quality health care in the United States, including preventing many transgender people from accessing quality care. The current Section 1557 regulations significantly rolled back prior protections against sex discrimination, threatening to exacerbate the mistreatment that many transgender people face in health care. The administration’s proposed regulations would provide strong protections against discrimination based on sexual orientation, gender identity, and sex characteristics. These regulations must be replaced as quickly as possible.

We appreciate your executive order issued early in your presidency affirming the administration’s commitment to enforcing Title IX’s protections against all forms of sex discrimination.⁹ This commitment has been underscored by other executive orders issued by your administration, including on racial equity and underserved communities, implementation of the landmark *Bostock* ruling across federal agencies, and advancing gender equity and equality — calling for an “ambitious whole-of-government equity agenda.” This necessarily includes ensuring that Title IX’s protections for *all* students are implemented “to the fullest extent permissible under law.”¹⁰

We urge your administration to swiftly issue a proposed Title IX rule that clarifies the rights of students to participate in school sports in accordance with their gender identity. Events in the last few months alone have increased the urgency for a proposed Title IX athletics rule as a record number of sports bans targeting transgender students have been proposed in states, and federal legislation has advanced in the

and also too often face inadequate, and even harmful, responses to their victimization. As a result, the 2020 Title IX regulations have had devastating impacts on student survivors, LGBTQI+ students, and pregnant and parenting students seeking support and resources after facing discrimination and violence. According to recent data from the Centers for Disease Control and Prevention (CDC), teen girls are facing the highest levels of sexual violence, sadness, and hopelessness they have ever reported to the CDC’s Youth Risk Behavior Survey. CDC data show that 1 in 5 teen girls experienced sexual violence in the past year — a 20 percent increase since 2017. Moreover, more than 1 in 10 teen girls reported they had been forced to have sex — up 27 percent since 2019, which is the first increase since CDC began monitoring this measure. Additionally, data show that nearly 1 in 4 LGBTQI+ high school students experienced sexual violence, with 1 in 5 being forced to have sex. Source: “CDC report shows concerning increases in sadness and exposure to violence among teen girls and LGBQ+ youth.” Centers for Disease Control and Prevention, U.S. Department of Health and Human Services. <https://www.cdc.gov/nchhstp/newsroom/fact-sheets/healthy-youth/sadness-and-violence-among-teen-girls-and-LGBQ-youth-fact-sheet.html>

⁹ Executive Order 14021 of March 8, 2021 (Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity). Federal Register 86. Mar 11, 2021. 13803. <http://federalregister.gov/d/2021-05200>.

¹⁰ Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government). Federal Register 86(14). Jan 25, 2021. <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>; Executive Order 13988 of January 20, 2021 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation). Federal Register 86(14). Jan 25, 2021. <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf>; Executive Order 14021 of March 8, 2021 (Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity). Federal Register 86(46). Mar 11, 2021. <https://www.govinfo.gov/content/pkg/FR-2021-03-11/pdf/2021-05200.pdf>.



House of Representative seeking to carve out transgender, nonbinary, and intersex students from the protections of Title IX in school sports.¹¹

To ensure health equity, we urge that the Section 1557 rule be released as quickly as possible. Its release not only will highlight the administration's commitment to health equity and nondiscrimination, but it will also help ensure the entire regulatory process is completed expeditiously. Most importantly, the regulation provides the clarity that patients need and deserve to ensure their rights are protected. The regulation must be finalized without delay. Patients cannot wait.

We commend you for the comprehensive efforts the administration has and is undertaking to ensure equity for all, and we urge you to continue to advance laws and policies that protect all people from discrimination, including transgender people, by finalizing and publishing the Title IX and Section 1557 rules. If you have any questions, please reach out to Steven Almazán, k12 education senior program manager at The Leadership Conference on Civil and Human Rights, at almazan@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
American Association of University Women
Family Equality
Girls Inc.
GLSEN
Human Rights Campaign
National Black Justice Coalition
National Center for Transgender Equality
National Council of Jewish Women
National Health Law Program
National Organization for Women
National Partnership for Women and Families
National Urban League
National Women's Law Center
PFLAG National
Transgender Law Center

¹¹ On March 9, 2023, H.R. 734 was reported out of the House Committee on Education and the Workforce.