

Representative Judy Boyle, CoChair
Representative Wendy Horman
Representative Sage Dixon
Representative Jason Monks
Representative Chris Mathias



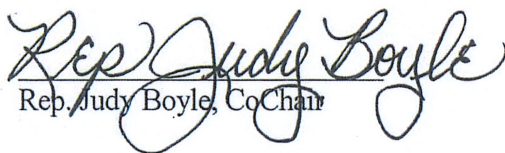
Senator Van Burtenshaw, CoChair
Senator Todd Lakey
Senator Mark Harris
Senator Cindy Carlson
Senator Rick Just

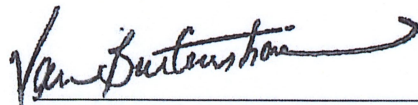
Idaho Legislature Committee on Federalism

May 15, 2023

The following comments on the U.S. Department of Education's proposed regulation regarding nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance have been approved by and are submitted on behalf of a majority of the Idaho Representatives and Senators serving on the Idaho Legislature's Committee on Federalism.

1. The proposed regulation interferes with a State's right to enact a blanket prohibition on transgender students participating in team sports that are segregated by sex if it results in the transgender student playing on a team that is inconsistent with the student's biological sex. The Code of Federal Regulations (34 CFR 106.41) provides that a recipient of federal moneys or other assistance may "operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport." The new language would severely restrict the ability to have such separate teams by requiring that the segregation of teams by biological sex must be justified as "substantially related to the achievement of an important educational objective" and minimizes harm to the student being restricted from playing on a team inconsistent with the student's biological sex. Regulations must be implemented to effectuate the law, and in this case, the language of Title IX of the United States Code enacted in 1972 clearly was not written to enable transgender students to play on teams inconsistent with their biological sex. Biological sex is the only objective standard that can promote fairness and safety and was the reason for the Title IX legislation. Therefore, this regulation exceeds its authority and should be rejected.
2. In addition, the proposed regulation introduces several terms that are key to understanding and implementing Title IX but that are not defined. This lack of clarity is antithetical to efficient government operations and will result in expensive litigation. "Sex-related criteria" is not defined, nor is "gender identity." Furthermore, even common terms can no longer be assumed to have their ordinary meanings in such a new context. What level of participation is required by the language "participate on a male or female team"? How shall "important educational objective" be defined and who is to decide such importance? What constitutes the minimizing of "harms to students"? It is dangerous and unwise to allow such important questions to be answered, perhaps in different ways, by courts around the nation. The Department of Education should withdraw its attempt to amend this regulation and continue to allow recipients of federal assistance to have a free hand in determining for itself when it is appropriate to operate or sponsor separate teams for members of each sex in the cases of contact sports or team selection by competitive skill.


Rep. Judy Boyle, CoChair


Sen. Van Burtenshaw, CoChair