

August 25, 2022

VIA COMMENT PORTAL

Alejandro Reyes, Program Legal Director
Office of the Assistant Secretary for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-0001

**Re: Comment on the Enforcement of Title IX of the Educational Amendments of 1972,
Respectfully Submitted by Interfaith Alliance Foundation**

To Mr. Reyes:

Interfaith Alliance Foundation provides the following comments on the proposed amendment of the regulations implementing Title IX of the Education Amendments of 1972 (“Title IX”), pursuant to the proposed rule “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” published in the Federal Register on July 12, 2022, at 87 Fed. Reg. 41390.

Interfaith Alliance Foundation (“IAF”) is a national policy and advocacy organization committed to advancing true religious freedom for all Americans. The only national interfaith organization dedicated to protecting the integrity of both religion and democracy, IAF’s membership is made up of individuals rather than institutions, in all 50 states and serving overseas in the U.S. military, and adhering to more than 75 faith traditions and belief systems.

While the notion of religious freedom has been used – and misused – by various groups over the course of our history, IAF’s work remains true to the foundational promise of the U.S. Constitution: that every American has the right to believe as we choose, with the secure knowledge that our government will not play favorites or favor religion over non-religion. IAF champions an inclusive vision of religious freedom, where all are free to embrace matters of personal conscience without fear of government intrusion or discrimination.

Our schools and universities are entrusted with the wellbeing of students from diverse backgrounds and experiences. The protections offered by Title IX are essential for creating safer, more equitable environments for women and LGBTQ+ students by ensuring schools are proactive in combating sexual harassment and sex discrimination.

We commend the Department of Education for expanding definitions to better address discrimination based on sex stereotypes and pregnancy, and urge the Department to provide training procedures and clear guidelines to allow Title IX recipients to address sex discrimination

and support students. We also urge the Department to ensure religious exemptions are appropriately implemented by outlining consistent and transparent guidelines, thereby protecting the right of all students to have equal access to education by strengthening Title IX protections.

I. Expanded Definitions Better Address Discrimination Based on Sex Stereotypes and Pregnancy

By clarifying that “sex discrimination” encompasses discrimination on the basis of sex stereotypes, sexual orientation, and gender identity, the proposed rule equips educational institutions to support students of all backgrounds and beliefs. It is essential that schools that receive federal financial assistance have clear guidelines to follow when assessing cases of discrimination. The expanded definitions in the proposed regulations are a positive step towards ensuring all instances of discrimination based on sex stereotypes and pregnancy are taken seriously.

LGBTQ+ students have been insufficiently protected under Title IX, as many schools fail to adequately respond to cases of harassment, violence, unequal discipline, and discrimination.¹ Insufficient Title IX protections for LGBTQ+ individuals prevent those students from receiving equal access to education by allowing discriminatory practices and policies to remain in place, leaving students with few ways to remedy instances of harassment and discrimination. We commend the Department for offering distinctions, such as acknowledging the hostile environment created when students are ostracized by others for failing to conform to traditional gender stereotypes,² that extend necessary protections to LGBTQ+ students and provide processes to report and remedy harassment. Similarly, clarifying sex discrimination as it relates to pregnancy to include current, past, and potential related conditions more comprehensively meets the needs of students.

Ensuring LGBTQ+ students and those with the ability to become pregnant are protected is essential to the promise of religious freedom; any institution that received public funding must use that funding to ensure all students are supported, not just some. The expanded definitions not only better define the type of discrimination students face, but will also better protect each student’s right to equal access to education by providing schools with guidance to deal with discrimination cases.

II. Schools Must Provide Prompt and Meaningful Support to Students and Employees Affected by Sex-Based Discrimination or Harassment

Title IX facilitates equal access to education for all students, regardless of sex. That mandate includes ensuring that all students feel safe and supported. The Department acknowledged this necessity by requiring recipients to train employees in the school’s obligation to support students

¹ Kosciw et al., The 2019 National School Climate Survey, 35 (2020)

² Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 Fed. Reg. 41390 28 (proposed Jul. 12, 2022) (to be codified at 34 C.F.R pt.106)

who are pregnant or with pregnancy-related conditions,³ but more can and should be done. We respectfully ask the Department to outline training procedures for school employees to create standards that would best help students through all forms of sex-based discrimination or harassment.

The Department also acknowledged that current guidelines do not adequately outline the breadth of recipients' responsibilities to students. Guidance should clarify recipient responsibility to support students dealing with pregnancy or related conditions and extend their duty beyond medical and hospital benefits to day-to-day and academic accommodations.⁴

While the Department's proposed rule posits a requirement to take prompt and effective action against sex discrimination, it fails to clarify how that standard should be met. Religious freedom and non-discrimination are rooted in the same values: equality, justice, and the right to self-determination. Expanding definitions of sex-based discrimination or harassment is a first step in realizing our inclusive vision of religious freedom; the Department must also provide clear guidelines to hold schools accountable to procedure.

III. Religious Exemptions to Title IX Should Be Consistent and Transparent

As an organization committed to protecting religious freedom, we recognize that some educational institutions may face a conflict between religious doctrine and the Department's interpretation of Title IX. Religious exemptions to Title IX have an important role in ensuring that religious institutions can operate in a manner consistent with their religious beliefs. Transparency and consistent application, however, are necessary to communicate institutional procedures and expectations to members of their community and the public.

Prior notice of Title IX exemptions allows students to make informed choices about their education and safety. Without it, students will not know whether they may be treated differently than their peers because of their sexual orientation, their gender identity, their reproductive history, or their personal beliefs. Appropriate implementation of religious exemptions also protects schools, who would otherwise be unclear as to what actions would put them at risk for legal challenges or complaints. However, the proposed rule provides little further guidance to institutions and students beyond the acknowledgement that religious exemptions are allowed under Title IX.⁵ We urge the Department to clarify this process for institutions seeking religious exemptions to allow them to act in accordance with their beliefs and to ensure students are supported through cases of discrimination.

As a matter of religious freedom, religiously affiliated universities are able to operate in a manner consistent with their religious doctrine. But students should be afforded the same ability to make education decisions based on their own personal beliefs. We urge the Department to

³ Fed. Reg. 41390 *supra* note 2, at 124

⁴ Fed. Reg. 41390 *supra* note 2, at 134

⁵ Fed. Reg. 41390 *supra* note 2, at 139

clarify religious exemptions and exercise transparency to ensure all personal beliefs are protected.

IV. Conclusion

As a national organization committed to advancing true religion freedom for all Americans, Interfaith Alliance Foundation applauds the Department's restoration of Title IX protections for student survivors of sexual harassment and violence and expansion of protections for LGBTQ+ students. We urge the Department of Education to ensure religious exemptions are appropriately implemented by outlining consistent and transparent guidelines, thereby protecting the right of all students to have equal access to education by strengthening Title IX protections. We also call on the Department to clearly define schools' responsibilities to students who are pregnant or with pregnancy-related conditions and establish training procedures to best-equip employees to support students through cases of discrimination.

Students seeking higher education are often away from home for the first time. They are encountering new people, having new experiences, and discovering their own identity. Schools should nurture students throughout this process and ensure that community members of all beliefs, experiences, and identities can thrive. Through the proposed rule and further guidance, the Biden administration can continue to rightfully use Title IX as a powerful tool to ensure all students are treated with dignity and respect.