

[your name and contact info here]

February 4, 2021

Miguel Cardona
Secretary of Education
US Dept of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

RE: Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation

Dear Secretary Cardona:

As you conduct your review ordered by President Biden, I urge you to uphold Title IX and protect the hard-won rights of women and girls. President Biden has called for science-based and anti-discriminatory public policies. Allowing boys and men who identify as girls and women to compete in female sports – a practice you supported in your confirmation hearing - undermines both of these ideals and will destroy female sport.

Males have many advantages over females in sport, including, but not limited to, larger hearts, greater lung capacity, more fast-twitch muscle fibers, and longer and stronger bones. The performance gap is such that in 2017 alone, 744 high school boys bested the 100 meter record of the fastest female athlete of all time – Florence Griffith Joyner.ⁱ These advantages are not significantly mitigated by temporary suppression of testosterone. A recent meta-analysis of 12 longitudinal studies of suppression of testosterone in males identifying as female found only a 5% reduction in muscle mass after a year. Males identifying as women retained 13-39% more muscle mass than females.ⁱⁱ

Further, many school boys who identify as girls have not undergone any medical transitioning before competing in female sport. Andraya Yearwood, who I am sure you have heard of, as you are from Connecticut, had not undergone any medical transitioning prior to competing against girls. Since 2017, Yearwood and another boy identifying as a girl, Terry Miller, have won between them 15 girls' track events. Last year, the Department of Education determined that allowing males claiming female identity to compete in women's sport *is* a violation of Title IX.

In his executive order, President Biden asserts that the Supreme Court decision *Bostock v Clayton County* (2020), which involved a set of employment discrimination cases in violation of Title VII, also applies to Title IX. Barely a month ago, the Dept of Education legal counsel issued a memorandum explaining why *Bostock* **does not** apply to Title IX.ⁱⁱⁱ In a significant passage concerning boys who identify as girls in female spaces such as locker rooms and restrooms, the memo states:

Title IX text is very different from Title VII text in many important respects. Title IX, for example, contains numerous exceptions authorizing or allowing sex-separate activities and intimate facilities to be provided separately on the basis of biological sex or for members of each biological sex.

Dept of Education policies and practices that allow boys who identify as girls to compete in female sport are scientifically unjustifiable, discriminate against girls, and are quite possibly illegal. Girls and women deserve fairness in sport as well as privacy, dignity, and safety in our private spaces. We urge you to uphold the spirit and letter of Title IX in your policy and guidance revisions.

Best regards,

[your signature with name typed below here]

Encl.

ⁱ Hilton, Emma. 2018. Harder, Better, Faster, Stronger. Why We Must Protect Female Sports. <https://fondofbeetles.wordpress.com/2018/10/01/harder-better-faster-stronger-why-we-must-protect-female-sports/>

ⁱⁱ Hilton, Emma N. and Tommy R. Lundberg. 2020. "Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage." *Sports Medicine*. <https://link.springer.com/article/10.1007/s40279-020-01389-3>

ⁱⁱⁱ US Dept of Education Office of the General Counsel. Memorandum for Kimberly M. Richey Acting Assistant Secretary of the Office for Civil Rights. 2021. RE: *Bostock v Clayton County*. <https://usequalityact-women.com/wp-content/uploads/2021/02/DOE-Memo-RE-Bostock.pdf>