

# **Independent Women's Voice**<sup>®</sup>

## **New Title IX Regs**

### **What They Do**

The Biden administration has issued an administrative rule that unlawfully alters Title IX, the landmark law that prohibits sex discrimination in education. The Biden rule flips Title IX on its head, requiring schools to discriminate against women and girls by allowing males to take opportunities and enter private spaces designated for females.

### **Male Invasion of Women's Spaces**

- The Biden rule expands the scope of Title IX to cover “gender identity,” making it discriminatory for a school to deny a student access to opportunities, activities, and spaces that match his or her subjective reality. 34 C.F.R. §106.10.
- The Biden rule requires schools to give males access to girls’ locker rooms, bathrooms, and health classes if the male asserts a feminine “gender identity.” 89 Fed. Reg. at 33,816.
- The Biden administration attempts to dodge the question of sports but has made clear in [legal filings](#) that it interprets Title IX as requiring schools to allow males to self-identify onto women’s teams.

### **Denial of Due Process**

- The Biden rule pressures colleges to utilize draconian disciplinary procedures that deny basic due process rights, such as the right to a live hearing with cross-examination at postsecondary institutions, 34 C.F.R. §106.45(f)-(g) (allowing only “the decisionmaker” to question parties and witnesses and only “to the extent credibility is both in dispute and relevant”); the right to inspect all the evidence against them, §106.45(f) (allowing the parties to access a mere “description” of the “relevant and not otherwise impermissible evidence”); and the right not to have the same individual serve as prosecutor, jury, and executioner, 34 C.F.R. §106.45(b)(2) (approving the single investigator model).

### **Violation of Parental Rights**

- The Biden rule says it trumps parents’ rights, including their right to access their child’s information. 34 C.F.R. §106.6(e).
- The Biden rule admits it may override parents’ request to treat students in accordance with biology or access records related to gender identity. 89 Fed. Reg. at 33,822.

## Infringement on Freedom of Speech

- The Biden rule expands the definition of unlawful sexual harassment to include unwelcome conduct that is “severe or pervasive” and is found to “limit” a person’s ability to participate in or benefit from the education program or activity, 34 C.F.R. §106.2, thus pressuring schools to police and punish any “offensive” speech about sex, sex roles, gender, or gender identity.
- The Biden rule concedes that “misgendering” someone would trigger a “fact-specific” Title IX inquiry. 89 Fed. Reg. at 33,516.

## Promoting the Woke Bureaucracy

- The Biden rule transforms Title IX from a statute that prohibits schools from discriminating on the basis of sex into a statute that requires all schools to monitor and police the behavior of students online, off campus, outside the United States. 34 C.F.R. §106.11.

## Mandating Harmful Medical Practices

- Because the law governing sex discrimination in health care incorporates Title IX, the Biden rule will also be used to require healthcare providers, hospitals, and insurers to provide and pay for irreversible “transgender procedures.” 42 U.S.C. §18116; [“Nondiscrimination in Health Programs and Activities.”](#)

## The Way Forward

- Do not comply. This illegal rewrite of Title IX will be struck down in court. States have led the way in refusing to start implementation and providing the courts an opportunity to review this unlawful [regulation](#).
- Congress should pass a Congressional Review Act (CRA) resolution establishing that the Biden rule directly violates the statute passed by Congress. If passed and signed by the President, a CRA nullifies an administrative rule and prohibits any future administration from passing a substantially similar measure.
- Congress should pass the [Women’s Bill of Rights](#), which clarifies the federal definition of “sex” as a person’s biological sex (either male or female) at birth.
- Congress should [clarify the definition of sexual harassment](#) under Title IX consistent with Supreme Court precedent.
- Congress should explicitly codify court precedent requiring colleges and universities to [provide basic due process protections](#) when investigating students and faculty under Title IX.
- State legislatures should prohibit schools from socially transitioning minors without parental consent.
- The U.S. Senate should take up the House-passed [Protection of Women and Girls in Sports Act](#) to preserve equal athletic opportunity for both sexes.

## Addressing Misperceptions

MISPERCEPTION	FACT
<p><b>The Biden Rule Protects Trans-identified Students From Discrimination.</b></p>	<p>The Biden rule does not simply require schools to <i>accommodate</i> trans-identifying individuals. Rather, it requires schools to allow any male to self-identify into female spaces and to <i>prioritize</i> males who identify as female over women and girls. More broadly, the proposed rules undermine parental rights, squelch certain viewpoints, and encourage schools to discipline students and faculty without basic due process.</p> <p>In short, in the name of fighting discrimination, these proposed rules impose a woke agenda on all aspects of the educational experience from kindergarten through graduate school.</p>
<p><b>The Department of Education Has a Legal Right to Amend Title IX Protections.</b></p>	<p>The Supreme Court has made clear that executive agencies may not adopt regulations that go beyond statutes as written. <a href="#"><u>West Virginia v EPA</u></a> (<i>Clean Air Act does not authorize EPA cap and trade rules</i>); <a href="#"><u>Biden v. Nebraska</u></a> (<i>HEROES ACT does not authorize the Department of Education to forgive student debt</i>).</p> <p>Here, the Biden rules go far beyond the scope of the statute enacted in 1972 (by adding new protected categories as well as by expanding the reach of the statute to include student behavior that occurs outside of the school's control). Moreover, by requiring schools to allow males to take opportunities and enter private spaces designated for females, the Biden rules require schools to violate the very statute it claims to enforce.</p>
<p><b>The Biden rule is a reasonable application of the Supreme Court's decision in <i>Bostock v. Clayton County</i>.</b></p>	<p>The <i>Bostock</i> decision, which extended employment protections to trans-identified people, applies only to Title VII and to the workplace.</p>