

# [***Biden Admin Is Weaponizing Title IX To Promote Fringe Sexual Politics | Opinion***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BX8-N821-JBR6-91D3-00000-00&context=1516831)

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**Highlight:** Earlier this month, the Office for Civil Rights in the Biden Education Department issued a new regulation on how schools must observe Title IX.

**Body**

Earlier this month, the [*Office for Civil Rights*](https://www2.ed.gov/policy/rights/reg/ocr/index.html) in the Biden Education Department issued a [*new regulation*](https://www2.ed.gov/about/offices/list/ocr/docs/t9-unofficial-final-rule-2024.pdf) on how schools must observe [*Title IX*](https://www.govinfo.gov/content/pkg/USCODE-2022-title20/pdf/USCODE-2022-title20-chap38-sec1681.pdf), the 1972 ban on sex discrimination in federally funded education. The rule transforms Title IX from a relatively [*benign equal-opportunity law*](https://www.nas.org/reports/dear-colleague/full-report#_ftnref1) into a weapon for sex-based identity ***politics***. It removes due process protection for students accused of sexual misconduct and favors gender ideology over free speech and, ironically, over women's sports programs that owe their existence to Title IX itself. [*Congress*](https://www.newsweek.com/topic/congress?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships) should use its powers under the Congressional Review Act to reject this rule as agency overreach and state attorneys general should sue the Education Department to stop it from taking effect in August.

Title IX did not need a new rule. It just [*got one*](https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal) in 2020, thanks to the heroic efforts of President [*Donald Trump*](https://www.newsweek.com/topic/donald-trump?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships)'s education secretary, [*Betsy DeVos*](https://www.newsweek.com/topic/betsy-devos?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships). She inherited a Title IX mess created by a [*2011 Dear Colleague Letter*](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html) (DCL) which was, supposedly, meant to help schools fight sex discrimination. In fact, however, the DCL browbeat schools into "finding" discrimination and harassment by expanding their definitions and by lowering the burden of proof to find guilt. For example, the DCL said that discriminatory sexual harassment included not just *quid pro quo* propositions (where a teacher or professor demands sex in exchange for good grades) but also the creation of a "hostile environment," a far more subjective standard.

The evolving definition of sex discrimination was a product of feminist advocacy. But that evolution always threatened—and continues to threaten—fundamental rights such as free speech and due process. By the subjective standards imposed under the DCL, "You look pretty today!" could qualify as Title IX sexual harassment if the statement is deemed hostile and affects someone's studies. So what happens, then, to free speech? And if students engage in sexual "hook ups" but later one student feels consent was lacking, are colleges equipped to investigate and adjudicate claims of criminal acts like assault and rape? What about protecting due process—such as the presumption of innocence and the right to see evidence—for those accused?

In point of fact, the 2011 DCL resulted in [*hundreds*](https://nyujlpp.org/wp-content/uploads/2019/12/Harris-Johnson-Campus-Courts-in-Court-22-nyujlpp-49.pdf) of students and professors being wrongly accused, and even suspended, expelled, or fired with little to [*no chance at self-defense*](https://www.youtube.com/watch?v=OOg3q3ZpxYc). Many of them [*successfully sued*](https://nyujlpp.org/wp-content/uploads/2019/12/Harris-Johnson-Campus-Courts-in-Court-22-nyujlpp-49.pdf) their schools for due process violations. DeVos stopped this chaos by rescinding the 2011 DCL in 2017. She then spent three years developing and promulgating a new Title IX rule that protects both complainants and due process. That rule was upheld as fair and lawful by every court to review it.

Tragically, Biden's regulation will undo these gains. It allows schools to investigate sexual harassment claims with an "individual meeting method" similar to the "single investigator model" used under the DCL, which resulted in all the due process disasters and lawsuits. In effect, Biden is eliminating formality, including live hearings at colleges, while increasing the discretion and power of Title IX staff. But these staffers have no legal or courtroom experience with due process. Instead, they come from [*heavily politicized disciplines*](https://www.nas.org/reports/dear-colleague) such as Women's Studies or Gender Studies.

Given these realities, any sound Title IX rule should do the opposite of what the Biden rule does—that is, Title IX staff should have *less* discretion and *more* formality for investigations and adjudications including real-time, live hearings with a written record. This ensures transparency and facilitates appellate review—both of which act as checks on the power of campus bureaucrats. But Biden is giving a blank check to the very people who need more oversight.

The new Title IX rule also redefines the word "sex" to include "gender identity" and "sexual orientation" such that dissenting views on gender or refusal to use preferred pronouns will be treated—and prosecuted—as a federal offense. In fact, Biden's education officials have already investigated [*California's Taft College*](https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09212010-b.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=) for just such a refusal as if it were already illegal.

It's not. In fact, interpreting and enforcing Title IX this way violates the United States Constitution. Americans have a [*First Amendment right*](https://adflegal.org/case/meriwether-v-trustees-shawnee-state-university) not only to free speech but also to the free exercise of religion, which often informs their views on gender. In the public education setting, students and faculty can speak—or not speak—according to their conscience. Title IX cannot change that, no matter what Biden administration officials say.

Most controversial, the redefinition of sex to include "gender identity" means that males claiming to be female and wanting to use women's locker rooms, or play on women's sports teams, can now claim that Title IX gives them that right. Ironically, women's athletics only exist in their present form, especially at the college level, because Title IX was interpreted decades ago to mandate not just equal athletic opportunity but equal funding for female sports programs. All this must now yield, however, to the yet more transgressive phenomenon of sex identity ***politics***. Girls uncomfortable with guys watching them undress? Parents angry? Biden says: Get over it!

The Biden rule represents the administrative state run amok: Activist agencies get an inch, then take a mile to make novel policy. But policymaking is the job of Congress, not the executive branch. Fortunately, Congress has the power, under the Congressional Review Act, to overrule regulations that, like this one, infringe on the legislature's policy making function. It's time for Congress to use this power.

What's more, [*Tennessee*](https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2021/pr21-31-complaint.pdf) has led 20 states in suing the Biden administration for Title IX overreach. The state attorneys general who filed the complaint should cite the new rule as perhaps the most egregious example of *ultra vires* action.

Finally, while lawless ideologues in power in Washington, D.C., zealously pursue their radicalism, real problems in American education go overlooked.

Since COVID, for example, American academic achievement has plummeted. And this trend has not affected boys and girls equally. One [*study*](https://largescaleassessmentsineducation.springeropen.com/articles/10.1186/s40536-023-00154-y) has shown that learning loss has affected female students more on the primary and secondary level, but male students may have been hindered in their studies more at the post-secondary level.

These findings should interest the Office for Civil Rights at the Education Department. If officials there were resourceful and properly focused, federal grants and other initiatives could help remedy the situation and perhaps improve student prospects and thereby change the future for many young Americans.

But Biden Education Department officials can't be bothered with that. They're too busy weaponizing Title IX to trash due process and to promote fringe sexual ***politics***.

*Teresa R. Manning is Policy Director at the National Association of Scholars, President of Virginia Association of Scholars and a former law professor at Virginia's Scalia Law School, George Mason University. She authored the 2020 Report "Dear Colleague: The Weaponization of Title IX."*

*The views expressed in this article are the writer's own.*

[*Link to Image*](https://d.newsweek.com/en/full/2385412/joe-biden-miguel-cardona.jpg)

**Graphic**

Joe Biden and Miguel Cardona

Chip Somodevilla/Getty Images

WASHINGTON, DC - JUNE 30: U.S. President Joe Biden is joined by Education Secretary Miguel Cardona (L) as he announces new actions to protect borrowers after the Supreme Court struck down his student loan forgiveness plan in the Roosevelt Room at the White House on June 30, 2023 in Washington, DC. In a 6-to-3 decision, the court ruled the loan forgiveness program -- which was projected to help 40 million people and cost $400 billion -- was unconstitutional.

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