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October 18, 2021

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Ave., SW
Washington, D.C. 20202

Dear Secretary Cardona:

We are deeply concerned with recent reports of sexual assaults in our public schools, which exemplify the misguided nature of the Department of Education's (Department) interpretation of Title IX.¹ The interpretation endangers young girls by putting their rights and needs second to the political agenda of the Biden administration. Further, parents who have raised concerns over these events have been labeled domestic terrorists, and the Department of Justice has issued a memo announcing undisclosed steps to investigate those parents.² We request that the Office for Civil Rights (OCR) review these developments and immediately rescind your June 22, 2021 interpretation.

When constructing the interpretation, which requires schools to allow biological males to use female bathrooms, the Department misconstrued the U.S. Supreme Court opinion in *Bostock v. Clayton County (Bostock)*. The case is related to Title VII of the *Civil Rights Act*, and the U.S. Supreme Court explicitly stated the following on page 31 of their opinion:

*The employers worry that our decision will sweep beyond Title VII to other federal or state laws that prohibit sex discrimination. And under Title VII itself, they say sex-segregated bathrooms, locker rooms, and dress codes will prove unsustainable after our decision today. **But none of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms, and we do not prejudge any such question today. Under Title VII, too, we do not purport to address bathrooms, locker rooms, or anything else of the kind. The only question before us is whether an***

¹ <https://www.govinfo.gov/content/pkg/FR-2021-06-22/pdf/2021-13058.pdf>

² <https://www.justice.gov/opa/pr/justice-department-addresses-violent-threats-against-school-officials-and-teachers>

employer who fires someone simply for being homosexual or transgender has discharged or otherwise discriminated against that individual ‘because of such individual’s sex.’ (Emphasis added).³

The Supreme Court was clear in its directive that this opinion was *not* in reference to bathrooms or locker rooms. The Department ignored the Court’s admonition and used the *Bostock* case to reinterpret Title IX. The Department issued a fact sheet that outlines what OCR can investigate.⁴ One example unambiguously states that if a school administrator bars a biological male from entering a female bathroom, the school district could be subject to investigation.

This interpretation has real-world consequences for our children’s health and safety. According to press reports, a biological boy wearing a skirt entered a girls’ bathroom earlier this year at a Virginia high school and allegedly sexually assaulted a ninth-grade girl. The boy was charged with two counts of forcible sodomy, one count of anal sodomy, and one count of forcible fellatio in response to the incident.⁵ Then on October 6, 2021, the boy was charged in another sexual battery case in another school to which he was transferred. This situation is a clear example of how dangerous the perpetuation of this interpretation will be.

When the girl’s father, Scott Smith, was informed about the situation, he went to the school to confront school administrators. Local law enforcement was called to the scene, not to respond to the sexual assault, but to deal with the father. The school said that it was handling the situation “in-house.” Smith then went to a school board meeting where he was again confronted by law enforcement, and eventually detained and arrested. Smith’s arrest was part of the pretext for the Department of Justice’s decision to begin investigating parents.⁶

Further, it is now being reported that Loudon County Public Schools have under-reported sexual assaults the past several years.⁷ The lack of transparency regarding the safety of children at school is alarming. Parents should know what is happening in their schools and have confidence that school administrators are keeping their children safe. Schools provide data on several topics, including sexual assaults on campus through the Civil Rights Data Collection. In addition, the Trump administration issued regulations outlining schools’ responsibilities for investigating sexual assault allegations under Title IX. Those regulations, if properly applied and enforced, provide schools with the tools to conduct fair and comprehensive investigations to ensure the rights of all students are protected.

We know that we cannot stop all cases of assault in our schools, but we should take commonsense precautions to work together with parents to protect our children. The

³ *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1753 (2020).

⁴ <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>

⁵ <https://www.dailywire.com/news/loudoun-county-schools-tried-to-conceal-sexual-assault-against-daughter-in-bathroom-father-says>

⁶ <https://nsba.org/-/media/NSBA/File/nsba-letter-to-president-biden-concerning-threats-to-public-schools-and-school-board-members-92921.pdf>

⁷ <https://www.dailywire.com/news/exclusive-loudoun-schools-did-not-record-multiple-alleged-sexual-assaults-over-a-period-of-years-despite-state-law-records-show>

Department's interpretation of Title IX flies in the face of this goal. As such, we request that you answer the following questions:

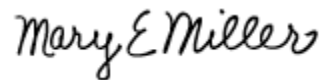
1. Under your interpretation of Title IX, would Loudoun County Public Schools be in violation of Title IX had the school barred the biological male who allegedly sexually assaulted a female in a school bathroom from entering that bathroom?
2. In light of this case and the danger posed to young girls, will you rescind your Title IX interpretation?
3. The Virginia Department of Education has begun an investigation into apparent violations of Virginia state law with respect to the reporting of sexual assault allegations. Please provide information demonstrating whether or not Loudoun County Public Schools has complied with the Civil Rights Data Collection.
4. As mentioned above, the Trump administration promulgated regulations outlining schools' responsibilities to address sexual assault allegations under Title IX. Based on press reports, it appears unlikely that Loudoun County Public Schools has complied with those regulations. Does the U.S. Department of Education plan to initiate an investigation of Loudoun County Public Schools to determine if the school district is out of compliance with Title IX?

It is immoral to compromise students' safety for a political agenda. We urge you to reevaluate your stance on Title IX in light of the tragic developments in Virginia. to help prevent similar tragedies moving forward.

Sincerely,



Virginia Foxx
Ranking Member



Mary Miller
Member of Congress