

September 12, 2022

The Honorable Miguel A. Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Re: Docket ID ED–2021–OCR–0166; Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

Dear Secretary Cardona:

On behalf of the physician and medical student members of the American Medical Association (AMA), I am pleased to submit comments in response to the Department of Education’s proposed rule on “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance” (proposed rule). The AMA appreciates the Department’s proposed changes to these Title IX rules, which would undo many of the controversial, harmful provisions put in place in 2020 that have failed to adequately protect individuals who are subject to incidents of sex-based harassment and other sex discrimination. The AMA believes that the proposed changes are consistent with Title IX’s broad mandate to prohibit sex discrimination in education and help to clarify the scope and application of Title IX and the obligation of all schools, including in undergraduate and graduate medical education, to provide an educational environment free from discrimination on the basis of sex, including through responding to incidents of sex discrimination.

Sex Discrimination, Sexual Assault, and Sex-Based Harassment

The AMA supports the Proposed Rule’s changes that would require schools to respond to a much wider range of sexual harassment and other sex-based harassment incidents than under the 2020 rules, consistent with decades of prior Department of Education policy. Schools would be required to: address all reports of sex discrimination, including sex-based harassment, anti-LGBTQI+ discrimination, and discrimination against pregnant and parenting students; offer supportive measures to all students who report sex discrimination to help them learn and feel safe in school; and follow more detailed steps when investigating complaints of sex discrimination, including, with few exceptions, by using an equitable standard of proof. Specifically, schools would be required to take “prompt and effective action” to (i) end any sex-based harassment that has occurred in their programs and activities, (ii) prevent the harassment from recurring, and (iii) remedy the effects of the harassment on all people harmed. Currently, the Title IX rules do not include requirements for prevention and monitoring of sexual harassment.

LGBTQI+ Protections

The AMA also supports the increased protections provided under the Proposed Rule for LGBTQI+ students. Currently, the Title IX rules do not explicitly address anti-LGBTQI+ discrimination. For years,

however, courts have held that Title IX prohibits discrimination based on sexual orientation, gender identity, and transgender status, and in 2020, the Supreme Court confirmed that Title VII, a federal law that bans sex discrimination against workers, protects workers facing discrimination because of their sexual orientation, or gender identity. Since then, federal courts have applied the same standard to Title IX protections in schools to affirm anti-discrimination. And, in 2021, the Department of Education shared resources for schools to meet their Title IX obligations by protecting LGBTQI+ students from harassment and attacks.

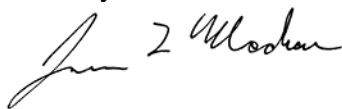
Under the proposed rule, the Title IX rules would explicitly state for the first time that “sex discrimination” includes discrimination based on sexual orientation, gender identity, and sex characteristics (e.g., intersex traits), status as transgender or nonbinary, or sex stereotypes. This means schools must allow transgender, nonbinary, and intersex students to participate fully in school programs and activities consistent with their gender identity. The proposed rule would clarify that when a school’s policy or practice stops students from participating because of their gender identity or transgender status, it would be considered generally harmful and would violate Title IX. Schools would be required to take steps to address sex-based harassment, including anti-LGBTQI+ harassment. These enhanced protections are especially important in light of the high rates of discrimination in the form of assault, harassment, and bullying faced by LGTBQI+ students, as well as the record number of state bills in 2022 targeting such youth.

Protections for Pregnant and Parenting Students

The AMA is pleased to see that the proposed rule would expand regulatory protections for pregnant and parenting students. Such students face several barriers to completing their education, including harassment, discrimination, and few institutional supports. The proposed rule would prohibit discrimination based on current, potential, or past pregnancy or related conditions, including childbirth, termination of pregnancy, lactation, and medical conditions or recovery related to these conditions. In terms of supports, schools would be required to give lactating students a clean, private non-bathroom space to breastfeed or express breast milk and provide reasonable modifications to policies, practices, or procedures due to pregnancy or related conditions, and allow voluntary leaves of absence beyond the medically necessary minimum.

The proposed rule is consistent with AMA policy to preserve the safety and wellbeing of all people affected by sex-based harassment, including medical students and physicians in residency programs. The AMA applauds the Department for issuing this proposed rule and urges that the proposal be finalized as soon as possible. If you have any questions, please contact Margaret Garikes, Vice President of Federal Affairs, at margaret.garikes@ama-assn.org or (202) 789-7409.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim L Madara".

James L. Madara, MD