

The Honorable Miguel Cardona
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW Washington, DC 20202
Via <https://www.federalregister.gov>
August 9, 2022

Reference (RIN): 1870-AA16 (Docket ID 2022-13734)

Dear Secretary Cardona,

This correspondence is submitted in response to the Department of Education's request for comments on the Notice of Proposed Rulemaking "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance" published by your department in the Federal Register on July 12, 2022.

The proposed rule would alter the longstanding definition of pregnancy to include "or related conditions" which is later defined as: "(1) Pregnancy, childbirth, termination of pregnancy, or lactation; (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or (3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions." This proposed redefinition of pregnancy was introduced a mere three weeks after the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* on June 24th, 2022. This decision corrected the grave errors of *Roe v. Wade* and *Planned Parenthood v. Casey*. Now, under the *Dobbs* decision, the question of abortion policy is returned to the American people and their elected representatives.

The Heritage Foundation's opposition to administrative attempts to redefine biological sex to promote gender ideology and abortion is a matter of public record. Because the Department's current proposed rule promotes such policies at the expense of the very women and girls Title IX was designed to protect, this comment respectfully writes in opposition to the current proposed rule.

Background: Longstanding Abortion Neutrality Provision

When Title IX was enacted in 1972 it ensured that "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]" 20 U.S.C. § 1681(a). Title IX has played a significant role in including women in athletic, academic, and extracurricular pursuits in K-12 schools and institutions of higher education.

In 1988 Congress enacted an abortion "neutrality" provision which clarifies Title IX funding may neither require nor prohibit abortion. It reads: "Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion."

Title IX's commitment to neutrality in the case of legal abortion has long protected individual or entities' rights of conscience when they hold sincere moral, religious, or ethical reasons for declining to participate in abortion. Similar 'abortion neutrality' provisions have long appeared elsewhere in federal law as well, including the Church amendments, the Siljander amendment, and the Pregnancy Discrimination Act.

Because of the abortion neutrality provision, women and girls do not face an implicit expectation that they should choose abortion to maintain their rights or opportunities as athletes and students. Title IX considered the demands, joys, and alternative opportunities that arise when people face the prospect of pregnancy and parenting, and sought to provide accommodations and flexibility for mothers and fathers.

Title IX's definition of sex as it relates to pregnancy is largely derived from Title VII

The department relies on guidance from the Pregnancy Discrimination Act, an amendment of Title VII, for their definition of "sex". The Act bars employers from "discriminating against employees on the basis of pregnancy, childbirth, or related medical conditions" [42 U.S.C. 2000e(k)]. As the department clarifies in this proposed rule, "the fact that Congress did not amend Title IX's definition of 'sex' to explicitly include pregnancy, as it did for Title VII in 1978, does not signal Congress's intent to exclude pregnancy coverage under Title IX." Title VII's definition of sex, then, is the basis of Title IX's own interpretation.

Unlike Title IX, Title VII does not have an explicit abortion neutrality clause. It states that a company is not required to cover the cost of an abortion on their health insurance, as a benefit or otherwise. They are, however, expected to cover medical issues that may arise from an abortion complication-like excessive hemorrhaging- as it may result in subsequent surgeries or medical care beyond the scope of the abortion. Additionally, employers are required to provide medical insurance coverage when the life of the mother is at risk.

Title VII does not provide a clear definition as to what falls under the "or related medical conditions" clause, though subsequent district court rulings and guidance announcements have clarified that it includes lactation or breastfeeding and complications arising from abortion.

By following the department's own reasoning as it relates to Title VII and Title IX definitions and protections, Title IX's proposed definition of "or related conditions" is derived from Title VII's "related medical conditions." The department defines Title IX's "pregnancy or related conditions" which is later defined as: "(1) Pregnancy, childbirth, termination of pregnancy, or lactation; (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or (3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions."

In this, #2 and #3 follows the logic of Title VII as it relates to abortion: namely, categorizing abortion as a subsequent medical condition that warrants medically directed accommodations; providing necessary periods of recovery without discrimination or penalty. The first definition,

however, breaks with Title VII's definition of sex and changes Title IX's current definition of pregnancy.

The Proposed Rule Equates Pregnancy and Abortion

New definition, no explanation

The proposed rule defines pregnancy itself as “pregnancy, childbirth, termination of pregnancy, or lactation.” This is a shift from listing conditions protected from discrimination, as the current rule does: “pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.” It's a distinction that makes all the difference. Under the department's new definition, abortion is given equal status with pregnancy and childbearing. This requires an acceptance of abortion as morally equivalent to pregnancy and childbirth. From a moral (and for that matter, medical) standpoint, this could not be further from the truth.

A pregnancy is a natural process in which new life begins at the moment of conception when an ova and sperm bond; the single-celled zygote quickly develops into an embryo. This embryo – a new, separate and distinct human being – implants on the uterine wall where it continues to grow and born after about nine months. This human being is just that – a human being – from its earliest stage of development.

Lactation is the natural response of a mother's body to the needs of her baby as she provides milk and essential nutrients for her newborn child.

Abortion, on the other hand, is the intentional, direct destruction of preborn human life. It kills the preborn baby and halts the natural process of pregnancy.

In short, the proposed definition erroneously conflates pregnancy and lactation, a natural and lifegiving process, with abortion, a medically induced procedure intended to kill preborn life. The department has not explained why the current definition is insufficient, nor has the department sufficiently demonstrated its reason for changing it. The department must explain its reasoning and justification.

Lack of sufficient need; insufficient explanations

The department offers this rationale for why they are changing the current rule as it relates to “pregnancy or related conditions.”

“The Department's tentative view is that the current regulations may be misconstrued as leaving gaps in coverage of discrimination based on “pregnancy,” “related conditions,” or “recovery therefrom” because the regulations do not clearly define those terms. The proposed changes would clarify a recipient's obligations under Title IX to students and employees who are pregnant or experiencing pregnancy- related conditions to ensure full implementation of Title IX's nondiscrimination requirement. For example, the current regulations do not specify the status of medical conditions that are related to or caused by pregnancy, childbirth, termination of

pregnancy, loss of pregnancy, or lactation but that are not necessarily related to “recovery” from pregnancy.

As it stands now, the department’s reasoning process appears to be arbitrary. The agency has not given adequate reasons for its choices.

First, the department fails to provide key examples, analyses, or demonstrable support for the claim that the current rule “may be misconstrued as leaving gaps in coverage”. To effectively justify this change, the department must show how the current rule misconstrues or leaves gaps in its protection of students.

Second, the clarifier “tentative” reveals the department’s own weak stance: this is the product of a hunch or a concern on their part with no solid examples or studies to support the conclusion. While the department claims the proposed changes would clarify and ensure full implementation of Title IX, the changes are substantial enough to call this claim into question.

Instead, the department should demonstrate the need for this change and then clarify the scope and practical meaning of this change. The lack of sufficient evidence to support their claim or justify such a change in the definition and language suggests that the department should wait until it has gathered sufficient data before suggesting these changes.

Third, the proposed rule changes the language from “pregnancy and...” to “pregnancy or related conditions” and fails to explain the why. The department does not provide an explanation for the use of “or” in the place of “and” in the proposed regulation. The department must do so.

Fourth, the department breaks with the tradition of Title VII and Title X which explicitly refer to abortion provisions as that, abortion. Title VII allows for limited provisions related to medical insurance surrounding abortion while Title X prohibits the use of its funding “in programs where abortion is a method of family planning.” Instead, Title IX refers to abortion as a “termination of pregnancy.” The department fails to provide an explanation for what “termination of pregnancy” entails. Does it refer to abortion, as Title VII and Title X do? Does the broad shift in language include similar but distinct means of terminating a pregnancy? Regardless, the department is unclear in both their reasoning and definitions.

The proposed rule marks a notable departure from previously held definitions of pregnancy. Beyond the departments “tentative view,” they do not provide adequate documentation to support the claim that the current rule is unclear; nor does the department sufficiently explain the impact of this change. The department fails to account for the significant impact this change will have on how the federal government and its subsidiary education centers understand, educate, and apply Title IX as it relates to pregnancy and abortion.

The department fails to discuss the redefinition’s impact

Beyond explaining the need for redefinition or its reasoning, the department has not explained the impact of this significant change.

The proposed language includes abortion as part of the definition of pregnancy yet the department fails to explain the scope or reach its ruling would have upon differing views about life, pregnancy, and abortion.

First, the proposed rule is silent on exactly how abortion is to be protected under the regulation's prohibition against discrimination on the basis of "termination of pregnancy." The proposed rule would require educational institutions to make "reasonable modifications" to policies, practices, or procedures for students due to "pregnancy or related conditions." What does this look like in practice?

Second, the proposed rule will shape how reproductive capabilities are taught and discussed, even in K-12 schools. Title IX will shape the expectations and values of young athletes and scholars to believe that abortion is necessary to follow their dreams. This would impose a heavy burden on women; exactly the kind that Title IX previously sought to eliminate when it was enacted in 1972. Title IX is meant to alleviate undue burdens by considering of the demands and responsibilities of one's sex.

Third, does the department's version of Title IX implementation implicitly encourage young women to seek abortion? Our concern that the rule will do so stems both from the current political climate following the Dobbs decision and redefinition of pregnancy to include abortion. If abortion is included as part of Title IX's definition of pregnancy, it could cause students to 'read between the lines' and falsely equate the two.

Fourth, it could lead an athlete to feel that she should choose an abortion even if it's not what she truly wants. Accommodating nine months of pregnancy requires significantly more of a school than the much shorter timeframe of abortion/recovery. Female students may internalize negative messages about pregnancy, childbearing, and their bodies given the highly competitive environment and their own commitment to success. Thus, the proposal would hurt the very people it claims to help.

Well-intended but inadequate justification

The proposed rule recognizes that this misconception often exists, and rightly seek to provide further clarification. It says, "this proposed revision would make clear that upon return to school, a student must be restored to the student's previous academic status, as well as to, as much as practicable, any extracurricular status the student may have held prior to the student's leave."

We applaud the department's efforts to clarify Title IX protections. Here, we write to encourage the department to clearly delineate its rule to protect the life of students and preborn children. The best way to do this is remove any pressure to make an "impossible decision" about whether to receive an abortion. Instead, Title IX funding and language should go towards providing women with a full understanding of their rights under Title IX, flexibility and accommodations, lactation rooms, and access to pregnancy care centers who will help address each of their needs.

Inclusion of lactation rooms

We applaud the inclusion of lactation rooms in the proposed rule. This measure supports the intended goal of Title IX's non-discrimination and provides much needed support and accommodations for mothers in this vulnerable season of life.

The department rightly cites the recognition of lactation and breastfeeding accommodations in the Pregnancy Discrimination Act. Title IX's proposed rule reads, "Courts have considered the scope of the term 'related medical conditions' under the PDA, particularly in connection with the issue of lactation. In 2013, for example, the U.S. Court of Appeals for the Fifth Circuit held that under the PDA, lactation is a medical condition related to pregnancy, explaining that '[i]t is undisputed . . . that lactation is a physiological result of being pregnant and bearing a child'" and the definition of "'medical conditions' includes physiological conditions. *Equal Emp. Opportunity Comm'n v. Hous. Funding II, Ltd.*, 717 F.3d 425, 428–29 (5th Cir. 2013). In 2017, the U.S. Court of Appeals for the Eleventh Circuit followed suit, holding that 'lactation is a related medical condition and therefore covered under the PDA.' *Hicks v. City of Tuscaloosa*, 870 F.3d 1253, 1259 (11th Cir. 2017)."

We're pleased that here, the department considers the demands and responsibilities of motherhood and empowers these mothers with this accommodation they need to pursue an education.

Proposed changes to Title IX and Post-Roe Abortion State Laws: Grey Zone

Given the Supreme Court's decision in *Dobbs*, the American people through their elected representatives are empowered to pass abortion laws that reflect our values. While *Roe v. Wade* was in effect, top-down national guidelines dictated state abortion law. This made the interpretation of Title IX's regulations easier to apply. Now, the abortion landscape is quickly shifting, and states have enacted– or are in the process of enacting – new policies that protect women and unborn children from abortion.

It is essential that the Department of Education clarify how Title IX's rule will be applied across jurisdictions with varying abortion policies. Given Title IX's inclusion of "termination of pregnancy" in the definition of pregnancy as a protected status, and the abortion neutrality clause which references legal abortion, the department must provide greater clarifications about how the rule will interact with state law. By neither "requiring nor prohibiting" abortion access in schools, Title IX's language creates a "grey zone."

The department fails to explain how Title IX's rule regarding abortion will interact with state laws, particularly in state's that protect the lives of preborn babies. Does the department believe that the proposed rule would preempt state-level pro-life laws?

It's not a theoretical question; the administration has already indicated as much in an unrelated interim final rule regarding provision of abortion services at V.A. facilities (a move that, beyond conflicts with state laws, violates federal law as well). Would this rule give schools the legal and monetary opportunity to defy their states' law under the guise of compliance with a federal regulation?

The proposed rule, when paired with the Dobbs ruling, effectively creates an abortion “grey zone.” Does this “grey zone” protect a K-12 school or institution of higher education who wants to use Title IX funds to promote information, access, referrals, or travel stipends for women seeking an abortion? How does the department plan to prevent schools from doing so with Title IX funds, in defiance of their own states’ laws? By giving schools the option, it places women in danger of coercion, malpractice, or the responsibility of making an impossible decision: must they kill their preborn child to “fully” pursue their dreams? In the short term, the financial cost of an abortion is cheaper than the long-term costs associated with parenting, which could make it the preferred or suggested option under the abortion “grey zone.”

Additionally, does the department believe that the proposed rule would affect pro-life speech, pro-life organizations, pro-life events, and pro-life speakers at educational institutions? Imagine a pro-life student group organizes a display of crosses commemorating the number of children aborted in a single year in a given state. Would a public display like this be considered harassment based on termination of pregnancy under the proposed rule? The department has failed to explain exactly what falls under the scope of discrimination related to abortion.

Title IX’s normalization – and apparent promotion – of abortion under its proposed rule paired with the Dobbs decision could give schools greater incentives to “opt in” to providing abortion access for athletes and students. The department provides no explanation for this shift, following the overturning of *Roe v. Wade*. Additionally, the department provides no explanation for how it will protect students from coercion, malpractice, or uninformed consent regarding abortion access or referrals.

Given the administration’s recent action related to the V.A., we are justifiably concerned that the department intends to once again use heavy-handed administrative action to do what cannot be accomplished through the democratic process.

The department continues to receive calls for clarification on both sides of the aisle

This confusion as to the extent and meaning of the department’s proposed rule as it relates to abortion is not limited to one ideological viewpoint. On July 20, 2022, a coalition of sixty Democrats wrote a letter to the Department of Education requesting that it clarify “specific protections for pregnancy students under Title IX.” It appears that even pro-abortion Democrat elected leaders are unclear about key aspects of Title IX’s ruling as it relates to abortion.

In particular, the democrat coalition asks the department to clarify how the Dobbs decision interacts with privacy laws affecting students. They recognize that the new post-Roe abortion landscape, in which elected leaders can better advance policies that value and protects both the lives of women and the lives of preborn children, requires a careful and specific consideration from the department as they issue sensitive rulings related to abortion and academic institutions. Similarly, this comment humbly requests similar explanations and definitions from the department related to abortion and Title IX.

Parental Rights

Under Section 654 of the Treasury and General Government Appropriations Act, 1999, (Pub. L. 105-277) federal agencies are required to assess the impact of proposed regulations on families. Officially known as the “Family Policymaking Assessment,” agencies are required to assess their actions “before implementing policies and regulations that may affect family well-being.” Of the seven categories provided, we are particularly interested in the department assessing the impact of the second category. It assesses whether “the action strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children.”

As it relates to K-12 schools and the rights of parents in their child’s education, nurture, and effective supervision, the department fails to clarify the rights of parents as it relates to abortion education, access, and/or assistance in achieving an abortion. Does the department consider it a form of discrimination to notify parents about a minor child receiving an abortion or “termination of pregnancy” via a referral from a school administrator, counselor, or nurse? What if the nurse supplies the chemical abortion pills and “oversees” the abortion for a minor? Does the department ensure that a minor’s parents will be adequately informed prior to this? If a parents’ sincerely held religious beliefs hold that abortion kills a preborn child, and not merely another aspect of “pregnancy,” will parents be informed, in advance, about school curriculum or trainings that teach abortion contrary to their beliefs? Additionally, what impact will the addition of in loco parentis have on parental notification?

To adequately clarify the department’s stance and provide an adequate assessment in line with the 654 of the Treasury and General Government Appropriations Act, the department should clarify the impact of this rule as it relates to “minor majority” in medical decisions and parental notification laws.

Given this, we request that the department immediately assess how the proposed rule will impact families, particularly considering whether “the action strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children.” For the department to fully conform to the requirements of the 1999 appropriations bill, we humbly ask the department to conduct the requested study before releasing the final form of the Title IX rule.

Professional Athletes and Legal Scholars Wrongly Conflate Title IX and Roe v. Wade

Title IX (1972) and Roe v. Wade (1973) went into effect less than a year apart. Each are distinct in their origins, branch of government, mode of enforcement, and reach. Nonetheless, many athletes and scholars have begun to equate the two given their symbiotic relationship. Two recent examples demonstrate this point.

Professional athletes and coaches misuse Title IX to fight for abortion rights

In an Amicus Brief submitted by over 500 professional, collegiate, and high school athletes, coaches, and organizations in the Dobbs v. Jackson Women’s Health Organization, the brief explicitly equates the power of Title IX protections with the right to abortion afforded under Roe v. Wade.

A few quotes from the Amicus Brief highlight the dangerous conflation internalized by athletes about Title IX and abortion rights:

- “As swimming gold medalist Katie Ledecky has observed, ‘Title IX has had a huge impact on women participating in sports and the evidence of that is clear with the results of women at the Tokyo Olympics.’ But Title IX does not exist in a vacuum. Less than a year after its enactment, this Court recognized that constitutional liberty interests include the right to abortion.”
- “Roe and Casey strengthen the practical impact of legislative guarantees of gender equality, like Title IX. Without Roe’s constitutional protection of women’s bodily integrity and decisional autonomy, women would not have been able to take advantage of Title IX and achieve the tremendous level of athletic participation and success that they enjoy today.”
- “For example, in track star Sanya Richards-Ross’ experience, women’s track and field would look entirely different without that right: ‘Most of the women I knew in my sport have had at least one abortion.’ Without the constitutional guarantee of reproductive freedom, many women athletes would be forced to sacrifice their athletic pursuits, and progress made toward gender equality in sports would be reversed.”
- “The most minute physical variances can affect athletic performance and opportunity—including the grant or denial of a scholarship or endorsement—and a pregnancy imposes enormous changes on a woman’s body.”

The conclusion goes so far as to say that without a right to abortion afforded by Roe v. Wade Title IX is rendered incomplete and unable to achieve its intended ends.

“Women’s increased participation and success in sports has been propelled to remarkable heights by women’s exercise of, and reliance on, constitutional guarantees of liberty and gender equality, including the right to reproductive autonomy. Continued access to, and reliance on, those rights will empower the next generation of girls and women to continue to excel in athletics and beyond, strengthening their communities and this nation. If women were to be deprived of these constitutional guarantees, the consequences for women’s athletics—and for society as whole—would be devastating.”

These quotes highlight the twisted relationship between Title IX and access to abortion. We hope that in the coming months and years female athletes will feel the freedom and support they need to pursue both their dreams and motherhood, should the opportunity arise.

Legal scholars argue Title IX should include a positive provision for abortion

The Harvard Journal of Law and Gender published an academic article in 2020 entitled “Reproducing Inequality Under Title IX.” The article begins by highlighting the insufficient attention given to “[Title IX’s] intersection with pregnancy and reproduction” (172). It goes on to frame pregnancy and maternity as “significant obstacles” to educational attainment (172).

The authors criticize Title IX for only addressing pregnancy and reproduction after it has occurred and threatened academic or athletic pursuits. Instead, they argue for a proactive

approach. At length, the authors argue that the abortion neutrality provision undermines Title IX's potency as it does not require universities to provide abortion services' for students.

In short, they believe Title IX should shift from a negative abortion provision (protecting a woman from discrimination should she receive an abortion) to a positive abortion provision. This positive provision could take the form of requiring "educational institutions to provide any support for students seeking or having an abortion, such as referrals to abortion providers, education about abortion as an option, or access to abortion care as part of a student health" (173).

Twisting Title IX to advance pro-abortion policy goals is the wrong approach

For both the athletes represented in the Amicus Brief and the legal scholars following the Harvard Journal of Law and Gender, Title IX's protection from discrimination on the basis of sex has been manipulated to require abortion access for the sake of "gender equality."

This is not gender equality; it's a rejection of the female sex altogether. The underlying message is that sterility is the normal – and in fact desired – state of the female body. Additionally, it frames pregnancy or motherhood as an abnormality or weakness unfairly imposed upon women. This could not be further from the truth. More importantly, it could not be further from Title IX's original goal of protecting women from this sort of sex-based discrimination.

These two examples demonstrate a powerful shift – for the worse – in how our athletes and scholars conceive of discrimination and reproductive care. In this line of thinking, women need the right to an abortion to be protected from discrimination or undue burdens.

This is an erroneous view of sex discrimination. Instead, it was precisely because of a person's male or female sex that Title IX protected them from athletic or academic discrimination. This way, women and men may fully embrace the demands of motherhood or fatherhood. This means, contrary to the suggestion by one athlete in the Amicus Brief, women will not lose scholarships, their places on an athletic team, and they will receive proper accommodations for class, doctors' appointments, or lactation rooms to care for their children.

Title IX and Chemical Abortion Pills

The abortion procedure itself has changed significantly since 1972. Given the rules' ambiguity and the change in terminology in "termination of pregnancy," it is worth considering one method in particular which did not exist at Title IX's inception: chemical abortion.

Abortion pills – the new frontier

The use of chemical abortion pills, as opposed to surgical abortion procedures, has risen to 54% of all abortion procedures and counting.

In the chemical abortion process a woman typically takes two pills: mifepristone and misoprostol. Mifepristone blocks the uterus from receiving a critical hormone, progesterone,

which is required to sustain a pregnancy. As a result of the progesterone inhibitor, the lining of the uterus deteriorates and cannot transfer adequate nutrients to the developing unborn child, causing its death. Twenty-four to 48 hours after taking mifepristone, a woman takes the second part of the abortion pill regimen, misoprostol, which causes uterine contractions to complete the abortion process and empty the uterus.

The FDA approved the use of chemical abortion pills until up to ten weeks of pregnancy. They also suspended their in-person dispensing requirement under the guise of Covid-19 safety protocols. The Biden administration made that change permanent in December 2021. The combination of widespread use paired with a greater risk for complications and adverse side-effects, makes chemical abortion pills an essential part of this abortion conversation.

When Title IX was enacted in 1972, the “termination of pregnancy” clause reliably referred to surgical abortions. The widespread use of chemical abortion pills raises new concerns that were not present when Title IX was enacted. Nor were these concerns an issue when similar regulations like the Pregnancy Discrimination Act went into effect. Because of this, it is important to ensure the proposed rule adequately considers chemical abortion pills under its “termination of pregnancy” provision.

Could a campus health center be accused of sex discrimination if it chooses to not dispense or refer for abortion pills? If a campus health clinic dispenses abortion pills, does the department believe the existing federal law protects conscience rights for clinic employees who do not wish to be party to an abortion procedure? Or does the department believe that such an employee could find themselves accused of Title IX discrimination for opting out of assisting students in aborting their unborn children?

The chemical abortion process is often bloody and painful; abortion providers routinely downplay the significance of the physical process. Under new protocols, failure to evaluate women in-person means that more women will take abortion pills past the 10-week cutoff, at which point the risk of complications exponentially increases. Women who order pills online without undergoing an ultrasound may take the pills despite the fact that she may have an undiagnosed ectopic pregnancy (which, in turn, can be a fatal complication).

If the department envisions the proposed rule being used to bolster access to abortion pills in campus health clinics, the department must provide an estimate of the cost increase to campus health centers and address how they will respond to an increase in harmful side effects experienced with chemical abortion pills.

Does the department believe campus health centers are equipped to handle women experiencing post-abortion physical and mental health complications?

Can the department provide a cost estimate for the increased toll on health and counseling centers caring for post-abortive women – and/or her roommate(s) – who were traumatized and experience adverse mental health consequences after undergoing a dorm room abortion?

The Negative Impacts of Abortion

Women who undergo an abortion (surgical or chemical) experience high rates of anxiety, depression, substance and alcohol abuse, and thoughts of suicide. For some, this takes the form of Post-Abortion Syndrome (PAS) or After-Abortion Grief. This syndrome refers to the myriad of emotional and psychological challenges women experience following an induced, elective abortion. It is not uncommon for women to experience sustained feelings of regret and loss.

Since abortions cost less and require fewer accommodations than pregnancy, childbirth, and lactation, we are concerned that some may view abortion to be the “cheap and easy” option in high-performance, high-stress environments.

The department’s proposed rule has failed to consider the physical, emotional, or mental harm a student may suffer when faced with an abortion. Since the rule includes abortion as a “related condition” of pregnancy, the department must provide an analysis of how many young women will be at risk for these adverse effects under their new rule. How will schools provide the necessary resources for students considering an abortion or recovery thereof?

Conclusion

Title IX does not provide the administration with the power or scope to rewrite the abortion policies of the states, nor does Congress’ original intent of passing Title IX indicate that it was ever meant to be an avenue to promote abortion. Likewise, Title IX does not have the power or scope to completely alleviate women of responsibility or the consequences from the fundamental biological reality that sexual intercourse can result in pregnancy. Therefore, while women would not be discriminated against for undergoing an abortion, Title IX does not encourage or stipulate a right to an abortion as a means of removing undue “barriers.” That was the case in 1972 and it remains the case half a century later.

Given how rapidly state laws are shifting to either protect or disregard the lives of mothers and preborn children, we urge the department to carefully consider their redefinition of pregnancy to include abortion. Without further clarification and protections, Title IX’s abortion “neutrality” creates a grey zone that will harm and be misused to promote a pro-abortion agenda- at the expense of the very women and girls Title IX was created to protect.

We respectfully beseech the department to carefully weigh these comments and respond accordingly so that Title IX may continue to protect and advocate on behalf of the women and girls it was designed to help.

Respectfully submitted,

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