



June 10, 2021

Hon. Miguel Cardona
Ms. Suzanne Goldberg
U.S. Department of Education
Office of Civil Rights
400 Maryland Avenue, SW
Washington, DC 20202

Re: Written Comment – Title IX Public Hearing, June 7 – 11, 2021

Submitted to: T9PublicHearing@ed.gov

Dear Secretary Cardona and Ms. Goldberg:

The Association of Christian Schools International (ACSI) is the largest worldwide Protestant school association and serves 2250 member schools in the United States alone. ACSI exists to strengthen Christian schools and equip Christian educators worldwide as they prepare students academically and inspire them to become devoted followers of Jesus Christ.

The Christian faith teaches the dignity of each human person, each of whom is made in the image of God and thus deserving of respect. In terms of sexuality, the Christian faith teaches that human flourishing calls for sex to be reserved for marriage only, and that marriage is a covenant between one man and one woman for one lifetime with children as God may give. [Orthodox and Catholic Christians teach that marriage is also a sacrament which implicates marriage as a means of God's grace]. Christian schools therefore teach, and Christian individuals do their best to live out, these timeless, proven truths which, in fact, promote *individual*, personal flourishing in ways that a real and loving God intended *and* which thus also promote the *common* good and contribute positively to a thriving society.

These Christian standards are part and parcel of a Christian faith and practice that reflects the Good News of the Gospel of Jesus Christ: a loving God has created an understandable order designed to bless and benefit His special creation – each of us – and has provided a Redeemer who took the punishment each and every individual deserves so we could be forgiven when we transgress God's laws and have a clear conscience when we turn away from sin and toward what He intends for our good.

Further, the federal Constitution guarantees freedom of conscience in the First Amendment which forbids the federal government from establishing an official religion, church or faith and compels the

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federal government to respect the free exercise of religion. The *first* line of the *first* item in the Bill of Rights is “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” Christians, like all others, have a lawful, inherent right to expect the full freedom to live out their faith and, as a practical example in one area of concern, to be treated equally in government programs of general applicability as the Supreme Court made clear in its decisions in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) and *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020).

As federal actors, you have an obligation to ensure that those rights are respected.

The Office of Civil Rights of the U.S. Department of Education has asked for public comment on its desire to fulfill the requirements of Executive Order 13988, *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation* (published January 25, 2021), and Executive Order 14021, *Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity* (published March 11, 2021). The latter seeks review of agency actions that “are or may be inconsistent with governing law, including Title IX.” Thus, in the words of its [Public Notice](#) announcing the June 7 – 11, 2021 public hearing, the Office of Civil Rights “seeks comments from the public ... on steps the Department can take 1) to ensure that schools are providing students with educational environments free from discrimination in the form of sexual harassment, which encompasses sexual assault and other forms of sexual violence; 2) to ensure that schools have grievance procedures that provide for the fair, prompt, and equitable resolution of reports of sexual harassment and other sex discrimination, cognizant of the sensitive issues that are often involved; and 3) to address discrimination based on sexual orientation and gender identity in educational environments.”

With respect to the first two questions, ACSI would note only that the rights of victims and the accused must be protected as they are in any judicial proceeding. There are victims who have been denied and there are those who have been wrongfully accused. Neither situation is just and the Department must ensure its work does not establish or perpetuate such injustice.

The third question is of significant, direct interest and concern to Christian schools. First, it must be said that the good faith of Executive Order 13988 itself can reasonably be questioned. An honest evaluation and an honest discussion are hampered when it makes odd claims such as “Children should be able to learn without worrying about whether they will be denied access to the restroom...”. Court cases and debate have ensued *not* over whether children should be allowed to use the restroom, but over *which* restroom is best. If the Department is to be serious, it must avoid the special interest politics present in the Executive Order itself when it attempts to review its regulations.

In addition, EO 13988 cites the ruling in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020) and attempts to apply it to other laws when the decision itself is clearly limited to employment issues specific to Title VII of the Civil Rights Act:

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 employer who fires someone simply for being homosexual or transgender has discharged or otherwise discriminated against that individual “because of such individual’s sex.” *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020) at 1753.

The Department should not compound the error by applying *Bostock* to Title IX; the Court made clear that such questions may well come before it in the future: “Whether other policies and practices might or might not qualify as unlawful discrimination or find justifications under other provisions of Title VII are questions for future cases, not these.” *Ibid*.

We recognize that the Department may feel pressure to submit to the political agenda of whatever Administration is in office, but as a matter of integrity, a professional civil service must have its loyalty to the U.S. Constitution and the rule of law, not the rule of political expediency.

Finally, the Office of Civil Rights and the Department of Education itself, must evaluate in all of its regulatory work on questions of sexual orientation and gender identity (SOGI) how it will ensure – as it must – that faith-informed institutions and their participants of good will are protected and continue to have every means at hand to teach and to live out Christian standards of conduct with which politicians and activists may disagree, but which are clearly lawful: respect for biological sex, human dignity, and the encouragement of all to reserve sexuality for marriage. Parents seek out – *choose* – faith-based schools *because* they are places of love and openness that teach, among many other positive messages, those related to Biblical views of marriage and sexuality. In fact, just as no one seeks to prevent a child from using the restroom, so does no family pay tuition for its children to be in a negative environment.

The Department must acknowledge and provide for the reality that no family that participates in a religious school environment is compelled to be there. Anyone who disagrees with Christian standards – or who becomes alarmed that they are implemented in error – is free to find other options. But those who desire to participate in a Christian (or other faith-based) education environment must have the freedom to do so as well. The Department should make clear in all of its regulations that it has no authority to violate the conscience of religious believers who have standards of sexual conduct and belief that promote the flourishing of individuals and the common good; and that the Department may not compel or suppress any specific belief or religious practice. It may be that many Christian institutions will choose to protect the privacy of biological males and females: the Department may not attack those children under the guise of discrimination, nor deprive them of their dignity, nor yet compel Christian institutions to go along with it. The Department must find a way to ensure that the disagreement over how best to serve children who are learning how to live out their questions about sexuality is not resolved by its own mandates.

Christians, as well as those that subscribe to other religious beliefs, have a right to full participation in American life, and their institutions, which may choose to be recipients of federal financial assistance

in accord the Supreme Court's multiple rulings barring discrimination in programs of general applicability, must be permitted and encouraged by the Department to exercise those rights. At minimum, the Department must make clear that it is not discrimination to teach and to live out the reality that sexuality is best reserved for marriage, that all children deserve to use a restroom that respects their privacy and thus gives them the human dignity that they do, in fact, possess.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "P. George Tryfiates". The signature is fluid and cursive, with a prominent initial "P." and a long, sweeping underline.

P. George Tryfiates
Director for Government Affairs