

A DOZEN DIRTY DEFECTS: PRESIDENT BIDEN’S PROPOSED TITLE IX RULE

The Biden Education Department (“Biden ED”) has published a Notice of Proposed Rulemaking (“NPRM”) under Title IX of the Education Amendments of 1972 (“TIX”). The NPRM is a radical overreach that--

Endangers Women’s and Girls’ Sports

Biden’s Title IX proposal expands the scope of "discrimination on the basis of sex" under TIX to include discrimination on the basis of "gender identity." This change will *require* schools, colleges, and universities to allow biological males who identify as females to compete in women’s and girls’ sports.

Tramples Parental Rights in K-12

Biden’s Title IX proposal requires K-12 schools to accept a child’s gender identity regardless of biological sex without requiring the approval of or notification to the child’s parents.

Threatens Free Speech and Academic Freedom

Biden’s Title IX proposal defines sexual harassment so broadly that it will require K-12 officials to police and punish the use of pronouns and allow colleges and universities to twist TIX into a *de facto* campus speech code that cancels debate, shuts down free speech and classroom discussion, and severely erodes academic freedom.

Turns Title IX Coordinators into Campus Commissars

Biden’s Title IX proposal turns TIX Coordinators into all-powerful “campus commissars” empowered to monitor day and night the conduct and speech of



students, faculty, and staff while constantly on patrol for perceived violations under the proposed regulations.

Brings Back the “Grand Inquisitor”

Biden’s Title IX proposal allows for schools to use the “single-investigator” model, meaning that schools can use the same school official as the investigator, prosecutor, judge, and jury in any TIX investigation and disciplinary proceeding.

Allows the Title IX Coordinator to Conceal Evidence

Biden’s Title IX proposal fails to require TIX Coordinators to turn over to students in a TIX proceeding all the evidence uncovered by a school in an investigation. If a college student requests the evidence, he or she will only receive evidence that the TIX Coordinator (the “Grand Inquisitor”) deems to be “relevant and not otherwise impermissible”—a recipe for abuse and lack of fairness.

Tosses Live Hearings and Cross-Examinations

Biden’s Title IX proposal does not require colleges or universities to use live hearings and require the right of cross-examination in TIX proceedings. If a school does have a live hearing with cross-examination, the TIX Coordinator can still prohibit any questions that he or she determines are “unclear” or “harassing”—another recipe for abuse and lack of fairness.

Imposes a Lower Standard of Evidence for Students

Biden’s Title IX proposal requires the “preponderance of evidence” standard, the lowest standard of proof, to decide responsibility under TIX, unless a school uses a more exacting evidentiary standard for all other discrimination complaints.



Gives Special Favors to Teacher Unions

Biden’s Title IX proposal makes it harder to discipline unionized K-12 teachers and staff accused of sexual harassment of students. For these employees, the rule allows a higher evidentiary standard—the “clear and convincing standard”—rather than the lower “preponderance of the evidence” standard used for everyone else.

Opens the Door to an Avalanche of Complaints

Biden’s Title IX proposal encompasses all complaints alleging sex discrimination under TIX (not just sexual harassment) and imposes excessive costs on K-12 and postsecondary institutions.

Applies Outside of the United States

Biden’s Title IX proposal applies to conduct anywhere in the world, despite Congress expressly limiting the scope of TIX to educational programs and activities “in the United States.”

Lays the Groundwork for Abortion as a Civil Right under Title IX

Biden’s Title IX proposal directs schools, colleges, and universities to make “reasonable modifications for students because of pregnancy or related conditions.” Yet, nothing in the text of the proposed rule prevents ED from requiring institutions to provide abortion counseling and services to students as a “reasonable modification” “because of pregnancy or related conditions.”