

December 15, 2025

VIA EMAIL to [kimberly.richey@ed.gov](mailto:kimberly.richey@ed.gov)

The Honorable Kimberly Richey  
Assistant Secretary of Education  
Office for Civil Rights  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

*Re: Restoring Fairness, Due Process, Free Speech, and Equal Opportunity to  
Department of Education Regulations Implementing Title IX*

Dear Assistant Secretary Richey:

We are writing to request that the U.S. Department of Education (“Department”) amend its regulations implementing Title IX of the Education Amendments of 1972 (“Title IX”) to rescind the unlawful regulatory amendments imposed by the previous administration in 2024 (the “2024 Rule”).

Anyone who has followed the Trump administration’s strong enforcement actions to date against those school districts, colleges, and universities that prioritize gender ideology over equal opportunities for women and girls in education—especially in accessing sex-separated sports and intimate facilities—may be surprised to learn that the 2024 Rule is still officially “on the books,” despite numerous court decisions preliminarily enjoining the enforcement of those rules and two district court decisions vacating them. The continued presence of these Biden-era rules in the Code of Federal Regulations confuses students, families, and educators seeking to understand their rights under Title IX. Notwithstanding the Trump administration’s interpretation of Title IX, the substantial risk also exists that a future administration may attempt to enforce the 2024 Rule against recipients of federal funds in those many jurisdictions not directly affected by various court rulings preliminarily enjoining or vacating the 2024 Rule.

For the purpose of clarity and to ensure the hard-won gains of the many successful legal challenges to the 2024 Rule, we urge the Department to begin, as quickly as possible, the



rulemaking process to rescind the 2024 amendments from the Department’s regulations implementing Title IX.

### **Title IX and the Regulatory Framework**

As you know, Title IX provides, “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,” subject to certain statutory exceptions.<sup>1</sup> It is beyond serious debate that, as used throughout Title IX, the word “sex” refers to a person’s biological sex—male or female—at birth.<sup>2</sup> As the Supreme Court recognized merely a year after Title IX’s passage, “[s]ex, like race and origin, is an immutable characteristic determined solely by the accident of birth.”<sup>3</sup> The law includes a rule of construction specifying that “nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.”<sup>4</sup>

The law also includes a provision directing federal agencies, including the Department, that provide federal financial assistance to education programs or activities to implement Title IX’s nondiscrimination mandate by “issuing rules, regulations, or orders of general applicability” applying the law and to effect compliance with these rules by withdrawing funding from federal funding recipients or “by any other means authorized by law.”<sup>5</sup> In 1974, Congress adopted the “Javits Amendment,” which required the Department’s predecessor to promulgate regulations to effectuate Title IX that included “with respect to

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<sup>1</sup> 20 U.S.C. § 1681(a).

<sup>2</sup> See Amended Complaint at 10, *Louisiana v. Dep’t of Educ.*, 737 F. Supp. 3d 377 (W.D. La. May 3, 2024) (No. 3:24-CV-00563-TAD-KDM) (citing *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (plurality op.); *Sex*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2081 (1966) (“one of the two divisions of organic esp. human beings respectively designated male or female”); *Sex*, WEBSTER’S NEW WORLD DICTIONARY (1972) (“[E]ither of the two divisions, male or female, into which persons, animals, or plants are divided, with reference to their reproductive functions.”); *Sex*, AMERICAN HERITAGE DICTIONARY 1187 (1969) (“a. The property or quality by which organisms are classified according to their reproduction functions. b. Either of two divisions, designated *male* and *female*, of this classification.”)).

<sup>3</sup> *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).

<sup>4</sup> 20 U.S.C. § 1686.

<sup>5</sup> 20 U.S.C. § 1682.



intercollegiate athletic activities reasonable provisions considering the nature of particular sports.”<sup>6</sup>

Since the Department’s predecessor first issued regulations in 1975 pursuant to these directives,<sup>7</sup> Title IX regulations have permitted recipients of federal education funding to “provide separate, toilet, locker room, and shower facilities on the basis of sex” as long as “such facilities provided for students of one sex” are “comparable to such facilities provided for students of the other sex.”<sup>8</sup> These regulations have also specifically prohibited discrimination on the basis of sex in recipients’ athletic programs, while permitting them to operate separate teams “for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.”<sup>9</sup>

### **The 2020 Rule**

In 2020, the Department promulgated amendments to its regulations implementing Title IX (the “2020 Rule”).<sup>10</sup> For the first time as a matter of regulation, the 2020 Rule recognized that federally funded educational institutions must address sexual harassment in their programs and activities, codified a definition of sexual harassment that tracks Supreme Court caselaw and includes single instances of sexual assault and similar conduct, and set out the basic standards for a grievance process that recipients must follow in campus disciplinary proceedings relating to allegations of sexual harassment.<sup>11</sup> Such a grievance process must include written notice of the allegations; an equal opportunity to submit and review evidence; a presumption of nonresponsibility for alleged sexual harassment until

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<sup>6</sup> Pub. L. No. 93-380, Title VIII, Part D, § 844, 88 Stat. 612.

<sup>7</sup> See U.S. Dep’t of Health, Educ., & Welfare, *Nondiscrimination on the Basis of Sex Under Federally Assisted Education Programs and Activities*, 40 Fed. Reg. 24,128 (June 4, 1975) (codified at 45 C.F.R. pt. 86). The Department of Education, created in 1979, formally adopted and recodified the 1975 regulations without substantive changes when it began operations in 1980. 45 Fed. Reg. 30,802, 30,955–65 (May 9, 1980) (codified at 34 C.F.R. pt. 106).

<sup>8</sup> 34 C.F.R. § 106.33.

<sup>9</sup> 34 C.F.R. § 106.41(a)–(b).

<sup>10</sup> U.S. Dep’t of Educ., *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30,026 (May 19, 2020) (codified at 34 C.F.R. pt. 106).

<sup>11</sup> *Id.* at 30,030 (summary of the major provisions of the 2020 Rule).



the conclusion of the process; and, in postsecondary institutions, a live hearing and opportunity for cross-examination.<sup>12</sup>

## The 2024 Rule

The Department finalized the 2024 Rule on April 29, 2024, with an effective date of August 1, 2024.<sup>13</sup> Those amendments misinterpreted the law’s prohibition of “discrimination on the basis of sex” to prevent discrimination on the basis of an undefined “gender identity” in federally funded education programs and activities.<sup>14</sup> As a result, the 2024 Rule required recipients to prohibit discrimination on the basis of “gender identity” in all of their programs and activities, including in their athletic programs, and to allow any person to use whichever sex-separated bathroom or locker room corresponded with that person’s claimed “gender identity.”<sup>15</sup>

The 2024 Rule also expanded the regulatory definition of “sexual harassment” to require federally funded educational institutions to police pronoun usage and a broad range of “offensive” speech, empowered Title IX Coordinators to become roving monitors and enforcers against any perceived violation of the regulations, and eliminated key protections in the 2020 Rule that require institutions to offer a fair grievance process to students and faculty before disciplining them over allegations of sexual harassment—returning Title IX enforcement on campus to the “kangaroo court” model favored by the Left.<sup>16</sup>

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<sup>12</sup> See U.S. DEP’T OF EDUC., U.S. DEPARTMENT OF EDUCATION TITLE IX FINAL RULE OVERVIEW 2 (2020), available at <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/titleix-overview.pdf>.

<sup>13</sup> U.S. Dep’t of Educ., *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89 Fed. Reg. 33,474, 33,474 (Apr. 29, 2024) (hereinafter “2024 Rule”).

<sup>14</sup> *Id.* at 33,886 (codified at 34 C.F.R. § 106.10).

<sup>15</sup> *Id.* at 33,887 (codified at 34 C.F.R. § 106.31(a)(2)); *id.* at 33,818 (denying “a transgender student access to a sex-separate facility or activity consistent with that student’s gender identity . . . would violate Title IX’s general nondiscrimination mandate”).

<sup>16</sup> See generally WISC. INST. FOR L. & LIBERTY, DEF. OF FREEDOM INST., & SE. LEGAL FOUND., PROTECTING TITLE IX: A RESOURCE GUIDE FOR SCHOOL BOARDS (2024), available at <https://dfipolicy.org/wp-content/uploads/2024/11/Protecting Title IX Resource Guide 11 2024.pdf> (describing for school boards the changes the 2024 Rule imposed in the Title IX regulatory framework applicable in the K–12 context).



Federal district courts and courts of appeals across the country blocked the 2024 Rule because it contradicted Title IX and subverted a primary purpose of the law—to guarantee equal opportunities to women and girls in education—by expanding the scope of the law to apply to “gender identity” discrimination and requiring schools to permit males who identify as female to share bathrooms, locker rooms, and other sex-separated private facilities with women and girls.<sup>17</sup> On August 16, 2024, the Supreme Court unanimously agreed that a preliminary injunction blocking the 2024 Rule’s “gender identity” provisions and the dramatic expansion of the regulatory definition of “sexual harassment” was an appropriate measure.<sup>18</sup>

On January 9, 2025, the U.S. District Court for the Eastern District of Kentucky vacated the 2024 Rule in full because, among other unlawful aspects of the rule, the regulations misinterpreted the word “sex” in Title IX to apply to “gender identity”<sup>19</sup> and overruled Title IX’s explicit recognition that schools may separate certain facilities and programs on the basis of sex in the interest of safety, privacy, and equal opportunity.<sup>20</sup> On February 19, 2025, the U.S. District Court for the Northern District of Texas also vacated the 2024 Rule on many of the same grounds, including that “expanding the meaning of ‘on the basis of sex’ to include ‘gender identity’ turns Title IX on its head” and the 2024 Rule’s standard forcing schools to allow males to access female bathrooms and other intimate spaces “is arbitrary in the truest sense of the word.”<sup>21</sup>

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<sup>17</sup> See *Tennessee v. Cardona*, No. 24-5588, 2024 WL 3453880 (6th Cir. July 17, 2024); *Louisiana v. Dep’t of Educ.*, No. 24-30399, 2024 WL 3452887 (5th Cir. July 17, 2024); *Oklahoma v. Cardona*, No. CIV-24-00461-JD, 2024 WL 3609109 (W.D. Okla. July 31, 2024); *Arkansas v. Dep’t of Educ.*, No. 4:24-CV-636-RWS, 2024 WL 3518588 (E.D. Mo. July 24, 2024); *Carroll Indep. Sch. Dist. v. Dep’t of Educ.*, No. 4:24-cv-00461-O, 2024 WL 3381901 (N.D. Tex. July 11, 2024); *Texas v. United States*, No. 2:24-CV-86-Z, 2024 WL 3405342 (N.D. Tex. July 11, 2024); *Kansas v. Dep’t of Educ.*, No. 24-4041JWB, 2024 WL 3273285 (D. Kan. July 2, 2024); *Tennessee v. Cardona*, No. 2:24-072-DCR, 2024 WL 3019146 (E.D. Ky. June 17, 2024); *Louisiana v. Dep’t of Educ.*, No. 3:24-CV-00563, 2024 WL 2978786 (W.D. La. June 13, 2024).

<sup>18</sup> *Dep’t of Educ. v. Louisiana*, No. 24A78, slip op. at 2 (U.S. Aug. 16, 2024).

<sup>19</sup> *Tennessee v. Cardona*, No. 2:24-cv-00072-DCR-CJS, at 4–7 (E.D. Ky. Jan. 9, 2025).

<sup>20</sup> *Id.* at 7–8.

<sup>21</sup> *Carroll Indep. Sch. Dist. v. Dep’t of Educ.*, No. 4:24-cv-00461-O, at 5, 8 (N.D. Tex. Feb. 19, 2025).



## Trump Administration’s Correct Interpretation and Enforcement of Title IX

On January 20, 2025, President Trump signed Executive Order 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* (“EO 14168”).<sup>22</sup> In that EO, the president declared that “[i]t is the policy of the United States to recognize two sexes, male and female,”<sup>23</sup> and defined “sex” for the purpose of Executive Branch interpretation and application of federal law as referring “to an individual’s immutable biological classification as either male or female.”<sup>24</sup> EO 14168 then directs all federal agencies and employees to “enforce laws governing sex-based rights, protections, opportunities, and accommodations to protect men and women as biologically distinct sexes,” giving all instances of “sex” and related terms the definitions set forth in the EO “when interpreting or applying statutes, regulations, or guidance . . . .”<sup>25</sup> Importantly, EO 14168 directs agencies to effect its policies “by taking appropriate action to ensure that intimate spaces designated for women, girls, or females (or for men, boys, or males) are designated by sex and not identity.”<sup>26</sup>

In Executive Order 14201 dated February 5, 2025, *Keeping Men Out of Women’s Sports* (“EO 14201”),<sup>27</sup> President Trump directed the Secretary of Education to comply with the judicial vacatur of the 2024 Rule “and take other appropriate action to ensure this regulation does not have effect,” “take all appropriate action to affirmatively protect all-female athletic opportunities and all-female locker rooms” in line with Title IX, and “prioritize Title IX enforcement actions against educational institutions (including athletic associations composed of or governed by such institutions) that deny female students an equal opportunity to participate in sports and athletic events by requiring them, in the women’s category, to compete with or against or to appear unclothed before males.”<sup>28</sup> EO 14201 further requires all federal agencies to “review grants to educational programs and, where appropriate, rescind funding to programs that fail to comply with the policy” of not depriving women and girls of “fair athletic opportunities.”<sup>29</sup>

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<sup>22</sup> Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 30, 2025).

<sup>23</sup> *Id.* at 8615.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 8616.

<sup>26</sup> *Id.* at 8617.

<sup>27</sup> Exec. Order No. 14,201, 90 Fed. Reg. 9279 (Feb. 11, 2025).

<sup>28</sup> *Id.* at 9279.

<sup>29</sup> *Id.* at 9280.



In light of the vacatur of the 2024 Rule and consistent with EO 14168 and EO 14201, OCR issued a Dear Colleague Letter announcing the Department’s intentions with regard to those regulations (“2025 Title IX DCL”). Dated February 4, 2025, the letter stated that OCR “will enforce Title IX under the provisions of the 2020 Title IX Rule, rather than the 2024 Title IX Rule.”<sup>30</sup> Accordingly, the 2025 Title IX DCL explained that “open Title IX investigations initiated under the 2024 Title IX Rule should be immediately reevaluated to ensure consistency with the requirements of the 2020 Title IX Rule and . . . preexisting regulations . . . .”<sup>31</sup>

Based on the mandates of EO 14168 and EO 14201, as well as its compliance with the judicial vacatur as set out in its 2025 Title IX DCL, the Department and other agencies in the Trump administration have launched a slew of investigations and enforcement actions against recipients in violation of the pre-2024 Rule regulatory framework. For instance, this pressure has forced the University of Pennsylvania to end its policies allowing men to compete in women’s sports and enter women’s intimate spaces and to restore to women awards that were unlawfully granted to men in female sports.<sup>32</sup> The administration’s actions have also resulted in the revision of National Collegiate Athletic Association (“NCAA”) policies to align with the interpretation of Title IX set out in EO 14201.<sup>33</sup> The McMahon Education Department has also cut through the bureaucracy that can hamper timely, effective investigations and enforcement actions against recipients that ignore Title IX’s nondiscrimination guarantee by launching a joint Title IX Special Investigations Team (“SIT”) with the Department of Justice.<sup>34</sup>

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<sup>30</sup> Craig Trainor, Acting Assistant Sec’y for C.R., U.S. Dep’t of Educ., Dear Colleague Letter, Feb. 4, 2025, at 1, <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl> (footnotes omitted).

<sup>31</sup> *Id.* at 2.

<sup>32</sup> *See* Press Release, U.S. Dep’t of Educ., U.S. Department of Education Announces the University of Pennsylvania Has Entered into a Resolution Agreement to Resolve Its Title IX Violations (July 1, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-announces-university-of-pennsylvania-has-entered-resolution-agreement-resolve-its-title-ix-violations>.

<sup>33</sup> *See* Press Release, U.S. Dep’t of Educ., U.S. Department of Education Urges the NCAA, NFHS to Restore Female Athletics Records Wrongfully Erased by Male Competitors (Feb. 11, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-urges-ncaa-nfhs-restore-female-athletics-records-wrongfully-erased-male-competitors>.

<sup>34</sup> *See* Press Release, U.S. Dep’t of Educ., U.S. Department of Education and U.S. Department of Justice Announce Title IX Special Investigations Team (Apr. 4, 2025),



Since January 20, the Trump administration has brought enforcement actions against K–12 education entities in a number of jurisdictions, including California, Maine, New York, and Virginia.<sup>35</sup> In addition to those instances, OCR has found violations of Title IX by entities in Colorado and Minnesota<sup>36</sup> and has opened investigations into numerous other entities for potential violations of the law.

We commend the Education Department’s strong and fearless actions to date enforcing Title IX, both as a matter of correct statutory interpretation and as an urgent necessity in light of how far the previous administration had untethered itself from Title IX’s guiding star of equal educational opportunities regardless of biological sex. We respectfully request that OCR take the next logical step with regard to Title IX—to begin the rulemaking process to remove from the regulations the language of the 2024 Rule and confirm the regulatory framework as it existed before the 2024 Rule.

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<https://www.ed.gov/about/news/press-release/us-department-of-education-and-us-department-of-justice-announce-title-ix-special-investigations-team>.

<sup>35</sup> See, e.g., Press Release, U.S. Dep’t of Just., Justice Department Sues California for Violating Title IX, Denying Girls Athletic Opportunities (July 9, 2025), <https://www.justice.gov/opa/pr/justice-department-sues-california-violating-title-ix-denying-girls-athletic-opportunities>; Press Release, U.S. Dep’t of Educ., U.S. Department of Education Announces Consequences for Maine’s Title IX Noncompliance (Apr. 11, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-announces-consequences-maines-title-ix-noncompliance>; Naaz Modan, *New York City Sues Education Department over Title IX Funds*, K–12 DIVE (Oct. 17, 2025), <https://www.k12dive.com/news/new-york-city-sues-education-department-ocr-title-ix-funds-civil-rights/803163/>; Press Release, U.S. Dep’t of Educ., U.S. Department of Education Places Five Northern Virginia School Districts on High-Risk Status and Reimbursement Payment Status for Violating Title IX (Aug. 19, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-places-five-northern-virginia-school-districts-high-risk-status-and-reimbursement-payment-status-violating-title-ix>.

<sup>36</sup> See Press Release, U.S. Dep’t of Educ., U.S. Department of Education’s Office for Civil Rights Finds Denver Public Schools Violated Title IX (Aug. 28, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-educations-office-civil-rights-finds-denver-public-schools-violated-title-ix>; Press Release, U.S. Dep’t of Educ., U.S. Department of Education and U.S. Department of Health and Human Services Find that Minnesota Violated Title IX (Sep. 30, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-and-us-department-of-health-and-human-services-find-minnesota-violated-title-ix>.



## The Need for Title IX Rulemaking

As you are aware, the preliminary injunctions courts imposed against the enforcement of the 2024 Rule and the vacatur of those regulatory amendments by two federal district courts did not result in the removal of its language from the Code of Federal Regulations. Anyone seeking information regarding institutional obligations under the Title IX regulations will find a provision stating that “[d]iscrimination on the basis of sex includes discrimination on the basis of . . . gender identity.”<sup>37</sup> They might believe, for instance, that schools are obligated to address a broad range of speech that “reasonably may constitute” sexual harassment under the “severe *or* pervasive” standard set out in the 2024 Rule.<sup>38</sup> They would also find that “[a]dopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person’s gender identity,” including by enforcing sex separation in bathrooms and locker rooms, violates Title IX because it “subjects a person to more than de minimis harm on the basis of sex.”<sup>39</sup> Conducting rulemaking to remove these harmful provisions, so contrary to the plain meaning of Title IX, would greatly assist students and schools in understanding their rights and responsibilities under Title IX.

Beyond preventing confusion, the agency’s formal withdrawal of the 2024 Rule will conclusively deflect any effort to enforce it in a future administration. During the Trump administration, OCR has properly chosen to abide by the vacatur of the 2024 Rule by federal district courts in Kentucky and Texas and has announced that it will carry out the regulatory framework that existed prior to the 2024 Rule’s effective date; however, a future president could rescind EO 14168 and EO 14201 and the Department’s 2025 Title IX DCL and attempt to enforce the 2024 Rule in those states against the many recipients unaffected by the judicial vacatur and preliminary injunctions. Numerous lawsuits, now dormant—challenging, it is important to note, not only the central provisions of the 2024 Rule related to “gender identity” and sexual harassment but all parts of a broad rewrite of Title IX regulations—would likely revive, perhaps with unpredictable results. We urge the Department to deprive a future administration of any opportunity to enforce the 2024 Rule in any jurisdiction.

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<sup>37</sup> 34 C.F.R. § 106.10.

<sup>38</sup> 34 C.F.R. § 106.2; 34 C.F.R. § 106.44(a).

<sup>39</sup> 34 C.F.R. § 106.31(a)(2).



An excellent baseline for action by the Department in 2026 would be to engage in a notice-and-comment rulemaking process to remove the provisions of the regulations established by the 2024 Rule and simply revert to the regulatory framework that existed prior to the effective date of that rule. The Department would be on firm ground to justify the removal of those provisions from the regulations on the basis of the numerous court actions that doomed the nationwide enforcement of the 2024 Rule and the need for uniformity across the country in how OCR enforces Title IX. Such an effort should, of course, go further. For instance, the Department could add to the regulations the biology-based definitions of “sex” and related terms of EO 14168 and further protect opportunities for female student-athletes in line with EO 14201. If the Department does decide to strengthen the Title IX regulatory framework in these and other ways, it may consider as a helpful resource the model Title IX regulatory code published by the Defense of Freedom Institute in December 2024.<sup>40</sup>

We are grateful for your strong leadership on this issue and for OCR’s concerted actions to date to enforce Title IX and protect equal opportunities in education, including athletics. We appreciate your consideration of this request and stand ready to support the agency as it addresses the critical issues outlined in this letter.

Sincerely,

Robert S. Eitel  
President and Co-Founder  
Defense of Freedom Institute for Policy Studies

Paul F. Zimmerman  
Senior Counsel, Policy and Regulatory  
Defense of Freedom Institute for Policy Studies

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<sup>40</sup> DEF. OF FREEDOM INST., TITLE IX MODEL REGULATIONS (2024), *available at* <https://dfipolicy.org/wp-content/uploads/2024/12/DFI-Model-Title-IX-Summary-and-Regulations.pdf>.



cc: Ms. Candice Jackson, Acting General Counsel  
Dr. Jonathan Pidluzny, Deputy Chief of Staff for Policy and Programs