June 12, 2026

VIA ELECTRONIC MAIL

U.S. Department of Education
Office of the Executive Secretariat
FOIA Service Center
400 Maryland Ave. SW, LBJ 7W106A
Washington, D.C. 20202-4536
EDFOIAManager@ed.gov
ATTN: FOIA Public Liaison

Re: FOIA REQUEST: Records Pertaining to Communications Between Irene Mulvey and the U.S. Department of Education
(DFI FOIA Request 100-10-26)

Dear FOIA Public Liaison:

The Defense of Freedom Institute for Policy Studies ("DFI") is a 501(c)(3) nonprofit, nonpartisan organization dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker and to protecting civil and constitutional rights at schools and in the workplace. DFI includes former U.S. Department of Education ("Department" or "ED") and other federal agency officials who are experts in education law and policy and the operation of the Department. For the benefit of the public, DFI's mission includes obtaining records related to the consideration and implementation of policies imposed by the federal government and its officials on the American people.

On May 6, 2020, under Secretary Betsy DeVos, the Department issued its final regulations[1] ("2020 Rule") clarifying and modifying Title IX of the Education Amendments of 1972 ("Title IX") following an extensive rulemaking process that began with ED's November 29, 2018, notice

[1] 34 C.F.R. Part 106.

(202) 627-6735
info@dfipolicy.com
dfipolicy.org
1455 Pennsylvania Avenue, NW
Suite 400
Washington, DC 20004

of proposed rulemaking ("NPRM").[2]

During the rulemaking process, ED received and responded to more than 124,000 comments on the NPRM.[3] The 2020 Rule was ED's first full rulemaking regarding sexual harassment in the Department's history and protected the rights of students and faculty[4] by: (1) defining sexual harassment as unlawful discrimination to include sexual assault, domestic violence, dating violence, and stalking; (2) restoring due process rights for survivors and the accused; (3) requiring colleges to provide dorm and classroom reassignments, among other supportive measures; (4) holding colleges responsible for certain off-campus sexual harassment; (5) adding privacy and rape shield protections; (6) expanding protections for children and minors; and (7) prohibiting retaliation.

On January 20, 2021, the Biden Administration indicated its intent to substantially revise the 2020 Rule. On March 8, 2021, President Biden issued an Executive Order ("EO") directing ED to review Title IX policies for consistency with the EO's shifting views of sexual harassment and sex-based discrimination.[5] Other EOs included new definitions of sexual identity and gender identities, including an EO establishing the "White House Gender Policy Council"[6] and an EO more broadly regarding sexual orientation and gender identities.[7] Those EOs may have had considerable impact on ED's Title IX enforcement policies. On April 6, 2021, OCR issued a letter announcing a "comprehensive review" of the 2020 Rule, including a public hearing[8] and

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[2] *See* Office for Civil Rights, Dep't of Educ. *Notice of Proposed Rulemaking* (last accessed Apr. 14, 2026), https://www2.ed.gov/about/offices/list/ocr/docs/title-ix-nprm.pdf.

[3] *See* Office for Civil Rights, Dep't of Educ. *Final Rule* (last accessed Apr. 14, 2026), https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf.

[4] *See* Office for Civil Rights, Dep't of Educ., *Title IX Regulations* (last accessed Apr. 14, 2026), https://web.archive.org/web/20220626005610/https://www2.ed.gov/news/newsletters/edreview/2020/0515.html.

[5] *See* Office for Civil Rights, Dep't of Educ., *White House Briefing* (currently unavailable) https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/08/executiveorder-on-guaranteeing-an-educational-environment-free-from-discrimination-on-the-basis-ofsex-including-sexual-orientation-or-gender-identity/.

[6] *See* Exec. Order No. 14021, 86 Fed. Reg. 13797 (Mar. 8, 2021).

[7] *See* Exec. Order No. 13988, 86 Fed. Reg. 7023 (Jan. 20, 2021).

[8] *See Notice of Public Hearing on Proposed Rulemaking*, 86 Fed. Reg. 13803 (Mar. 11, 2021) (Dep't of Educ.).

an anticipated NPRM.[9] On June 16, 2021, OCR issued a Notice of Interpretation interpreting Title IX to prohibit "discrimination based on gender identity."[10]

On April 29, 2024, the Department published final regulations ("2024 Title IX Rule") that prohibited "gender identity" discrimination in federally funded education programs and activities across the country. The 2024 Title IX Rule unlawfully extended the meaning of "discrimination on the basis of sex" to include discrimination on the basis of an undefined "gender identity." As a result, the 2024 Title IX Rule required public schools to allow any person to use whichever sex-separated bathroom or locker room corresponded with that person's claimed "gender identity."[11]

Congress enacted Title IX to prohibit sex-based discrimination in educational programs or activities by entities that receive federal financial assistance, with certain limited exceptions. Title IX provides that "[n]o 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."[12] ED's actions appeared to be aimed at, *inter alia*, diminishing the due process protections afforded accused students and faculty at American colleges and universities, conflating Title IX's clear sex-based protections [13] with elusive gender identity concepts, and effectively undermining the

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[9] *See* Office for Civil Rights, Dep't of Educ., *Letter to Students, Educators, and other Stakeholders re Executive Order 14021* (Apr. 6, 2021), https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/20210406-titleixeo-14021.pdf.

[10] *See* 86 Fed. Reg. 32637.

[11] *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89 Fed. Reg. 33,474, 33,887 (Apr. 29, 2024) (hereinafter "2024 Title IX Rule"); *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").

[12] 20 U.S.C. § 1681(a).

[13] Title IX was enacted primarily to ensure equal opportunities for women and girls through prohibitions against programs or activities that failed to protect those opportunities. In 1974, for example, Congress explicitly passed an amendment regarding women's sports that required the issuance of regulations "with respect to intercollegiate athletic activities, reasonable provisions considering the nature of particular sports." Sen. Conf. Rep. N0. 1026, 93rd Cong., 2nd Sess. 4271 (1974). In 1975, federal rules were promulgated (by the Department

tremendous progress attained by girls and women in competitive high school and collegiate competitive athletics since Title IX's enactment in 1972.[14]

A slew of federal district courts and courts of appeals across the country blocked the 2024 Title IX Rule on the basis that it contradicted Title IX and subverted one purpose of the law—to guarantee equal opportunities to women and girls in education—by requiring schools to permit males who identify as female to share bathrooms, locker rooms, and other sex-separated private facilities with women and girls.[15] On August 16, 2024, a unanimous Supreme Court agreed that a preliminary injunction blocking the "gender identity" provisions of the 2024 Title IX Rule was an appropriate measure. [16]

On January 9, 2025, the U.S. District Court for the Eastern District of Kentucky vacated the 2024 Title IX 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"[17] 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.[18] On February 19, 2025, the U.S. District Court for the Northern District of Texas also vacated the 2024 Title IX 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

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of Health, Education, and Welfare) providing that schools "may operate or sponsor separate teams for members of each sex where selection for such teams is based on competitive skill" and permitted single-sex athletic teams if "equal athletic opportunity for members of both sexes" was provided. 34 C.F.R. § 106.41(b)-(c).

[14] Women's Sports Foundation, *Title IX and the Rise of Female Athletes in America* (September 2, 2016), https://www.womenssportsfoundation.org/education/title-ix-and-the-riseof-female-athletes-in-america/.

[15] *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*, 743 F. Supp. 3d 1314 (W.D. Okla. 2024); *Arkansas v. Dep't of Educ.*, 742 F. Supp. 3d 919 (E.D. Mo. 2024); *Carroll Indep. Sch. Dist. v. Dep't of Educ.*, 741 F. Supp. 3d 515 (N.D. Tex. 2024); *Texas v. United States*, 740 F. Supp. 3d 537 (N.D. Tex. 2024); *Kansas v. Dep't of Educ.*, 739 F. Supp. 3d 902 (D. Kan. 2024); *Tennessee v. Cardona*, 737 F. Supp. 3d 510 (E.D. Ky. 2024); *Louisiana v. Dep't of Educ.*, 737 F. Supp. 3d 377 (W.D. La. 2024).

[16] *Dep't of Educ. v. Louisiana*, 603 U.S. 866, 867 (2024).

[17] *Tennessee v. Cardona*, No. 2:24-cv-00072-DCR-CJS, at 4–7 (E.D. Ky. Jan. 9, 2025).

[18] *Id.* at 7–8.

allow males to access female bathrooms and other intimate spaces "is arbitrary in the truest sense of the word."[19] Appeals in both the Fifth and Sixth Circuits were recently dismissed.[20]

At the time of the drafting and adoption of the 2024 Title IX Rule, ED officials, were under tremendous pressure[21] from outside interest groups to make significant changes to the 2020 Rule. One such group was the American Association of University Professors whose President was Irene Mulvey. The public has an interest in knowing which outside interest groups, including the American Association of University Professors may may have affected ED's Title IX interpretations and rulemaking during the prior administration. DFI is also concerned that changes to the 2020 Rule imperiled sex based equal opportunities for girls and women to compete in sex-segregated competitive athletics, denying them the protections ensured by Title IX.[22]

DFI and the public have an interest in knowing the activities and communications related to outside influences that played a role in the unconstitutional redrafting of certain Title IX regulations.

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq*. and ED's implementing regulations, 34 C.F.R. Part 5 ("Availability of Information to the Public"), DFI makes the following requests for provision of records within your possession and/or control:

Requested Records

DFI requests that ED produce the following records within twenty (20) business days as required by statute:

1. All communications, including but not limited to electronic mail ("email"), email

[19] *Carroll Indep. Sch. Dist. v. Dep't of Educ.*, No. 4:24-cv-00461-O, at 5, 8 (N.D. Tex. Feb. 19, 2025).
[20] *See* CA6-Doc. 52, *Tennessee v. Cardona*, No. 25-5205 (May 13, 2026); CA5-Doc. 220, *Carroll Indep. Sch. Dist. v. U.S. Dep't of Educ*, No. 25-10651 (May 19, 2026).
[21] Tyler Kingkade, *Activists Increase Pressure on Biden to Scrap Betsy DeVos' Title IX Rules*, NBC News (March 15, 2021), https://www.nbcnews.com/news/us-news/activists-increasepressure-biden-scrap-betsy-devos-title-ix-rules-n1261017.
[22] Education Amendment Acts of 1972, 20 U.S.C. §§ 1681-1688 (2018).

attachments, texts, letters, memoranda, calendar invitations, calendar entries, training materials, and other documentation between Department of Education officials ("Custodians") that include the term “Title IX” or “TIX” and the name “Irene Mulvey” or “American Association of University Professors” or “AAUP” or the email address “irene.mulvey@aaup.org” in the "To", "From", "CC", or "BCC" fields, in the body of the email, or in any attachments thereto, during the time period January 20, 2021, through January 20, 2025.

2. All records to or from any person or entity using an email address ending in “@aaup.org” or “aaup.org” including but not limited to electronic mail, email attachments, texts, letters, memoranda, and other documentation with Custodians during the time period January 20, 2021, through January 20, 2025.

3. All deliberative and non-deliberative communications, including but not limited to electronic mail, email attachments, texts, letters, memoranda, calendar invitations, calendar entries, training materials, and other documentation between Custodians that reference the term “Title IX” or “TIX” and “Irene Mulvey” or “American Association of University Professors” or “aaup.org” during the time period January 20, 2021, through January 20, 2025.

Custodians

The search for records described in Items 1 through 3 should be limited to any and all ED officials within the Office of the Secretary, Office of Elementary & Secondary Education, Office for Civil Rights, Office of the General Counsel, Office of Planning Evaluation and Policy Development, and Office of Legislation and Congressional Affairs, who are classified as any of the following:

a. “PAS” (Presidential Appointments Requiring Senate Confirmation)
b. “NC-SES” (Non-Career Senior Executive Service)
c. “SES” (Career Senior Executive Service)
d. “SC” (Schedule C Confidential or Policymaking Positions)
e. “GS15” (Schedule C)

Statutory Disclosure Requirements

FOIA imposes a burden on ED, as a covered agency under 5 U.S.C. § 551(1), to timely disclose requested agency records to the requestor[23] if ED (1) created or obtained the requested materials and (2) is "in control of the requested materials at the time the FOIA request [was] made."[24] Upon request, ED must "promptly" make the requested records available to the requester.[25] Notably, covered agency records include materials provided to ED by both private and governmental organizations.[26] Upon receipt of a FOIA request that "reasonably" describes the records sought and is in compliance with ED's published rules regarding the time, place, any fees, and procedures to be followed,[27] ED must conduct a search calculated to find responsive records in ED's control at the time of the request.[28] In addition, the records produced by ED are required to be provided in "any form or format requested . . . if the record is readily reproducible by the agency in that form or format."[29]

Upon receipt of this request, ED has **twenty business days** to "determine . . . whether to comply with [the] request" and "shall immediately notify" the requester of its "determination and the reasons therefore," the right to seek assistance from the agency's FOIA public liaison, and the requester's right to appeal any "adverse determination" by ED.[30]

Consistent with FOIA guidelines, DFI requests the following regarding the provision of the requested records:

- ED should immediately act to protect and preserve all records potentially responsive to this request, notifying any and all responsible officials of this

[23] FOIA requires the disclosure of nonexempt agency records to any person, which includes an individual, partnership, corporation, association, or public or private organization other than an agency. 5 U.S.C. § 551(2).
[24] *Department of Justice v. Tax Analysts*, 492 U.S. 136, 144–45 (1989).
[25] 5 U.S.C. § 552(a)(3)(A).
[26] *Tax Analysts*, 792 U.S. at 144.
[27] 5 U.S.C. § 552(a)(3)(A)(i).
[28] *Wilbur v. C.I.A.*, 355 F.3d 675, 678 (D.C. Cir. 2004).
[29] 5 U.S.C. § 552(a)(3)(B).
[30] 5 U.S.C. § 552(a)(6)(A)(i).

preservation request and verifying full compliance with the preservation request.

This matter may be subject to litigation, making the immediate initiation of a litigation hold on the requested materials necessary.

- ED should timely provide entire records responsive to this request, broadly construing what information may constitute a "record" and avoid unnecessarily omitting portions of potentially responsive records as they may provide important context for the requested records.

- ED should narrowly construe and precisely identify the statutory basis for any constraint which it believes may prevent disclosure.

- If ED determines that any portions of otherwise responsive records are statutorily exempt from disclosure, DFI requests that ED disclose reasonably segregable portions of the records.

- For any responsive records withheld in whole or part, ED should provide a clear and precise enumeration of those records in index form presented with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA" [31] and provide a sufficiently detailed justification and rationale for each non-disclosure and the statutory exemption upon which the non-disclosure relies.

- Please provide responsive records in electronic format by email, native format by mail, or PDF or TIFF format on a USB drive. If it helps speed production and eases ED's administrative burden, DFI welcomes provision of the records on a rolling basis. Responsive records sent by mail should be addressed to the Defense of Freedom Institute for Policy Studies, 1455 Pennsylvania Avenue NW, Suite 400, Washington, D.C. 20004.

[31] *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

Fee Waiver Request

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. § 5.33 and 34 C.F.R. § 5.32(b)(1)(ii), DFI requests a waiver of all fees associated with this FOIA request for agency records. Indeed, the Department recognizes that DFI is entitled to a fee waiver under the applicable authorities because on February 22, 2022, the Department granted DFI's request for a fee waiver. Please refer to the Department's correspondence dated March 3, 2022, from Tracey St. Pierre, Chief FOIA Officer, to DFI's counsel.

Disclosure of the requested records is in the public interest.

Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and because disclosure of the information contained within the requested records is not primarily in the commercial interests of DFI.

The disclosed materials are likely to contribute significant information to the public's understanding of the official NPRM comment submission process and recordkeeping on the federal government's rulemaking docket involving important ED policy matters that are highly relevant to the interests of students, families, teachers, and taxpayers. Disclosure of the requested materials will illuminate ED's policies and planning (e.g., rulemaking and enforcement decisions).

This information does not otherwise appear to be in the public domain (in duplicative or substantially identical form).

Provision of the requested records will not commercially benefit DFI (a nonprofit, nonpartisan organization interested in the transparency of ED operations and governance) but will benefit the general public and other groups and entities with non-commercial interests in ED's operations and governance.

DFI will review and analyze the requested records and make the records and analyses available to the general public and other interested groups through publication on DFI's website and social media platforms such as Facebook and X, formerly known as Twitter (distribution

functions it has already demonstrated a capacity to provide since its formation in September 2021, including a detailed news story on ED policies widely distributed by one of the nation's largest news providers in February 2022, a March 2022 analysis of DOJ policies distributed by a leading news magazine, and multiple widely published analyses and news stories involving recent ED policy announcements regarding the student loan repayment program and Title IX proposed rulemaking). DFI personnel also frequently offer commentary and analyses on radio and television news programs, online, and in various other public forums.

Federal law makes clear that when the disclosure is in the public interest and the information contained within the disclosed records is not primarily in the commercial interests of the requester (here, DFI), statutory fee waiver is appropriate.

DFI is a representative of the news media.

In addition to the fee waiver request based upon the public interest, DFI is also entitled to a fee waiver on the basis that DFI is a **representative of the news media**, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. § 5.32(b)(1)(ii).

FOIA (as amended) provides that a representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that to an audience."[32] DFI provides exactly this service to the general public and other audiences with an interest in those materials and analyses. Upon receipt of the requested materials from ED, DFI will review and analyze those materials and will extract and otherwise distill particularly useful information from those materials for the benefit of the general public and other interested audiences.

Again, DFI will provide its analyses to the general public and other interested audiences through publication on DFI's website and social media platforms such as Facebook and X (distribution functions it has already demonstrated a capacity to provide since its formation in September 2021). DFI personnel also frequently appear as guests or panelists to offer commentary and analysis on radio and television news programs and in various other public forums.

[32] *See Cause of Action v. FTC*, 799 F.3d 1108, 1115–16 (D.C. Cir. 2015).

As a qualified non-commercial public education and news media requester with demonstrated ability to review and analyze publicly available information and to provide insight regarding that information, DFI is thus entitled to a fee waiver under FOIA as a representative of the news media.

Conclusion

The subject of this request regards identifiable operations and activities ED engaged in during the Biden era Title IX rulemaking. Provision of the requested records will meaningfully inform the general public about the role third parties may have played in the development of that rule. As noted above, ED's Title IX enforcement policies have previously resulted in greater due process rights for students and faculty and vastly improved equal opportunities for girls and women in high school and collegiate competitive athletics, among other policy impacts. These are significant issues with tremendous impact on the general public and worthy of transparency in service of the public's right to know

As noted above, DFI is an independent 501(c)(3) nonprofit organization without a commercial purpose primarily engaged in the dissemination of information about government policies to the public. DFI is engaged in the collection, analysis, and dissemination of information to educate the public about government policies that impact the civil and constitutional rights of American families, students, entrepreneurs, and workers. DFI actively publishes information and related analyses on its public website and promotes access to that information and analyses on social media platforms, including but not limited to distribution via Facebook and X.

DFI appreciates ED's prompt attention to this request for records pursuant to FOIA, which will provide important information to the American people regarding ED's Title IX enforcement policies and the efforts of outside interest groups impacting ED's planned revisions of Title IX regulations, which impact students, parents, teachers, faculty, and the public.

Please contact me immediately if DFI's request for a fee waiver is not granted in full.

If you have any questions or I can further clarify DFI's request, please contact me at your earliest convenience at don.daugherty@dfipolicy.org or (414) 559-6902.

Sincerely,

/s/ *Donald A. Daugherty, Jr.*
Donald A. Daugherty, Jr.
Senior Counsel, Litigation
Defense of Freedom Institute
for Policy Studies, Inc.