



September 11, 2026

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

Mr. Richard Lucas
Chief Operating Officer
Federal Student Aid
830 First Street, NE, UCP 54C2
Washington, DC 20002
Via Email

RE: Policies and Practices of Agnes Scott College in Violation of Title IX of the Education Amendments of 1972 and Title IV of the Higher Education Act

Dear Assistant Secretary Richey and Chief Operating Officer Lucas:

The Defense of Freedom Institute for Policy Studies (“DFI”) is a national nonprofit organization dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker and to protecting the civil and constitutional rights of Americans at school and in the workplace.

We write to notify you about policies, practices, and activities at an undergraduate women’s college in Decatur, Georgia – Agnes Scott College (“Agnes Scott” or the “College”) – that violate Title IX of the Education Amendments of 1972 (“Title IX”) and Title IV of the Higher Education Act of 1965, as amended (the “HEA”). This letter urges action by the U.S. Department of Education (the “Department”) under both statutory authorities.

First, pursuant to the discrimination complaint resolution procedures of the Department’s Office for Civil Rights (“OCR”), DFI brings this federal civil rights complaint against Agnes Scott for violating Title IX.¹ Title IX prohibits discrimination on the basis of sex in any education program or activity receiving

¹ 20 U.S.C. §§ 1681 *et seq.*; 34 C.F.R. Part 106.



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federal financial assistance; critically, Title IX also protects single-sex spaces. For example, female students are entitled to sex-segregated intimate facilities and housing, sororities, athletic teams, and (where an institution portrays itself as a single-sex undergraduate college) admissions. Since its founding, the College has represented to prospective students, applicants, current students, alumnae, donors, families, its accrediting agency, its state licensing authority, the Department, and members of the public that it is a women’s college. Yet, despite its decades-long public posture as a women’s college, the College allows biological men who identify as female to enroll in the institution, use women’s intimate housing and facilities, and participate on women’s athletic teams.

Second, Agnes Scott’s admissions policies raise significant and ongoing concerns under the legal authorities that prohibit substantial misrepresentations by institutions wishing to maintain institutional eligibility for HEA, Title IV programs. Since its founding, the College has held itself out as a women’s college, a representation that is central to its history, institutional identity, and value proposition. Indeed, the College’s website trumpets that “Agnes Scott doesn’t settle for giving women a seat at the table. It puts them at the head of it.”² Yet, the College’s admissions policy allows people who are not biological women to apply, enroll, and participate in campus life and academics. This inconsistency misleads the public, including prospective students, and the Department about the nature of its educational program.

The HEA and the Department’s regulations prohibit institutions of higher education from making such substantial misrepresentations. Those regulations define a “substantial misrepresentation” as any false, erroneous, or misleading statement that a reasonable person could be expected to rely upon to that person’s detriment. Prospective students selecting a college specifically because it represents itself as a single-sex undergraduate institution dedicated exclusively to the education of women could reasonably rely on that representation in making life-changing enrollment and financial decisions, including taking on federal student loan debt.

² Agnes Scott College, “The Women’s College Advantage,” <https://www.agnesscott.edu/about/why-a-womens-college.html>.



Because the College's admissions policy and practices are materially inconsistent with that representation, Agnes Scott has engaged in a substantial misrepresentation, as prohibited by Title IV.

We appreciate the work that the Department is already doing on these issues in the context of civil rights compliance,³ but these efforts are far from complete. The Department must expand its efforts to protect students – beyond the OCR process – to ensure that institutions come into compliance with *all* federal requirements, if they wish to benefit from taxpayer funds. The College's policies present a Federal Student Aid ("FSA") program oversight issue as much as an OCR matter.

Therefore, DFI urges OCR and FSA to investigate the policies, practices, and actions described in this complaint, consider potential sanctions against the institution as authorized under Title IX and the HEA, and place the College on clear notice that failure to comply will result in the limitation, suspension, or termination of federal funding.

FACTUAL BACKGROUND

A brief history of the abandonment by women's colleges of *women* in favor of radical gender ideology deserves attention. On April 27, 2014, without notice and comment rulemaking, OCR published guidance stating that Title IX prohibited discrimination against "transgender" students.⁴ The guidance established that discrimination based on gender identity or failure to conform to sex stereotypes is a violation of federal civil rights laws.⁵ The guidance also directed schools to investigate allegations of sexual harassment regarding transgender students using the same standards and procedures as all other complaints and clarified that OCR

³ U.S. Dep't of Educ., "U.S. Department of Education Opens Title IX Investigation into All-Women's Smith College for Admitting Men," May 4, 2026, <https://www.ed.gov/about/news/press-release/us-department-of-education-opens-title-ix-investigation-all-womens-smith-college-admitting-men>.

⁴ U.S. Dep't of Educ., "Questions and Answers on Title IX and Sexual Violence," April 29, 2014, <https://www.ed.gov/media/document/questions-and-answers-title-ix-and-sexual-violence-33916.pdf>.

Note: On September 2, 2017, this Q&A was rescinded by the Department.

⁵ *Id.*



would accept and investigate complaints involving discrimination based on gender identity.⁶

At that time, the women's college, and single-sex education in general, was openly referred to as a “dinosaur.”⁷ *The New York Times* and *Slate Magazine* published articles pressuring women's colleges to accept the new and radical conception of what it means to be a woman and to admit “transgender women” into educational institutions for women.⁸ Advocates argued that preserving the practice of segregating male and female students “lean[ed] on fraying and outdated assumptions about gender.”⁹

Mills College in California became the first women's college to implement a formal admissions policy for “transgender women.”¹⁰ Its then vice president for admissions management stated that the “purpose of this policy is that we didn't want students to feel excluded in the application process.”¹¹ Other historically women's colleges soon followed the trend. By January 2015, Simmons College and Mount Holyoke College established policies to admit “transgender women.” That year also saw Wellesley College change its admissions policy “to make anyone who identifies and lives as a woman – including trans and nonbinary people – eligible for admission.”¹² Nearly a decade later, a study found that all but 3 of the nearly 30

⁶ *Id.*

⁷ Katy Waldman, “The Wellesley Man,” *Slate*, June 5, 2014, <https://slate.com/life/2014/06/transgender-students-at-womens-colleges-wellesley-smith-and-others-confront-their-limits.html>.

⁸ Kiera Feldman, “Who are Women's Colleges For?” *The New York Times*, May 24, 2014, <https://www.nytimes.com/2014/05/25/opinion/sunday/who-are-womens-colleges-for.html>; Waldman, <https://slate.com/life/2014/06/transgender-students-at-womens-colleges-wellesley-smith-and-others-confront-their-limits.html>.

⁹ Waldman, <https://slate.com/life/2014/06/transgender-students-at-womens-colleges-wellesley-smith-and-others-confront-their-limits.html>.

¹⁰ Moya Stone, “Transitions: The Transgender Policy,” *Mills Quarterly*, June 22, 2022, <https://quarterly.mills.edu/transitions-the-transgender-policy/>.

¹¹ *Id.* Note: It appears that Mills had been working on the transgender policy since 2011.

¹² Paula A. Johnson, “A Women's College and an Inclusive Community,” July 12, 2023, <https://magazine.wellesley.edu/issues/summer-2023/a-womens-college-and-an-inclusive-community>.



women's colleges in the U.S. allowed biologically male students who identify as female to enroll at their institutions.¹³

Agnes Scott followed that unfortunate trend. Founded in 1889, Agnes Scott is one of the nation's oldest and most respected historically women's liberal arts colleges and was established "to educate women for the betterment of their families and the elevation of their region."¹⁴ The College was also the first institution of higher education in Georgia to receive institutional accreditation.¹⁵ Originally established as the Decatur Female Seminary and long affiliated with the Presbyterian Church, the College built its reputation on providing a rigorous liberal arts education centered on the advancement of women in leadership, scholarship, and public service. Throughout its history, Agnes Scott consistently marketed itself as an institution dedicated to educating women, emphasizing small class sizes, close faculty mentorship, and a mission of preparing graduates to "think deeply, live honorably, and engage the intellectual and social challenges of their times."¹⁶ The College has long enjoyed a strong national academic reputation, particularly for its emphasis on leadership development, global learning, and preparing graduates for advanced study and professional careers.

What has distinguished Agnes Scott from many other private liberal arts colleges is that its identity as a women's college has never been merely historical. Rather, the College has made it central to its institutional mission and public brand. Thus, it has traditionally promoted the unique educational, social, and leadership benefits associated with a learning environment specifically designed for women, and this mission informed the College's admissions practices, fundraising efforts, alumnae engagement, and recruitment messaging for generations.

In recent years, however, the College has adopted an admissions policy that, like those of other women's colleges described above, extends eligibility beyond

¹³ Emily Rosecrans, "Most Women's Colleges Admit Students Who 'Identify as Female,'" *The College Fix*, February 29, 2024, <https://www.thecollegefix.com/most-womens-colleges-admit-students-who-identify-as-female/>.

¹⁴ Agnes Scott College, "History," <https://www.agnesscott.edu/about/history/index.html>.

¹⁵ *Id.*

¹⁶ Agnes Scott College, "Mission & Values," <https://www.agnesscott.edu/about/mission-values.html>.



biological women to include biologically male applicants who identify as women. The policy also permits the admission of applicants who identify as “transgender,” “agender,” “genderfluid,” or “non-binary.” In other words, this “women’s college” admits biological males under certain circumstances. The College’s Undergraduate Admissions Policy specifically states:

As a learning community that embraces our identity and mission as a women’s college and our commitment to inclusive excellence, **Agnes Scott admits students who were assigned female at birth as well as those who were assigned male or female at birth who now identify as female, transgender, agender, genderfluid, or non-binary.** The college does not admit individuals who were assigned male at birth and continue to identify as male. Agnes Scott is proud of the women, trans women, trans men and non-binary individuals who have enrolled and graduated from Agnes Scott. Individuals whose legal documents are not in alignment in terms of gender or sex should contact the Office of Admission to discuss their self-identification and receive further clarification of policies and information regarding the resources available on campus.¹⁷

To our knowledge, this policy has been in place since adoption by the College’s Board of Trustees in May 2015.

The College’s admissions policy lays the foundation for its Title IX violations by allowing students who are biological men to enroll and participate in the campus life of the institution. The downstream impact of that policy violates Title IX.

For example, the dormitories at Agnes Scott are for *all* students; presumably, that includes both female and “transgender” students. The College states that “all undergraduate students are expected to live on campus.”¹⁸ This puts female

¹⁷ Agnes Scott College, “2024–2025 Undergraduate Academic Catalog,” 11, <https://www.agnesscott.edu/assets/documents/catalogs/2024-2025undergraduateacademiccatalog.pdf> (emphasis added).

¹⁸ Agnes Scott College, Office of Residence Life, “General FAQs,” <https://www.agnesscott.edu/office-of-residence-life/frequently-asked-questions.html>.



students in a difficult position. At least two (2) of Agnes Scott's dorms have "common area baths"¹⁹ and at least one (1) dorm facility has "semi-private bathrooms."²⁰ Indeed, there is no indication on the College's website that biological men are prohibited from sharing bedrooms or living spaces with members of the opposite sex.

Indeed, it is not clear whether a female student could object to the presence of a male in an intimate space or a bedroom. The 2024-2025 Undergraduate Academic Catalog states that the College "does not discriminate on the basis of . . . gender identity [or] gender expression."²¹ Indeed, the College's "Nondiscrimination, Sexual Harassment (Title IX), and Sexual Misconduct Policies" also include an option to report "Bias Concerns" to the "Vice President for Global Diversity and Inclusion."²² Interestingly, the College's current student handbook does not contain *any* explanation for what constitutes "Bias Concerns." Agnes Scott apparently has a "Bias Response Team" charged with "addressing cases of both implicit and explicit bias between Agnes Scott students."²³ Further, the College defines a bias incident as:

¹⁹ See Agnes Scott College, Office of Residence Life, "Rebekah Scott Hall," <https://www.agnesscott.edu/office-of-residence-life/rebekah-scott-hall.html> ("common area baths") and "Inman Hall," <https://www.agnesscott.edu/office-of-residence-life/inman-hall.html> ("common area baths").

²⁰ See Agnes Scott College, Office of Residence Life, "Campbell Hall," <https://www.agnesscott.edu/office-of-residence-life/campbell-hall.html>.

²¹ "2024–2025 Undergraduate Academic Catalog," <https://www.agnesscott.edu/assets/documents/catalogs/2024-2025undergraduateacademiccatalog.pdf>. *Note:* Curiously, the 2024–25 catalog does not include a prohibition on discrimination solely on the basis of "gender." Further, the 2024–25 prohibition on discrimination on the basis of "gender identity, gender expression" is left out of the 2025–26 and 2026–27 Academic Catalogs. However, research did not reveal any change in institutional policy. Rather, it appears that the proscription of "gender identity" and "gender expression" discrimination morphed into a more-generalized prohibition on discrimination on the basis of "gender" present in the 2025–26 Catalog (<https://www.agnesscott.edu/assets/documents/catalogs/2025-2026undergraduatecatalog.pdf>) and 2026–27 Catalog (<https://www.agnesscott.edu/assets/documents/catalogs/2026-2027-undergraduate-catalog.pdf>).

²² Agnes Scott College, "Nondiscrimination, Sexual Harassment (Title IX), and Sexual Misconduct Policies," <https://www.agnesscott.edu/wellnessandsafety/policy-statement.html>.

²³ Agnes Scott College, "2023–2024 Student Handbook," 52, https://dspace.agnesscott.edu/bitstream/123456789/1257/1/student-handbook_2023.pdf.



[A]n act of bigotry, harassment or intimidation involving a member of the community that a reasonable person would conclude is directed at a member or group within the community based on race, color, ethnicity, nationality, economic background, age, physical and mental health or ability, sexual orientation, sex, gender identity or expression, marital status, veteran status or religious practice. A bias incident can occur whether the act is intentional or unintentional.²⁴

Under this policy, if a student is determined to have “engaged in unacceptable behavior,” that student “will be subject to prompt disciplinary action.”²⁵ Stated plainly, any female student who objects to a biological man in the restroom or a dormitory shower is potentially subject to discipline by the College.²⁶

Athletic teams follow suit. The institution’s “Athletic Department Student-Athlete Handbook” requires student-athletes to accept that men will change, shower, and use the bathroom in facilities designated for women:

Every student-athlete has access to a locker room, bathroom and shower facilities in a safe, comfortable and convenient environment. Transgender student-athletes may use the locker room, bathrooms and showers in accordance with their gender identity.²⁷

Media coverage shows that the College has admitted and continues to admit male students. For example, as early as 2017, Agnes Scott represented to the public that it admitted “transwomen” and “transmen,” allowed students to graduate despite

²⁴ *Id.* at 53.

²⁵ *Id.* at 52.

²⁶ Although the Bias Response Team and the Protocol for student complaints curiously do not appear in the current Student Handbook, we believe that the process is likely still in place and necessitates the “Bias Concern” reporting option. OCR should investigate whether such illegal processes remain in place at Agnes Scott and force women to choose between accepting biological men in intimate spaces or facing institutional discipline.

²⁷ Agnes Scott College, “Athletic Department Student-Athlete Handbook,” updated July 2023, 16–17, https://s3.us-east-2.amazonaws.com/sidearm.nextgen.sites/ascscotties.com/documents/2023/8/30/StudentAthleteHandbook_8_12_23_updated_1.pdf.



“transitioning,” and admitted “nonbinary” students.²⁸ In 2018, an Agnes Scott student, “Tyler,” discussed with the media the College’s “transgender athlete policy,” which allows students to “dress in the locker room of their choosing.”²⁹ Indeed, when asked after taking office in July 2018 about advising wary parents of the College’s “transgender” student policy, President Leocadia I. Zak remarked, “I would say to the parents to allow the students to be their guide. This is looking toward where the future is, the world that we live in, and that we are creating an environment that represents that world.”³⁰

Agnes Scott promises young women the opportunity to study and learn in a female-only environment. The College’s devotion to radical gender ideology guts this promise by admitting male applicants claiming a female “identity” and allowing them to invade women’s spaces on campus – housing, bathrooms, locker rooms, athletic teams, and the like. The tragic consequence is that Agnes Scott has freely chosen to sacrifice on the altar of gender identity its own identity.

LEGAL ARGUMENT

TITLE IX

Agnes Scott’s Violation of Title IX

Under the Trump administration, the Department has enforced Title IX in accordance with the statute’s text, purpose, and intent to prohibit discrimination in education on the basis of sex, not gender identity or some other status. Recent

²⁸ Anna North, “Can Transgender Students Go to Women’s Colleges? Across the Country, the Answer is Evolving,” *Vox*, September 22, 2017, <https://www.vox.com/identities/2017/9/21/16315072/spelman-college-transgender-students-womens-colleges>.

²⁹ Kate Guarino, “What It’s Really Like Being Trans or Gender Nonconforming at a Women’s College,” *Refinery29*, November 19, 2018, <https://www.refinery29.com/en-us/transgender-students-womens-college-acceptance>; *Note*: Indeed, the College currently has a “Statement and Policy for Inclusion and Respectful Treatment of Student-Athletes,” which is designed to “facilitate and encourage the participation of transgender students, staff, faculty, and visitors.” See Agnes Scott College, “Athletic Department Student-Athlete Handbook,” updated July 2023, 15, https://s3.us-east-2.amazonaws.com/sidearm.nextgen.sites/ascscotties.com/documents/2023/8/30/StudentAthleteHandbook_8_12_23_updated_1.pdf.

³⁰ Rickey Bevington, “Gender Identity at Women’s Colleges: Meet Agnes Scott President Lee Zak,” *LinkedIn*, May 3, 2019, <https://www.linkedin.com/pulse/gender-identity-womens-colleges-meet-agnes-scott-lee-zak-bevington/>.



judicial decisions, executive actions, and Department guidance have reaffirmed that Title IX’s use of the term “sex” refers to binary, biological sex and that educational institutions receiving federal financial assistance must administer sex-separated programs and facilities consistent with that understanding. Against this backdrop, Agnes Scott’s policies conflict with federal law and call into question the institution’s continued eligibility for federal student aid funds.

Recent Developments Under Title IX

The College’s policies and practices conflict with the text and purpose of Title IX, various executive orders on policies related to sex discrimination in federally funded programs, recent case law, and the Department’s current guidance on Title IX and the prevention of sex discrimination in federally funded programs.³¹

Title IX and the Meaning of “Sex”

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.³² 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.”³³

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,

³¹ See Executive Order 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>; Executive Order 14201, *Keeping Men Out of Women’s Sports* (Feb. 5, 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/keeping-men-out-of-womens-sports/>; U.S. Dep’t of Educ., “U.S. Department of Education to Enforce 2020 Title IX Rule Protecting Women,” January 31, 2025, <https://www.ed.gov/about/news/press-release/us-department-of-education-enforce-2020-title-ix-rule-protecting-women>.

³² 20 U.S.C. § 1681(a).

³³ *Id.* § 1686.



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.”³⁴ 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 intercollegiate athletic activities reasonable provisions considering the nature of particular sports.”³⁵

Since the Department’s predecessor first issued regulations in 1975,³⁶ 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.”³⁷ 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.”³⁸

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.³⁹ As the Supreme Court

³⁴ *Id.* § 1682.

³⁵ Pub. L. No. 93-380, Title VIII, Part D, § 844, 88 Stat. 612.

³⁶ 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).

³⁷ 34 C.F.R. § 106.33.

³⁸ *Id.* § 106.41(a)–(b).

³⁹ See *Louisiana v. Dep’t of Educ.*, Amended Complaint, No. 3:24-CV-00563-TAD-KDM, at 10 (May 3, 2024) (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.”)).



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.”⁴⁰ More recently, in denying an application for a stay of two injunctions blocking the Department’s recent amendments to its Title IX implementing regulations, a *per curiam* opinion of the U.S. Supreme Court confirmed this understanding of Title IX by noting that, “[i]mportantly, all Members of the Court today accept that the plaintiffs [challenging the amendments] were entitled to preliminary injunctive relief as to three provisions of the rule, including the central provision that newly defines sex discrimination to include discrimination on the basis of sexual orientation and gender identity.”⁴¹

Most recently, in *West Virginia v. B.P.J.*, the Supreme Court held that schools can restrict female athletic teams to biological females, upholding West Virginia’s Save Women’s Sports Act. Justice Thomas, writing in concurrence, concluded that men and boys with gender dysphoria are not women or girls, even if they believe that they are.⁴² He added: “Sex is an immutable ‘biological’ characteristic . . . it is binary; and ‘man’ and ‘woman,’ ‘boy’ and ‘girl,’ are the terms that correspond to adults and children of each sex.”⁴³ Justice Thomas went on to say that using language “to obscure reality” is “to lie to the public and cease to treat our fellow citizens ‘as equal[s].’”⁴⁴ The Department correctly accepts this view.

The Rise and Fall of the 2024 Title IX Rule

In the prior administration, the Department finalized amendments to its regulations implementing Title IX (the “2024 Rule”) on April 29, 2024, with an effective date of August 1, 2024.⁴⁵ 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

⁴⁰ *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).

⁴¹ *Dep’t of Educ. v. Louisiana*, 603 U.S. 866, 867 (2024).

⁴² 609 U.S. __ (2026).

⁴³ *Id.*

⁴⁴ *Id.*, quoting J. Pieper, *Abuse of Language – Abuse of Power* 17, 21 (1992).

⁴⁵ 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”).



and activities.⁴⁶ 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.”⁴⁷

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 its scope 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.⁴⁸ Among these courts was the U.S. Court of Appeals for the Eleventh Circuit,⁴⁹ the jurisdiction in which the College is located. 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.⁵⁰

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”⁵¹ and overruled Title IX’s explicit recognition that schools may separate certain

⁴⁶ *Id.* at 33,886 (codified at 34 C.F.R. § 106.10).

⁴⁷ *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”).

⁴⁸ 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).

⁴⁹ *Alabama v. U.S. Sec’y of Educ.*, No. 24-1244, 2024 WL 3981994 (11th Cir. 2024).

⁵⁰ *Louisiana*, 603 U.S. at 867.

⁵¹ *Tennessee v. Cardona*, 762 F. Supp. 3d 615, 622–24 (E.D. Ky. Jan. 9, 2025).



facilities and programs on the basis of sex in the interest of safety, privacy, and equal opportunity.⁵² 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.”⁵³ The College simply cannot rely, in any way, on the 2024 Rule.

Trump Administration’s Correct Interpretation 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”).⁵⁴ In that EO, the president declared that “[i]t is the policy of the United States to recognize two sexes, male and female,”⁵⁵ 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.”⁵⁶ 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.”⁵⁷ 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.”⁵⁸

In Executive Order 14201 dated February 5, 2025, *Keeping Men Out of Women’s Sports* (“EO 14201”),⁵⁹ President Trump further directed the Secretary of Education

⁵² *Id.* at 626.

⁵³ *Carroll Indep. Sch. Dist. v. Dep’t of Educ.*, 2025 U.S. Dist. LEXIS 124115 *9 (N.D. Tex. Feb. 19, 2025).

⁵⁴ Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 30, 2025).

⁵⁵ *Id.* at 8615.

⁵⁶ *Id.*

⁵⁷ *Id.* at 8616.

⁵⁸ *Id.* at 8617.

⁵⁹ Executive Order No. 14,201, 90 Fed. Reg. 9279 (Feb. 5, 2025).



(“Secretary”) to comply with the judicial vacatur of the 2024 Rule⁶⁰ “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.”⁶¹ 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.”⁶²

Considering the vacatur of the 2024 Rule and consistent with EO 14168 and EO 14201, OCR issued a *Dear Colleague Letter* on February 4, 2025 (“2025 Title IX DCL”) stating that OCR “will enforce Title IX under the provisions of the 2020 Title IX Rule, rather than the 2024 Title IX Rule.”⁶³ 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.”⁶⁴

OCR Must Investigate Whether Agnes Scott Committed Violations of Title IX

Agnes Scott’s policies and practices violate Title IX by depriving female students of the sex-based privacy, safety, and equal educational opportunities that Title IX and its implementing regulations protect. Agnes Scott effectively eliminates those protections when it requires female students to share intimate facilities and residential spaces with biologically male students who identify as women. The result is that women who enroll at a *women’s* college cannot rely on bathrooms,

⁶⁰ See notes 51–53, *supra*.

⁶¹ 90 Fed. Reg. at 9279.

⁶² *Id.* at 9280.

⁶³ 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).

⁶⁴ *Id.* at 2.



locker rooms, showers, and housing designated for women actually being limited to members of the female sex.

These policies impose the burden of the College's gender-identity policies directly on female students. The College permits biological males to use or reside in spaces and facilities represented by the College as reserved for females, where women must undress, shower, sleep, or engage in other private activities. Requiring female students to surrender their civil rights in this manner constitutes discrimination on the basis of sex. Agnes Scott cannot be allowed to maintain facilities and housing as sex-separated for purposes of attracting and serving women, while simultaneously defining access to those facilities in a manner that disregards sex.

In sum, these practices transform protections created for women into policies that require women to yield sex-based privacy and opportunities. Title IX prohibits discrimination on the basis of sex – not “gender identity” – in federally funded education programs and activities. The College is in violation of Title IX because, by admitting men who identify as women and forcing women students to share intimate facilities, including locker rooms and showers for student-athletes, with members of the opposite sex as a condition of participation in its education programs and activities, it prioritizes “gender identity” over sex. Simply put, the “gender identity” policies of the College effectively erase “sex” from Title IX and place the institution in conflict with that law.

HIGHER EDUCATION ACT

Agnes Scott's Violation of the HEA's Prohibition on Substantial Misrepresentation

Agnes Scott's admissions policies conflict with the HEA's prohibition against substantial misrepresentation. For decades, the College has represented itself as a women's college to prospective students, students, families, alumnae, donors, accreditors, regulators, and the public, making that portrayal a defining feature of its mission and recruiting efforts. Because federal law requires institutions participating in the Title IV programs to provide truthful and non-misleading information about matters that are material to students' enrollment decisions, the



College's public representations regarding its admissions policies warrant careful scrutiny.

Indeed, Agnes Scott prides itself on “The Women’s College Advantage.” As the College says on its website:

Agnes Scott doesn’t settle for giving women a seat at the table. It puts them at the head of it.

That has been true since 1889. Long before women were welcomed into most boardrooms and labs, Agnes Scott was built on the conviction that women belong where decisions are made.

As one of only 29 women's colleges in the country, women lead every organization, hold every elected position and drive every campus debate. Your thinking shapes the conversation because Agnes Scott was designed to make space for your voice. You'll be inspired by faculty, surrounded by peers who match your ambition and prepared to lead wherever your path takes you.⁶⁵

This is simply not true. Rather than creating a unique space for women to learn and grow, Agnes Scott has chosen to allow men to sit at its table.

As discussed below, the Department’s regulations implementing the HEA’s prohibition against misrepresentations by Title IV-participating institutions bar materially false or misleading statements or omissions and authorize significant enforcement action where such statements or omissions occur. Agnes Scott’s admissions policies and practices allowing men who identify as women to apply, enroll, and attend the College belie its longstanding public posture as an exclusively women’s college.

The Statutory Prohibition on Substantial Misrepresentation

Congress intended for the HEA’s ban on substantial misrepresentation to ensure that colleges and universities participating in Title IV programs provide accurate

⁶⁵ Agnes Scott College, “The Women’s College Advantage,” <https://www.agnesscott.edu/about/why-a-womens-college.html>.



and reliable information to the public, particularly prospective students, students, and regulatory authorities. The HEA states in this vein:

Upon determination . . . that an eligible institution has engaged in substantial misrepresentation of the nature of its education program . . . the Secretary may suspend or terminate the eligibility status for any or all programs . . . of any otherwise eligible institution . . . until the Secretary finds that such practices have been corrected.⁶⁶

The Department's implementing regulations explain misrepresentation as:

Any false, erroneous or misleading statement an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting or admissions services makes directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary. A misleading statement includes any statement that has the likelihood or tendency to mislead under the circumstances. A misleading statement may be included in the institution's marketing materials, website, or any other communication to students or prospective students.⁶⁷

In pertinent part, the regulations broadly construe what constitutes a misrepresentation:

A statement is any communication made in writing, visually, orally, or through other means. Misrepresentation includes any statement that omits information in such a way as to make the statement false, erroneous, or misleading Misrepresentation also includes the omission of facts.⁶⁸

⁶⁶ 20 U.S.C. § 1094(c)(3)(A).

⁶⁷ 34 C.F.R. § 668.71(c).

⁶⁸ *Id.*



The bar for reliance on a substantial misrepresentation is very low: it includes “[a]ny misrepresentation, including omission of facts . . . on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.”⁶⁹

These authorities make abundantly clear that a misleading statement may consist not only of an affirmative falsehood, but also of a statement that has the likelihood or tendency to deceive because of what it omits or implies, such as an institution that holds itself out as a “women’s college” but admits biological men who identify as women. In the past, the Department emphasized that these rules protect students from making significant educational and financial decisions based on inaccurate or deceptive information.

In determining whether a substantial misrepresentation exists, the Department evaluates the totality of the circumstances. The central test is whether the statement is false, erroneous, or misleading and whether a reasonable prospective student or member of the public could be expected to rely upon it when deciding whether to enroll or incur federal student loan obligations. The Department considers the context in which the representation was made, including institutional websites, catalogs, advertisements, recruiting materials, oral statements by admissions personnel, and other public communications. Importantly, the Department is not required to establish that every student was actually deceived or suffered financial harm. Instead, the regulations focus on whether the representation was material and reasonably likely to influence a student’s decision-making to that person's detriment.

The penalty for committing a substantial misrepresentation is stiff. The Secretary may act against an institution in a variety of ways. In addition to approving borrower defense to repayment applications,⁷⁰ the Department may:

- 1) Revoke the eligible institution’s program participation agreement, if the institution is provisionally certified;

⁶⁹ *Id.*

⁷⁰ *See* 34 C.F.R. § 685.206.



- 2) Impose limitations on the institution's participation in the Title IV, HEA programs, if the institution is provisionally certified;
- 3) Deny participation applications made on behalf of the institution;
- 4) Begin a fine proceeding under 34 C.F.R. Part 668, Subpart G;
- 5) Initiate a suspension proceeding under 34 C.F.R. Part 668, Subpart G;
- 6) Institute a limitation or termination proceeding under 34 C.F.R. Part 668, Subpart G; and/or
- 7) Begin an emergency action proceeding to immediately remove an institution's Title IV, HEA eligibility under 34 C.F.R. Part 668, Subpart G.⁷¹

In addition, depending on the facts, the Department may also require corrective action, heightened oversight, or additional reporting obligations. Even further, Department findings of institutional misrepresentations may be considered in connection with program reviews, audits, or recertification proceedings.

Because participation in the Title IV programs is conditioned on compliance with all relevant regulations, a finding of substantial misrepresentation rightfully exposes an institution not only to financial penalties – including a Letter of Credit based upon the volume of Title IV funds – but also to the potential and permanent loss of access to all federal student aid funds.

FSA Must Investigate Whether Agnes Scott Committed Substantial Misrepresentations Concerning the Nature of Its Educational Program

The Department's substantial misrepresentation regulations are broad enough to encompass institutional statements about the nature of an institution's educational program where those statements (or omissions) are – as here – false, erroneous, or misleading. Although the regulations are most used in cases involving job placement rates, transferability of credits, or tuition and financial aid, the Department has a duty to investigate *any* material representation that could reasonably influence a student's decision to enroll or incur Title IV debt.

⁷¹ 34 C.F.R. § 668.71(a).



Accordingly, when Agnes Scott repeatedly, consistently, and continually represents itself as a “women’s college,” those statements are subject to scrutiny under the substantial misrepresentation regulations because they are and have been since at least 2015 materially inconsistent with the College’s actual admissions policies.

After the Department examines the totality of the College’s communications and public statements, the agency will find that a reasonable prospective student would be misled regarding the nature of the student body and educational programs and, therefore, subject the College to an enforcement action under the Department’s substantial misrepresentation regulations.

CONCLUSION

As described above, Agnes Scott College’s policies and practice violate Title IX, the HEA, and the Department’s implementing regulations at 34 C.F.R. Part 106 and 34 C.F.R. Part 668, Subpart F. DFI urges OCR to commence a Title IX investigation and FSA to conduct a program review of the College and, failing immediate and lasting corrective action by the institution, to commence proceedings to suspend, limit, revoke, and/or terminate federal financial assistance to the school.

Thank you for your prompt assistance. Please feel free to contact us with any questions related to this request.

Sincerely,

/s/ Donald A. Daugherty, Jr.

Donald A. Daugherty, Jr.

Senior Counsel, Litigation

/s/ Paul F. Zimmerman

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