



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 Bryn Mawr 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 Pennsylvania – Bryn Mawr College (“Bryn Mawr” 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 Bryn Mawr 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.



(202) 627-6735



info@dfipolicy.com
dfipolicy.org



1765 Duke Street
Alexandria, Virginia 22314



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, Bryn Mawr’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 itself as “the preeminent college for women.”² Yet, the College’s admissions policy allows individuals 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. Because the College’s admissions policy and practices are materially inconsistent

² Bryn Mawr College, “About the College,” <https://www.brynmawr.edu/about-college>.



with that representation, Bryn Mawr has engaged in a substantial misrepresentation 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 would accept and investigate complaints involving discrimination based on gender identity.⁶

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.*

⁶ *Id.*



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

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>.

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/>.



Bryn Mawr followed that illegal trend. The College published and currently implements policies that violate both Title IX and Title IV. Bryn Mawr promises young women the opportunity to study and learn in a female-only environment, but the College’s adherence to radical gender ideology guts this promise by admitting male applicants flimsily claiming a female “identity.” Further, Bryn Mawr disallows separate male and female bathrooms in its student dormitories and athletic facilities. As a result, the College has eliminated female-only intimate spaces despite its representations to prospective students, applicants, enrolled students, accrediting agencies, state licensing authorities, the Department, and the public that it is a single-sex women’s undergraduate institution of higher education.

One of the famous “Seven Sisters” colleges, Bryn Mawr was the first women’s college to offer graduate degrees. The College also claims to be “committed to supporting our students holistically and to women’s education and empowerment.”¹⁴

In its public-facing materials, Bryn Mawr states that it is “dedicated to diversity, equity, inclusion, and accessibility, which serve as the engine for excellence and innovation, helping us pave the way for gender equity and inspiring brilliant minds who find life-long community” at the College.¹⁵ It is unclear how “excellence and innovation” is served by allowing biological men into spaces traditionally reserved for women and girls.

As further explained below, during the 2014–2015 school year, Bryn Mawr re-evaluated its admissions policy regarding “transgender” students.¹⁶ The result was the current “Transgender Applicants” Policy. The College states that, “[i]n taking an inclusive approach to fulfilling [its] mission,” Bryn Mawr “acknowledges gender complexity as an opportunity for learning.”¹⁷ The College adds that it recognizes “that students may express new gender identities while at Bryn Mawr and beyond.

¹⁴ Bryn Mawr College, “About the College,” <https://www.brynmawr.edu/about-college>.

¹⁵ *Id.*

¹⁶ Theresa Diffendal, “Being Male at a Women’s College,” *Medium*, March 15, 2017, <https://medium.com/student-voices/being-male-at-a-womens-college-1d31a61dab82>.

¹⁷ Bryn Mawr College, “Admissions Policies: Transgender Applicants,” <https://www.brynmawr.edu/admissions-aid/apply/admissions-policies>.



Bryn Mawr is committed to all of our current and future students, whom we will continue to welcome, support, and proudly claim as our alumnae/i. Our women-centered focus is not intended to exclude any members of this special community, although it is a fundamental part of our undergraduate mission.”¹⁸ The paradox at the heart of this policy – a “woman-centered focus” that includes biological males – goes unexplained.

The Policy continues:

In light of our mission and these understandings of gender, Bryn Mawr College considers as eligible to apply to the undergraduate college all individuals who have identified and continue to identify as women (including cisgender and trans women), intersex individuals who do not identify as male, individuals assigned female at birth who have not taken medical or legal steps to identify as male, and individuals assigned female at birth who do not identify within the gender binary.¹⁹

Finally, the College states that it “intends to be flexible and inclusive in implementing these understandings,” adding that it takes a “holistic approach” to reviewing applications.²⁰ Interestingly, Bryn Mawr states that it may request additional information from applicants, but does not identify what that additional information would entail or why it would be necessary to satisfy the open-ended policy.

These policies of allowing biological men into a *women’s* college translate into practices that clearly violate Title IX. For example, Bryn Mawr’s dorms have a “shared bathroom” on every floor.²¹ The College proudly states that the bathrooms are “shared spaces” and provides no indication that there are separate bathrooms for women and men.²² There is *no* indication on the Bryn Mawr website of separate

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Bryn Mawr College, “FAQs; Housing and Arrival Information,” <https://www.brynmawr.edu/inside/offices-services/first-year-experience/faqs>.

²² *Id.*



dorm or living spaces for female and “biological male” students. Therefore, as a matter of policy, biological women must use the same intimate and living spaces as individuals of the opposite sex.

With regard to sports teams and locker rooms, Bryn Mawr’s public-facing website does not indicate that sex differences are recognized or protected. Rather, as a member of the Centennial Conference, the College has incorporated the Conference’s “Student-Athlete Inclusion Policy,” which demands that each member-institution “shall provide access to facilities that accord with the gender identity” of the team member, including changing, showering, and toilet facilities.²³ Indeed, there is no indication on the College’s website that gender differences are acknowledged in recognized intramural contact sports, like aikido, judo, taekwondo, soccer, and, even, wrestling.²⁴

Further, the College’s student fitness and athletic center flagrantly violates Title IX. The facility’s “Locker Room Policy” states:

Women’s Locker Room: Locker room is reserved for use by those who identify themselves as female.²⁵

Hence, biological males, if they only *self-identify* as female – and with no indication of how one would self-identify or if it is subject to confirmation – can gain access to female students’ intimate and changing facilities.

Indeed, if a female student objects to the consequences of these policies, she may be subject to sanctions by the College. Bryn Mawr’s Sexual Misconduct Policy explicitly prohibits “[s]ubjecting an individual . . . to an adverse action . . . based on . . . gender identity, gender expression, affectional or sexual orientation, differences in sex

²³ Centennial Conference, “Student-Athlete Inclusion Policy,” updated February 7, 2025, <https://centennial.org/sports/2023/4/22/general-2021-22-inclusionpolicy.aspx>.

²⁴ Bryn Mawr College, “Sports Clubs,” <https://www.brynmawr.edu/inside/offices-services/student-engagement/clubs/sports-clubs>.

²⁵ Bryn Mawr Owls, “Bern Schwartz Fitness and Athletic Center: Locker Room Policies,” <https://gobrynmawr.com/sports/2023/1/25/information-facilities-policies-COVID.aspx#Locker%20Room%20Policies>.



development, variations of sex characteristics or other intersex characteristics.”²⁶ Significantly, *none* of the terms included in this policy are defined or explained.

Bryn Mawr’s threat to punish students who may object to the College’s adherence to radical gender ideology is real and concrete. Students are subject to a disciplinary hearing if they commit thought crime. Bryn Mawr’s “Notice of Non-Discrimination” incorporates a provision prohibiting discrimination on the basis of “gender identity/expression.”²⁷ Thus, if a student expresses a desire to *not* use the same bathroom or locker room as a member of the opposite sex, she could be subject, under the policy, to dismissal or expulsion from the College; suspension from the College; loss of campus housing or other privileges; withholding of diploma and/or transcripts; disciplinary probation; or “other Sanctions as deemed appropriate.”²⁸ In other words, a female student who objects to sharing a communal bathroom in a dormitory with an individual born male could be required to find her own housing, at her own expense, off campus.

Bryn Mawr’s policy of admitting biological males has been on the books for over a decade. According to media coverage at the time, on February 9, 2015, the College

²⁶ Bryn Mawr College, “Sexual Misconduct Policy,” revised January 2025, https://www.brynmawr.edu/sites/default/files/media/documents/2025-07/2024-2025%20Bryn%20Mawr%20College%20Sexual%20Misconduct%20Policy_Jan.%202025.pdf. Notably, this policy also requires, under the “Rules of Decorum,” that parties to a complaint as well as witnesses and College staff use “the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.”

²⁷ Bryn Mawr College, “Interim Policy for the Prevention of Discrimination, Discriminatory Harassment, and Retaliation,” published December 22, 2025, https://www.brynmawr.edu/sites/default/files/media/documents/2025-12/InterimDiscriminationPolicy_FINAL_AdobeRemediated.pdf. Note: The “Discrimination, Harassment, Sexual Misconduct, and Retaliation Reporting Form” can be found here: https://cm.maxient.com/reportingform.php?BrynMawrCollege=&layout_id=200.

²⁸ See “Interim Policy for the Prevention of Discrimination, Discriminatory Harassment, and Retaliation,” https://www.brynmawr.edu/sites/default/files/media/documents/2025-12/InterimDiscriminationPolicy_FINAL_AdobeRemediated.pdf.



became the fifth women's college in the country to admit "trans women and intersex individuals who do not identify as male."²⁹

The College Board Chair at the time, Arlene Gibson, said in a letter to students:

Bryn Mawr continues its clear mission to educate women to be future leaders, but it also recognizes that conceptions of gender are changing and that the College must respond to these changes.³⁰

Notably, the Board Chair did not bother to reconcile a "clear mission to educate women" with admitting biological men. In reality, the College caved to pressure from radical gender ideology activist alumnae who published a Change.org petition stating that the College had "not taken adequate steps towards guaranteeing rights and protections for trans students and applicants equivalent to those extended to cisgender students and applicants."³¹ The Petition continued:

The Bryn Mawr community deserves a clear, intentional, and well-articulated admissions policy protecting all prospective students, including trans, nonbinary, and intersex students, and especially trans women. In addition to a comprehensive admissions policy, we need campus protections and support for trans, nonbinary, and gender nonconforming students and applicants. Without these basic changes, Bryn Mawr cannot claim to be a women's college or an advocate for gender equality.³²

²⁹ Sara Hoover, "Bryn Mawr College Becomes Most Recent Women's College to Accept Transgender Students," *WHYY.org*, February 15, 2015, <https://whyy.org/articles/bryn-mawr-college-becomes-most-recent-womens-college-to-accept-transgender-students/>.

³⁰ *Id.*

³¹ Maria Aghazarian et al., "An Open Letter to Bryn Mawr College, Calling for the Inclusion of Trans Women," September 3, 2014, <https://www.change.org/p/bryn-mawr-college-an-open-letter-to-bryn-mawr-college-calling-for-the-inclusion-of-trans-women>.

³² *Id.*



Inextricably, Bryn Mawr began its review of its admissions policy a *month* after this Petition was posted, throwing away its illustrious tradition and history in favor of the radical political preferences of outspoken alumnae.³³

There is also clear evidence that Bryn Mawr continues to enforce its illegal policy to this day. As recently as May 2026, when asked about the Transgender Admissions Policy, the College said in a statement to *The Philadelphia Inquirer*:

The college remains focused on our mission and commitment to academic excellence. . . . We continue to operate in compliance with all federal laws and regulations.³⁴

It is clear that, as of this writing, Bryn Mawr continues to flagrantly violate Title IX based upon radical gender ideology rather than an appropriate, grounded, and legal interpretation of federal laws and regulations.

Bryn Mawr 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 Bryn Mawr has freely chosen to sacrifice on the altar of gender identity its own identity.

LEGAL ARGUMENT

TITLE IX

Bryn Mawr'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 judicial decisions, executive actions, and Department guidance have reaffirmed

³³ Hoover, <https://why.org/articles/bryn-mawr-college-becomes-most-recent-womens-college-to-accept-transgender-students/>.

³⁴ Susan Snyder, "The Trump Administration Is Investigating Smith College for Admitting Trans Women. Could Bryn Mawr Be Next?" *The Philadelphia Inquirer*, May 5, 2026, <https://www.inquirer.com/education/smith-college-trump-trans-women-bryn-mawr-20260505.html>.



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, Bryn Mawr'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.³⁵

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.³⁶ 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."³⁷

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

³⁵ 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>.

³⁶ 20 U.S.C. § 1681(a).

³⁷ *Id.* § 1686.



compliance with these rules by withdrawing funding from federal funding recipients or “by any other means authorized by law.”³⁸ 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.”³⁹

Since the Department’s predecessor first issued regulations in 1975,⁴⁰ 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.”⁴¹ 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.”⁴²

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.⁴³ As the Supreme Court recognized merely a year after Title IX’s passage, “[s]ex, like race and origin, is an

³⁸ *Id.* § 1682.

³⁹ Pub. L. No. 93-380, Title VIII, Part D, § 844, 88 Stat. 612.

⁴⁰ 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).

⁴¹ 34 C.F.R. § 106.33.

⁴² *Id.* § 106.41(a)–(b).

⁴³ 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.”)).



immutable characteristic determined solely by the accident of birth.”⁴⁴ 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.”⁴⁵

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.⁴⁶ 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.”⁴⁷ 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].’”⁴⁸ 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, 2024.⁴⁹ 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

⁴⁴ *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).

⁴⁵ *Dep’t of Educ. v. Louisiana*, 603 U.S. 866, 867 (2024).

⁴⁶ 609 U.S. __ (2026).

⁴⁷ *Id.*

⁴⁸ *Id.*, quoting J. Pieper, *Abuse of Language – Abuse of Power* 17, 21 (1992).

⁴⁹ 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.⁵⁰ 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.”⁵¹

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.⁵² 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.⁵³

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”⁵⁴ 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.⁵⁵ On February 19, 2025, the U.S. District Court for the Northern

⁵⁰ *Id.* at 33,886 (codified at 34 C.F.R. § 106.10).

⁵¹ *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”).

⁵² 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).

⁵³ *Louisiana*, 603 U.S. at 867.

⁵⁴ *Tennessee v. Cardona*, 762 F. Supp. 3d 615, 622–24 (E.D. Ky. Jan. 9, 2025).

⁵⁵ *Id.* at 626.



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.”⁵⁶ 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”).⁵⁷ In that EO, the president declared that “[i]t is the policy of the United States to recognize two sexes, male and female,”⁵⁸ 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.”⁵⁹ 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.”⁶⁰ 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.”⁶¹

In Executive Order 14201 dated February 5, 2025, *Keeping Men Out of Women’s Sports* (“EO 14201”),⁶² President Trump further directed the Secretary of Education (“Secretary”) to comply with the judicial vacatur of the 2024 Rule⁶³ “and take other appropriate action to ensure this regulation does not have effect,” “take all

⁵⁶ *Carroll Indep. Sch. Dist. v. Dep’t of Educ.*, 2025 U.S. Dist. LEXIS 124115 *9 (N.D. Tex. Feb. 19, 2025).

⁵⁷ Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 30, 2025).

⁵⁸ *Id.* at 8615.

⁵⁹ *Id.*

⁶⁰ *Id.* at 8616.

⁶¹ *Id.* at 8617.

⁶² Executive Order No. 14,201, 90 Fed. Reg. 9279 (Feb. 5, 2025).

⁶³ See notes 54–56, *supra*.



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.”⁶⁴ 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.”⁶⁵

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.”⁶⁶ 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.”⁶⁷

OCR Must Investigate Whether Bryn Mawr Committed Violations of Title IX

Bryn Mawr’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. Bryn Mawr effectively eliminates those protections when it requires female students to share intimate facilities, residential spaces, and sports teams with biologically male students who identify as women. The result is that women who enroll at a *women’s* college cannot rely on bathrooms, locker rooms, showers, housing, and athletics designated for women actually being limited to members of the female sex.

⁶⁴ 90 Fed. Reg. at 9279.

⁶⁵ *Id.* at 9280.

⁶⁶ 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).

⁶⁷ *Id.* at 2.



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.

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 identity 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

Bryn Mawr's Violation of the HEA's Prohibition on Substantial Misrepresentation

Bryn Mawr'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, the College proudly states:



Since its founding in 1885, Bryn Mawr College has been the preeminent college for women interested in the pursuit of wisdom necessary to challenge the world's expectations. Our community has repeatedly broken barriers to achieve greater equity through exceptional academics and a deep dedication to learning.

...

We are dedicated to diversity, equity, inclusion, and accessibility, which serve as the engine for excellence and innovation, helping us pave the way for gender equity and inspiring brilliant minds who find life-long community here.⁶⁸

This is simply not true. Rather than “pave the way for gender equity,” Bryn Mawr has built roadblocks for women who want to learn in spaces dedicated to biological women.

Indeed, the College also claims that “[n]inety-nine percent of seniors go on to achieve positive career outcomes within one year of graduation.”⁶⁹ Notably, no data is provided for this claim nor is a definition for “positive career outcomes” provided. Without data, this claim goes beyond mere puffery and clearly falls into the category of a promise to induce enrollment based upon outcomes for students. Failing supportive information, vague terminology and clearly exaggerated numbers constitute the kind of prohibited misrepresentation envisioned by Congress in the HEA.

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. Bryn Mawr’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.

⁶⁸ Bryn Mawr College, “About the College,” <https://www.brynmawr.edu/about-college>.

⁶⁹ *Id.*



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 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.⁷⁰

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.⁷¹

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,

⁷⁰ 20 U.S.C. § 1094(c)(3)(A).

⁷¹ 34 C.F.R. § 668.71(c).



erroneous, or misleading Misrepresentation also includes the omission of facts.⁷²

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.”⁷³

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.

⁷² *Id.*

⁷³ *Id.*



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,⁷⁴ the Department may:

- 1) Revoke the eligible institution's program participation agreement, if the institution is provisionally certified;
- 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.⁷⁵

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.

⁷⁴ See 34 C.F.R. § 685.206.

⁷⁵ 34 C.F.R. § 668.71(a).



FSA Must Investigate Whether Bryn Mawr 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. Accordingly, when Bryn Mawr 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, Bryn Mawr 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

Paul F. Zimmerman
Senior Counsel, Policy & Regulatory