



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 Stephens 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 Columbia, Missouri – Stephens College (“Stephens” 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 Stephens for violating Title IX.<sup>1</sup> Title IX prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance; critically, Title IX also protects single-sex spaces. For example, female

---

<sup>1</sup> 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



students are entitled to sex-segregated intimate facilities and housing, sororities, 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 and use women’s intimate housing and facilities.

Second, Stephens’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 Stephens was “inspired by its founding commitment to women’s education” and “a belief that women deserved access to the power of education.”<sup>2</sup> 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. Because the College’s admissions policy and practices are materially inconsistent

---

<sup>2</sup> Stephens College, “Mission, Vision, & Ideals,” <https://stephens.edu/mission-vision-ideals/>.



with that representation, Stephens 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,<sup>3</sup> 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.<sup>4</sup> The guidance established that discrimination based on gender identity or failure to conform to sex stereotypes is a violation of federal civil rights laws.<sup>5</sup> 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.<sup>6</sup>

---

<sup>3</sup> 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>.

<sup>4</sup> 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.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*



At that time, the women's college, and single-sex education in general, was openly referred to as a "dinosaur."<sup>7</sup> *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.<sup>8</sup> Advocates argued that preserving the practice of segregating male and female students "lean[ed] on fraying and outdated assumptions about gender."<sup>9</sup>

Mills College in California became the first women's college to implement a formal admissions policy for "transgender women."<sup>10</sup> 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."<sup>11</sup> 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."<sup>12</sup> 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.<sup>13</sup>

---

<sup>7</sup> 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>.

<sup>8</sup> 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>.

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

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

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

<sup>12</sup> 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>.

<sup>13</sup> 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/>.



Stephens College followed that illegal trend. The College published and currently implements policies that violate both Title IX and Title IV. Stephens College 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, Stephens College disallows separate male and female bathrooms in its student dormitories. 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.

Stephens College's website claims that it is "proud" to be the second-oldest women's college in the county.<sup>14</sup> The College explains its vision as follows:

Inspired by its tradition as an undergraduate women's college, Stephens College engages lifelong learners in an educational experience characterized by intellectual rigor, creative expression, and professional practice, supported by accomplished faculty, talented staff, and engaged alumnae/alumni. Graduates of Stephens College are educated in the liberal arts, informed by diverse perspectives, and committed to lives of leadership, integrity and service.<sup>15</sup>

The College further opines:

For more than 185 years, in the face of changing cultural norms and standards, Stephens College's undergraduate residential program has remained singularly dedicated to educating, empowering and inspiring women. Today, the College's undergraduate residential program reaffirms its identity as a living-and-learning community of women, a sisterhood that encourages and supports women's independent voice, free agency, and powerful leadership.<sup>16</sup>

---

<sup>14</sup> Stephens College, "About Stephens," <https://stephens.edu/about-stephens/>.

<sup>15</sup> Stephens College, "Mission, Vision, & Ideals," <https://stephens.edu/mission-vision-ideals/>.

<sup>16</sup> Stephens College, "Frequently Asked Questions: Stephens College Admissions and Enrollment Policy," 2018, [http://komu.s3.amazonaws.com/files/faq\\_admissions\\_policy\\_\(1\).pdf](http://komu.s3.amazonaws.com/files/faq_admissions_policy_(1).pdf).



Despite this profound and important history, in November 2018, Stephens College sided with radical gender ideology activists in violation of Title IX and Title IV.<sup>17</sup> According to media reports at the time, a College statement said:

The world's understanding of and definition of womanhood is changing. . . . Stephens is evolving – just as it always has – to ensure that it continues to provide the extraordinary experience of a Stephens College education to all women who will seek and benefit from it.<sup>18</sup>

Further, the College said that it had “expanded its definition of womanhood to include both sex and gender.”<sup>19</sup> The College did not explain at the time how providing an “extraordinary experience . . . to all women” included admitting biological males.

The admissions policy that is in place today at Stephens College reads as follows:

Consistent with our mission, admission and continued enrollment in our undergraduate residential women's college is restricted exclusively to women, including students who are legally identified as female and who self-identify as women; students who document an ongoing transition to female and who self-identify as women; and students who are legally identified as female but do not fit within the gender binary. The program will not admit or enroll students who self-identify as men or who are transitioning to male.<sup>20</sup>

---

<sup>17</sup> Associated Press, “Missouri Women's College to Accept Transgender Women,” *KSHB.com*, December 28, 2018, <https://www.kshb.com/news/local-news/missouri-womens-college-to-accept-transgender-women>.

<sup>18</sup> Ivy Hettinger-Roberts, “Stephens College's New Admissions Policy to Include Nonbinary, Transgender Students,” *The Columbia Missourian*, December 26, 2018, [https://www.columbiamissourian.com/news/local/stephens-colleges-new-admissions-policy-to-include-nonbinary-transgender-students/article\\_09549e76-0930-11e9-b7f4-d3e823d48b04.html](https://www.columbiamissourian.com/news/local/stephens-colleges-new-admissions-policy-to-include-nonbinary-transgender-students/article_09549e76-0930-11e9-b7f4-d3e823d48b04.html).

<sup>19</sup> Owen Daugherty, “Second Oldest US Women's College to Accept Transgender Students,” *The Hill*, December 27, 2018, <https://thehill.com/regulation/other/423033-second-oldest-all-women-college-will-now-accept-transgender-students/>.

<sup>20</sup> Stephens College, “Applying as a Freshman: Undergraduate Residential Women's College Eligibility,” <https://stephens.edu/applying-as-a-freshman/>.



The consequences of Stephens’s admissions policies are clear. When it comes to women’s intimate spaces, Stephens shirks its responsibilities in favor of radical gender ideology. For example, there is no indication on the College’s website that biological females will not be in the same dormitory or same *dorm room* with a student who was born of the opposite gender. In fact, the College touts its “lively community bathroom setup,”<sup>21</sup> with dorms that only offer “community bathrooms” without sex-segregated facilities, despite the presence of admitted “transgender male” students.<sup>22</sup> Another dorm – Prunty Hall – has only “community style floors with bathroom which house multiple sinks, toilet stalls, and shower stalls.”<sup>23</sup> Despite bragging about the “community vibes,”<sup>24</sup> Stephens simply fails to protect female-only shower and toilet facilities, in violation of Title IX.

Indeed, if a female student objects to these types of living arrangements, the College’s policies could subject her to discipline. Stephens’s Statement of Nondiscrimination (“Statement”) includes the following:

The College does not discriminate in its admissions practices (except as permitted by law), in its employment practices, or in its educational programs or activities on the basis of age, color, disability, gender expression and identity, genetic information, national origin, race, religion, sex, sexual orientation, or veteran status and all other classifications protected by law.<sup>25</sup>

The statement does not contain a definition of either “gender expression” or gender “identity.” Curiously, Stephens College does not admit or enroll students who identify as men *or* are transitioning from female to male, stating that “it is logically consistent that it also acknowledges both sex and gender in its definition of

---

<sup>21</sup> Stephens College, “Campus Housing,” <https://stephens.edu/life-at-stephens/campus-housing/>.

<sup>22</sup> Stephens College, “Searcy Hall,” <https://stephens.edu/life-at-stephens/campus-housing/searcy-hall/>.

<sup>23</sup> Stephens College, “Prunty Hall,” <https://stephens.edu/life-at-stephens/campus-housing/prunty-hall/>.

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

<sup>25</sup> Stephens College, “Statement of Nondiscrimination,” <https://www.course-catalog.com/stephens/C/2025-2026/content/statement-of-nondiscrimination/17>.



manhood.”<sup>26</sup> As a result, College students who identified as women at the time of admission, but who transitioned to men during their enrollment, are no longer able to attend Stephens College.

Regardless of this confusion, if a female student’s objection is viewed by another, or the College, of violating the Statement, the student would be subject to an investigation by the “Equity + Compliance Team,” Stephens’s version of a bias response team.<sup>27</sup> If a student is found to have committed a discriminatory act, the violator is subject to any of the following: a warning; “required counseling”;<sup>28</sup> probation; suspension; expulsion; withholding her diploma; or “revocation of degree.”<sup>29</sup>

In short, if a female student at Stephens expresses an objection to failing to share in the “community vibes” of showering next to a biological male, the College could find that she violated its Statement and either send her to re-education camp, i.e., “required counseling,” or revoke her degree. This represents a stunning betrayal of the College’s female students and of Title IX.

---

<sup>26</sup> Mackenzy Middlebrooks, “Stephens College Now Accepts All Women,” *Vox Magazine*, April 25, 2019, [https://www.voxmagazine.com/news/stephens-college-changes-policy-for-transgender-students/article\\_d8e18012-6558-11e9-9d66-df6af28602d1.html](https://www.voxmagazine.com/news/stephens-college-changes-policy-for-transgender-students/article_d8e18012-6558-11e9-9d66-df6af28602d1.html). *Note:* Despite surrendering their history and identity to radical gender activists, those activists were still not satisfied by the new policy: “Emile Eller, a Stephens fashion design student, has faced a similar struggle. ‘I don’t think, at an institutional level, Stephens takes the time to understand trans issues or support trans students,’ Eller says. ‘It’s never the first thought.’”

<sup>27</sup> Stephens College, “What Happens When I Report?” <https://stephens.edu/why-stephens/leadership/compliance-offices/welcome-to-the-office-of-title-ix/what-happens-when-i-report/>.

<sup>28</sup> Defined as: “A mandate to meet with and engage in either Stephens College-sponsored or external counseling to better comprehend the misconduct and its effects.” Stephens College, “Resolution Process for Alleged Violations of Equal Opportunity, Harassment, and Nondiscrimination Policy,” effective March 10, 2022, <https://stephens.edu/wp-content/uploads/2025/08/Stephens-Title-IX-Policy-8.pdf>.

<sup>29</sup> Defined as: “Stephens College reserves the right to revoke a degree previously awarded from the College for fraud, misrepresentation, or other violation of Stephens College policies, procedures, or directions in obtaining the degree, or for other serious violations committed by a student prior to graduation.” Stephens College, “Resolution Process for Alleged Violations of Equal Opportunity, Harassment, and Nondiscrimination Policy,” effective March 10, 2022, <https://stephens.edu/wp-content/uploads/2025/08/Stephens-Title-IX-Policy-8.pdf>.



Stephens 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, and the like. The tragic consequence is that Stephens has freely chosen to sacrifice on the altar of gender identity its own identity.

## **LEGAL ARGUMENT**

### **TITLE IX**

#### **Stephens'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 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, Stephens'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.<sup>30</sup>

---

<sup>30</sup> 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,



### *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.<sup>31</sup> The law includes a rule of construction specifying that “nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.”<sup>32</sup>

The law also includes a provision directing federal agencies, including the Department, that provide federal financial assistance to education programs or activities to implement Title IX’s nondiscrimination mandate by “issuing rules, regulations, or orders of general applicability” applying the law and to effect compliance with these rules by withdrawing funding from federal funding recipients or “by any other means authorized by law.”<sup>33</sup>

Since the Department’s predecessor first issued regulations in 1975,<sup>34</sup> Title IX regulations have permitted recipients of federal education funding to “provide separate, toilet, locker room, and shower facilities on the basis of sex” as long as “such facilities provided for students of one sex” are “comparable to such facilities provided for students of the other sex.”<sup>35</sup>

---

<https://www.ed.gov/about/news/press-release/us-department-of-education-enforce-2020-title-ix-rule-protecting-women>.

<sup>31</sup> 20 U.S.C. § 1681(a).

<sup>32</sup> *Id.* § 1686.

<sup>33</sup> *Id.* § 1682.

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

<sup>35</sup> 34 C.F.R. § 106.33.



It is beyond serious debate that, as used throughout Title IX, the word “sex” refers to a person’s biological sex – male or female – at birth.<sup>36</sup> As the Supreme Court recognized merely a year after Title IX’s passage, “[s]ex, like race and origin, is an immutable characteristic determined solely by the accident of birth.”<sup>37</sup> 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.”<sup>38</sup>

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.<sup>39</sup> 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.”<sup>40</sup> 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].’”<sup>41</sup> The Department correctly accepts this view.

---

<sup>36</sup> 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.”)).

<sup>37</sup> *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).

<sup>38</sup> *Dep’t of Educ. v. Louisiana*, 603 U.S. 866, 867 (2024).

<sup>39</sup> 609 U.S. \_\_ (2026).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*, quoting J. Pieper, *Abuse of Language – Abuse of Power* 17, 21 (1992).



## *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.<sup>42</sup> Those amendments misinterpreted the law’s prohibition of “discrimination on the basis of sex” to prevent discrimination on the basis of an undefined “gender identity” in federally funded education programs and activities.<sup>43</sup> As a result, the 2024 Rule required recipients to prohibit discrimination on the basis of “gender identity” in all of their programs and activities, and to allow any person to use whichever sex-separated bathroom or locker room corresponded with that person’s claimed “gender identity.”<sup>44</sup>

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.<sup>45</sup> On August 16, 2024, the Supreme Court unanimously agreed that a preliminary injunction blocking the 2024 Rule’s “gender identity” provisions and the dramatic expansion of the regulatory definition of “sexual harassment” was an appropriate measure.<sup>46</sup>

---

<sup>42</sup> U.S. Dep’t of Educ., *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89 Fed. Reg. 33,474, 33,474 (Apr. 29, 2024) (hereinafter “2024 Rule”).

<sup>43</sup> *Id.* at 33,886 (codified at 34 C.F.R. § 106.10).

<sup>44</sup> *Id.* at 33,887 (codified at 34 C.F.R. § 106.31(a)(2)); *id.* at 33,818 (denying “a transgender student access to a sex-separate facility or activity consistent with that student’s gender identity . . . would violate Title IX’s general nondiscrimination mandate”).

<sup>45</sup> See *Tennessee v. Cardona*, No. 24-5588, 2024 WL 3453880 (6th Cir. July 17, 2024); *Louisiana v. Dep’t of Educ.*, No. 24-30399, 2024 WL 3452887 (5th Cir. July 17, 2024); *Oklahoma v. Cardona*, No. CIV-24-00461-JD, 2024 WL 3609109 (W.D. Okla. July 31, 2024); *Arkansas v. Dep’t of Educ.*, No. 4:24-CV-636-RWS, 2024 WL 3518588 (E.D. Mo. July 24, 2024); *Carroll Indep. Sch. Dist. v. Dep’t of Educ.*, No. 4:24-cv-00461-O, 2024 WL 3381901 (N.D. Tex. July 11, 2024); *Texas v. United States*, No. 2:24-CV-86-Z, 2024 WL 3405342 (N.D. Tex. July 11, 2024); *Kansas v. Dep’t of Educ.*, No. 24-4041JWB, 2024 WL 3273285 (D. Kan. July 2, 2024); *Tennessee v. Cardona*, No. 2:24-072-DCR, 2024 WL 3019146 (E.D. Ky. June 17, 2024); *Louisiana v. Dep’t of Educ.*, No. 3:24-CV-00563, 2024 WL 2978786 (W.D. La. June 13, 2024).

<sup>46</sup> *Louisiana*, 603 U.S. at 867.



On January 9, 2025, the U.S. District Court for the Eastern District of Kentucky vacated the 2024 Rule in full because, among other unlawful aspects of the rule, the regulations misinterpreted the word “sex” in Title IX to apply to “gender identity”<sup>47</sup> and overruled Title IX’s explicit recognition that schools may separate certain facilities and programs on the basis of sex in the interest of safety, privacy, and equal opportunity.<sup>48</sup> On February 19, 2025, the U.S. District Court for the Northern District of Texas also vacated the 2024 Rule on many of the same grounds, including that “expanding the meaning of ‘on the basis of sex’ to include ‘gender identity’ turns Title IX on its head” and the 2024 Rule’s standard forcing schools to allow males to access female bathrooms and other intimate spaces “is arbitrary in the truest sense of the word.”<sup>49</sup> 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”).<sup>50</sup> In that EO, the president declared that “[i]t is the policy of the United States to recognize two sexes, male and female,”<sup>51</sup> and defined “sex” for the purpose of Executive Branch interpretation and application of federal law as referring “to an individual’s immutable biological classification as either male or female.”<sup>52</sup> EO 14168 then directs all federal agencies and employees to “enforce laws governing sex-based rights, protections, opportunities, and accommodations to protect men and women as biologically distinct sexes,” giving all instances of “sex” and related terms the definitions set forth in the EO “when interpreting or applying statutes, regulations, or guidance.”<sup>53</sup> Importantly, EO 14168 directs agencies to effect its policies “by taking appropriate action to ensure

---

<sup>47</sup> *Tennessee v. Cardona*, 762 F. Supp. 3d 615, 622–24 (E.D. Ky. Jan. 9, 2025).

<sup>48</sup> *Id.* at 626.

<sup>49</sup> *Carroll Indep. Sch. Dist. v. Dep’t of Educ.*, 2025 U.S. Dist. LEXIS 124115 \*9 (N.D. Tex. Feb. 19, 2025).

<sup>50</sup> Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 30, 2025).

<sup>51</sup> *Id.* at 8615.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 8616.



that intimate spaces designated for women, girls, or females (or for men, boys, or males) are designated by sex and not identity.”<sup>54</sup>

Considering the vacatur of the 2024 Rule and consistent with EO 14168, 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.”<sup>55</sup> Accordingly, the 2025 Title IX DCL explained that “open Title IX investigations initiated under the 2024 Title IX Rule should be immediately reevaluated to ensure consistency with the requirements of the 2020 Title IX Rule and . . . preexisting regulations.”<sup>56</sup>

### **OCR Must Investigate Whether Stephens Committed Violations of Title IX**

Stephens’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. Stephens 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, 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. Stephens cannot be allowed to advertise itself as a single-sex institution while simultaneously requiring members of the sex that it claims to serve to surrender their privacy and dignity by sharing intimate facilities with men.

---

<sup>54</sup> *Id.* at 8617.

<sup>55</sup> Craig Trainor, Acting Assistant Sec’y for C.R., U.S. Dep’t of Educ., *Dear Colleague Letter*, Feb. 4, 2025, at 1, <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl> (footnotes omitted).

<sup>56</sup> *Id.* at 2.



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, 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**

#### **Stephens’s Violation of the HEA’s Prohibition on Substantial Misrepresentation**

Stephens’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, Stephens prides itself on their “Statement of Purpose”:

We began in 1833 with a belief that women deserved access to the power of education. Nearly two centuries later, that work is still unfinished: because the world still needs more leaders who create, care, build, question, and act with purpose.<sup>57</sup>

This is simply not true. Stephens has chosen instead to turn its back on “nearly two centuries” of working to uplift women in the name of radical gender ideology.

---

<sup>57</sup> Stephens College, “Mission, Vision, & Ideals,” <https://stephens.edu/mission-vision-ideals/>.



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. Stephens'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 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.<sup>58</sup>

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

---

<sup>58</sup> 20 U.S.C. § 1094(c)(3)(A).



the institution's marketing materials, website, or any other communication to students or prospective students.<sup>59</sup>

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.<sup>60</sup>

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.”<sup>61</sup>

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

---

<sup>59</sup> 34 C.F.R. § 668.71(c).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*



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,<sup>62</sup> 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.<sup>63</sup>

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

---

<sup>62</sup> See 34 C.F.R. § 685.206.

<sup>63</sup> 34 C.F.R. § 668.71(a).



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 Stephens 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 Stephens 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, Stephens 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