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ADVISORY ON APPLICATION OF TITLE IX IN TEXAS SCHOOLS

Texas won a major victory against the Biden Administration and the Department of Education (“DOE”), stopping their unlawful attempt to rewrite Title IX of the Education Amendments Act of 1972 to force Texas schools to adopt radical “transgender” policies in violation of state and federal law. These radical policies would have enabled the widespread abuse of children.¹ Because of Texas’s victory, students are now safer from abusers and safe from the erasure of the protections enshrined in Title IX, and school districts are protected from illegal threats of lost federal funding.

Texas school districts should not follow or implement either the guidance documents issued by the DOE or the DOE’s related underlying interpretation of Title IX.² Title IX is a federal civil rights law that protects women through prohibitions on sex-based discrimination in educational programs that receive federal money. Congress’s purpose in passing Title IX was to address concerns about discrimination against women in education. *See North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 523–24 (1982). “Title IX prohibits sex discrimination by recipients of federal education funding.” *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005). The statute provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a). Nothing in the text of Title IX supports the DOE’s interpretation.

Our State’s law is clear. Texas parents have a fundamental right to make decisions concerning the care, custody, and control of their child. Public schools may not withhold critical information about a child from that child’s parents, and public schools must obtain parental written consent prior to exposing children to sexual topics. Texas law does not provide for any confidentiality in a teacher-student relationship or provide any basis for educators to withhold information from parents under the guise of “confidentiality.” In other words, secret relationships between public school teachers and students are not permitted by Texas law, as Texas recognizes that such relationships are a recipe for abuse. To the contrary, teachers owe a duty of candor to parents regarding the topics discussed with their children. And children should not be exposed to members of the opposite sex in private spaces.

Nonetheless, the DOE issued illegal guidance documents that would have removed these protections for women. These documents would have forced schools to give men access to female-only spaces and female-only organizations simply because those men claimed they feel like a woman. If schools refused to give these men an opportunity to abuse and groom other children or young adults, federal funding would have been withheld. The illegal guidance was a blatant attempt by the DOE and the Biden

¹ More information can be found about the court’s order and the underlying lawsuit at <https://www.oag.state.tx.us/news/releases/attorney-general-ken-paxton-secures-major-win-blocking-biden-administrations-attempt-force>.

² The DOE’s June 22, 2021, Notice of Interpretation, June 23, 2021, Dear Educator Letter, and June 23, 2021, Fact Sheet (collectively, “guidance documents”).

Administration to effect radical social change in our Nation's schools by purporting to "interpret" Title IX to prohibit discrimination based on sexual orientation and gender identity in clear conflict with the text and intent of Title IX. So-called "gender modification" is abuse, and it is one of the worst types of child abuse when it is imposed on children.

I stepped in to protect Texans and sued the DOE to stop the unlawful regulatory requirements.³ On June 11, 2024, Texas won.⁴ The court concluded that applying the DOE's interpretation of Title IX would not only deny students the "dignity and freedom of bodily privacy" but would also "rob women and girls of meaningful access to education."⁵ And through the court's reassurance that Title IX does in fact rely on biological sex, Title IX's protections are secure. Texas has prevailed not only on behalf of Texas but on behalf of the entire Nation.

This ruling covers all Texas school districts and ensures no district in our State will have to comply with the Biden Administration's illegitimate interpretation that Title IX includes gender-identity requirements, including allowing men into women's restrooms, locker rooms, sports teams, or requiring students or teachers to use pronouns based on gender identity rather than biological sex. And if any Texas school district adopts a policy or procedure that conflicts with or contravenes state law, then I will pursue every remedy available to protect students and teachers from these illegal and radical policies.

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³ More information can be found about the underlying lawsuit at <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-sues-biden-administration-unlawfully-using-title-ix-mandate-radical>.

⁴ Specifically, the court vacated and set aside the DOE's guidance documents and declared unlawful (1) the guidance documents, and (2) the DOE's interpretation of Title IX. The court also permanently enjoined the DOE from implementing and enforcing the guidance documents as it relates to Texas and Texas schools. *See supra note 1.*

⁵ *See supra note 1.*