



The Montana Public Policy Center comment in opposition to Department of Education proposed rule regarding sex-related eligibility criteria for male and female athletic teams:

The Montana Public Policy Center, Inc. (“MPPC”) exists to promote public policy solutions that provide increased access to economic opportunities, greater individual freedoms, and encourage great participation on public matters. MPPC strongly opposes the Department’s proposed changes to Title IX’s regulations permitting sex-separated athletic competitions. Allowing, or forcing schools to permit, biological males to participate in girls’ sports will erode the successes of Title IX for girls to have fair and equal opportunities to participate in sports.

Every girl in Montana’s schools should have the right to not only have equal opportunities in sports as boys are afforded, but for their participation in competitive sports to be meaningful and protected by Title IX’s statutory right to have sex-separated sports.

This proposed rule change will erode Title IX’s five decades of progress for girls and women to have a fair opportunity to participate in competitive sports that were long only afforded to boys and men. Due to average, common physiological differences, biological males have distinct advantages over biological females in physical sports. Thus, allowing biological males to participate in female competitive sports undermines the very purpose of Title IX. In its current form, Title IX provides important statutory protections for girls and women to have equal rights in educational settings, including the right to have sex-separated sports. The Department’s proposed rule conflates gender identity with sex—which are not the same. Without honoring the distinction of males and females in sports, females would quickly be eliminated from participation or competition and denied the right to have a meaningful opportunity to participate in sports.

Time and again, we have seen that allowing biological males to participate in women’s sports raises serious safety issues and often results in unfair competition due to the athletic advantages men have over women. This has been evidenced by transgender athletes participating in women’s sports handily winning state and national championships in a variety of sports in recent years. “[I]t is well-established that athletic but not necessarily elite males dominate females in almost every sport and event, which is true without regard to how individuals identify.” *Re-Affirming the Value of the Sports Exception*, 27 Duke J. of Gender & Policy, at 115-116. In other cases, we have seen girls seriously injured by transgender competitors. The proposed rule change will only increase the unfairness and safety issues we are seeing in jurisdictions who have permitted these activities. “It is fact, not myth or stereotype, that beginning at the onset of male puberty, an insurmountable performance gap between males and females emerges such that even the very best females are not competitive for the win against males, including against second-tier males. If we care about sex equality in sport ... competitive sport has to be segregated on the basis of sex.” *Id.* at 115.

If this proposed rule goes into effect, it will have a devastating impact for girls across the country. Gone will be the days where girls were afforded a level playing field and guaranteed an equal opportunity to participate and compete in sports. MPPC encourages the Department to withdraw this proposed rule change and protect girls’ rights to meaningfully participate in sports.