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June 15, 2022

The Honorable Joseph Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear President Biden:

As civil rights advocates and advocates for student survivors of sex-based harassment,¹ we applaud the Biden administration's work towards ensuring safe, fair, and equal opportunities for all students under Title IX of the Education Amendments of 1972 ("Title IX").² This includes taking steps towards undoing the Trump administration's weakening of civil rights protections for student survivors and ensuring the protection of LGBTQI+ students in the face of mounting violent threats, hateful rhetoric, and cruel attacks from state officials.³ In keeping with this commitment and the broad promise of Title IX to prevent all forms of sex-based discrimination, we urge the swift release of a robust proposed rule by the Department of Education ("Department") by the 50th Anniversary of Title IX on June 23, 2022.

In light of this anniversary and the increasingly urgent need for this rule, we are deeply concerned about the delay in its publication. Even though the Department previously indicated the proposed Title IX rule would be issued in April 2022,⁴ no such proposed rule has been published. Students are protesting across

¹ In accordance with current OCR and EEOC guidance, we use the term "sex-based harassment" in this letter to include sexual harassment—which encompasses a variety of sexual misconduct such as stalking, domestic violence, and sexual assault—as well as discrimination because of sex, which includes discrimination on the basis of sexual orientation, actual or perceived gender identity, sex characteristics, or pregnancy or parenting status. *See, e.g.,* U.S. DEP'T OF EDUC., Office for Civil Rights, *Sex-based Harassment* (2022),

<https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/sex-issue01.html>; EQUAL EMPL.

OPPORTUNITY COMM'N, *Sex-Based Discrimination* (2022), <https://www.eeoc.gov/sex-based-discrimination>.

² Exec. Order No. 14021, *Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity*, 86 Fed. Reg. 13803 (Mar. 8, 2021), <http://www.federalregister.gov/d/2021-05200>.

³ Exec. Order No. 13988, *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*, 86 Fed. Reg. 7023 (Jan. 21, 2021), <http://www.federalregister.gov/d/2021-01761>; Exec. Order No. 14021, *Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity*, 86 Fed. Reg. 13803 (Mar. 8, 2021), <http://www.federalregister.gov/d/2021-05200>; *See Enforcement of Title IX of the Education Amendments of 1972 With Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021). *See also A Proclamation on Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Pride Month*, The White House (May 31, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/05/31/a-proclamation-on-lesbian-gay-bisexual-transgender-queer-and-intersex-pride-month-2022/>.

⁴ Off. of Mgmt. & Budget, Office of Info. & Reg. Aff., 34 CFR 106, *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance* (2021), <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1870-AA16>.

the country, demanding that their schools meaningfully address sex-based harassment;⁵ they are in desperate need of Title IX’s full protections. The proposed rule is critical to begin the regulatory process for undoing the harmful changes made to the Title IX rule in 2020 (“the 2020 Rule”), and to address mounting threats to LGBTQI+ students and school communities. While sex-based harassment in schools remains pervasive, the 2020 Rule pushes schools to ignore many instances of sex-based harassment, leaving scores of survivors without recourse, and imposes overly prescriptive and unfair grievance procedures that are harmful to student survivors, that deter reporting, and that are not required for any other type of school disciplinary proceeding.⁶ These harms especially fall on women and girls of color, disabled survivors, LGBTQI+ survivors, and pregnant and parenting survivors, all of whom face stereotypes casting them as less credible when they report sexual misconduct.

It is also increasingly urgent to clarify Title IX’s protections for LGBTQI+ students in the face of escalating threats to their well-being, safety, and educational opportunities. It has been well-documented that LGBTQI+ students experience widespread discrimination in schools,⁷ including high rates of harassment, violence, and discriminatory discipline.⁸ In recent months, state lawmakers and officials across the country have enacted unprecedented laws and policies—grossly inconsistent with Title IX—banning students from school restrooms and sports, censoring discussion of their very existence, and punishing adults who seek to help protect their health and safety.⁹ Already we have seen teachers fired, students ejected from teams, yearbooks and library books pulled from circulation.¹⁰ Most concerning, we are now seeing escalating violent rhetoric, threats, and actions directed at LGBTQI+ youth and adults who support them—from death threats to school leaders, to calls for violence outside family-friendly

⁵ Brooke Migdon, *Campus Protests Around Sexual Assault Look Different This Year*, THE HILL (Feb. 9, 2022), <https://thehill.com/changing-america/respect/equality/593592-campus-protests-around-sexual-assault-look-different-this/>; Maria Carrasco, *Students Gather in Washington to Protest Sexual Assault*, INSIDE HIGHER ED (Oct. 7, 2021), <https://www.insidehighered.com/news/2021/10/07/groups-deliver-edactnow-petition-education-department>.

⁶ Dep’t of Educ., *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30026 (May 19, 2020), <https://www.federalregister.gov/d/2020-10512>.

⁷ See, e.g., Valerie A. Earnshaw, et al., *LGBTQ Bullying: Translating Research to Action in Pediatrics*, 1 PEDIATRICS 140 (2017); Movement Advancement Project, *Bans on Transgender Youth Participation in Sports*, 2022, https://www.lgbtmap.org/equality-maps/sports_participation_bans.

⁸ GLSEN, *The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation’s Schools*, 28, (2020), <https://www.glsen.org/research/2019-national-school-climate-survey> (In a 2019 national survey of LGBTQ+ students, an overwhelming majority (81.0%) were verbally harassed because of their sexual orientation, gender expression, or gender identity, and more than one in three (35.1%) reported that they were verbally harassed often or frequently. Over one-third (34.2%) of LGBTQ+ students were shoved, pushed, or otherwise physically harassed because of their sexual orientation, gender expression, or gender.).

⁹ See ACLU, *Legislation Affecting LGBTQ Rights Across the Country*, <https://www.aclu.org/legislation-affecting-lgbtq-rights-across-country> (last visited June 9, 2022). For example, five states have recently adopted new laws censoring classroom discussions; 18 have enacted laws banning students from school sports; one has enacted a law barring students from school restrooms; and five states have enacted laws or announced policies that could threaten educators and school health staff with punishment for facilitating or failing to “report” that they have accessed gender-affirming medical care.

¹⁰ See, e.g., Daniel Villarreal, *Teachers Are Already Getting Fired, Resigning, and Speaking Out Against Don’t Say Gay Movement*, LGBTQ NATION (May 20, 2022), <https://www.lgbtqnation.com/2022/05/teachers-already-getting-fired-resigning-speaking-dont-say-gay-movement/>; Dan Tracer, *A Teacher Was Fired For Helping a Bullied Queer Teen. Now His Students are Raising Hell*, QUEERTY* (May 11, 2022), <https://www.queerty.com/teacher-fired-helping-bullied-queer-teen-now-students-raising-hell-20220511/>; Associated Press, *Florida School Yearbook on Hold After Students Protest Don’t Say Gay Bill in Photos*, CBS NEWS (May 10, 2022), <https://www.cbsnews.com/news/florida-yearbook-dont-say-gay-bill-students-protest/>; Olivia Krauth, *Over Pleas of Families, Kentucky Bill Barring Transgender Girls from Girls Teams Advances*, LOUISVILLE COURIER JOURNAL (Feb. 11, 2022), <https://www.courier-journal.com/story/news/politics/ky-general-assembly/2022/02/10/kentucky-bill-banning-transgender-girls-girls-teams-advances/6720231001/>.

Pride events, to a town virtually shut down by bomb threats expressly linked to the opening of a Title IX harassment investigation.¹¹ LGBTQI+ students desperately need a strong rule that codifies the law's protection against all forms of anti-LGBTQI+ discrimination and schools' responsibility to take action to protect them.

Finally, at a time when reproductive rights are under attack, pregnant and parenting students are at risk of experiencing even more barriers to completing their education. Pregnant and parenting students need stronger protections under Title IX to combat the levels of discrimination and harassment they face.¹² Stronger Title IX protections must include lactation accommodations, reasonable modifications to their education programs, and clear grievance procedures for reported pregnancy discrimination.

It has been a year since the Department held public hearings on Title IX, yet we are still waiting for the administration to move forward in ensuring protection of student survivors, LGBTQI+ students, and pregnant and parenting students by releasing a proposed Title IX rule.¹³ Not only does delay increase the number of survivors who will suffer because the 2020 Rule remains in place until changes to it are finalized, but it also threatens the purpose and significance of Title IX as its 50th anniversary approaches.

A celebration of 50 years of Title IX's promise to end discrimination on the basis of sex in education will ring hollow if the Department has failed to act to make good on that promise by moving forward in undoing a rule premised on offensive and sexist stereotypes about sex-based harassment. The Department should restore broad protections for student survivors, commit to ending sex-based harassment and support pregnant and parenting students, solidify its commitment to supporting LGBTQI+ students, and honor 50 years of Title IX by releasing a proposed Title IX rule before June 23. Thank you for your consideration of our call for the prompt release of the Title IX rule in order to protect against sex discrimination in schools. If you have any questions about this letter, please contact Emily Martin (emartin@nwlc.org), Shiwali Patel (spatel@nwlc.org), or Hunter Iannucci (hiannucci@nwlc.org).

Sincerely,

National Women's Law Center, *joined by*

National Organizations

American Association of University Women

American Atheists

American Federation of Teachers

Athlete Ally

Autistic Self Advocacy Network

Bazon Center for Mental Health Law

Center for Disability Rights

¹¹ See, e.g., Kathryn Joyce & Ben Lorber, *Self-described "Christian fascist" movement is trying to sabotage LGBTQ Pride Month Last weekend's vicious episode in Dallas wasn't isolated — it was part of a coordinated far-right assault*, SALON (June 9, 2022), <https://www.salon.com/2022/06/09/exclusive-self-described-christian-fascist-movement-is-trying-to-sabotage-lgbtq-pride-month>; Judith Retana & Gilat Melamed, *'Violent threats' prompt Apex to pull Drag Queen Story Hour from Pride Festival*, WNCN (June 8, 2022), <https://www.cbs17.com/news/violent-threats-prompt-apex-to-pull-drag-queen-story-hour-from-pride-festival>; Deneen Smith, *Kiel school district cancels in-person classes after threats surface related to transgender rights controversy*, WI PUBLIC RADIO (May 27, 2022), <https://www.wpr.org/kiel-school-district-cancels-person-classes-after-threats-surface-related-transgender-right>.

¹² Nat'l Women's Law Ctr., *Let Her Learn: Stopping Pushout For Girls Who are Pregnant or Parenting* (2017), <https://nwlc.org/resources/stopping-school-pushout-for-girls-who-are-pregnant-or-parenting/>.

¹³ Dep't of Educ., Office for Civil Rights, *Title IX Public Hearing* (June 7-11, 2021), <https://web.event.com/event/ba5eef74-8f35-4a4e-b0a7-1f047fe033bc/summary>.

Center for LGBTQ Economic Advancement & Research (CLEAR)
CenterLink: The Community of LGBT Centers
Clearinghouse on Women's Issues
COLAGE
Diversity Center of Oklahoma Inc.
EducateUS: SIECUS In Action
End Rape On Campus
Equal Rights Advocates
Equality Federation
The Every Voice Coalition
Faculty Against Rape
Family Equality
Feminist Majority Foundation
Fierberg National Law Group
FORGE, Inc.
Futures Without Violence
Garden of Peace, Inc.
The GenderCool Project
Girls Inc.
GLBTQ Legal Advocates & Defenders (GLAD)
GLMA: Health Professionals Advancing LGBTQ Equality
GLSEN
Healthy Teen Network
Human Rights Campaign
It's On Us
Japanese American Citizens League
Jewish Women International (JWI)
Keshet
Know Your IX, Advocates for Youth
Lambda Legal
Leadership Conference on Civil and Human Rights
League of United Latin American Citizens (LULAC)
Legal Momentum, the Women's Legal Defense and Education Fund
Many Voices
Movement Advancement Project
National Alliance for Partnerships in Equity
National Alliance to End Sexual Violence
National Association of Councils on Developmental Disabilities
National Black Justice Coalition
National Center for Transgender Equality
National Council of Jewish Women
National Education Association
National LGBTQ Task Force
National Network to End Domestic Violence
National Organization for Women
National Partnership for Women & Families
National Survivor Network
National Women's Political Caucus
New York Transgender Advocacy Group

PFLAG National
Planned Parenthood Federation of America
Public Advocacy for Kids (PAK)
Public Counsel
Public Justice
SAGE
Society of Women Engineers
SPLC Action
Stop Sexual Assault in Schools
Trans Lifeline
TransActive Gender Project
TransFamily Support Services
Transgender Legal Defense & Education Fund, Inc.
The Trevor Project
U.S. Breastfeeding Committee
Ujima Inc., The National Center on Violence Against Women in the Black Community
Union for Reform Judaism
URGE: Unite for Reproductive & Gender Equity
ValorUS
Victim Rights Law Center
Voice in Sport
Whitman-Walker Institute
Women's Sports Foundation
YWCA USA

State and Local Organizations

Ace and Aro Alliance of Central Ohio
Adair Co. GLBT Center
Advocate Safehouse Project
Advocates of Ozaukee
Affirmations
Arianna's Center
Arizona Coalition to End Sexual and Domestic Violence
Arkansas Black Gay Men's Forum
Arkansas Coalition Against Sexual Assault
Arkansas' Little Rock Black Pride
Black & Beyond the Binary Collective
The Blue Bench
Borderland Rainbow Center
The Bridge International
Brilliancy Counseling
Brooklyn Community Pride Center
CAMP Rehoboth Community Center
Casa Ruby
Center for Domestic Peace
The Center Project Peace
Central Oregon Trans Health Coalition
Chicago Alliance Against Sexual Exploitation (CAASE)
The Children's Agenda

Colorado Coalition Against Sexual Assault
Colors+
Compass LGBTQ Community Center
Day One
Diverse & Resilient
DOVE
East Bay Queer Healing Arts Center
Eastern PA Trans Equity Project
Education Law Center-PA
Embrace Services, Inc.
Equality California
The Equality Crew
Equality Delaware
Equality Florid
Equality Illinois
Equality Ohio
Equality South Dakota
Equality Texas
Equality Utah
Equality Virginia
Equality Maine
The Equi Institute
Equitas Health
Fair Wisconsin
Fairness Campaign
Family Advocates
Family Guidance Center
First Haven
Florida Council Against Sexual Violence
Freedom Oklahoma
The GA Coalition Against Domestic Violence
Gay City: Seattle's LGBTQ Center
Georgia Equality
Great Lakes Bay Pride
GSAFE
HAVEN, Inc.
Hetrick-Martin Institute
Hugh Lane Wellness Foundation
Illinois Families for Public Schools
Iowa Coalition Against Sexual Assault
Kansas Breastfeeding Coalition
Lancaster LGBTQ+ Coalition
Law Foundation of Silicon Valley
Lexington Pride Center
The LGBT Center of Greater Reading
LGBT Center of SE Wisconsin
LGBTQ Allyship
LGBTQ Center of Bay County, Inc.

LGBTQ Center of Durham
The LGBTQ Community Center of Southern Nevada
LGBTQ Foundation of Kansas
LGBTQ+ Allies Lake County
Los Angeles LGBT Center
Love on a Mission
Maine Coalition Against Sexual Assault
Maryland Coalition Against Sexual Assault
Mazzoni Center
Men Stopping Violence, Inc.
Michigan Organization on Adolescent Sexual Health (MOASH)
Michigan Teacher of the Year Network
Pacific Pride Foundation
Pennsylvania Coalition Against Rape
PFLAG Mt. Horeb
Pittsburgh Equality Center
Pride Center of Terre Haute Inc.
Pride Center San Antonio
Pride Community Center, Brazos Valley
Project Hope of Gunnison Valley
Project Safeguard
Promise Place
Pueblo Rape Crisis Services
Rainbow Center
Rainbow Health Minnesota
Rainbow Rose Center
Rape Crisis Center
Renew, Inc.
Response: Help for Survivors of Domestic and Sexual Abuse
Rocky Mountain Victim Law Center
Safeguarding American Values for Everyone
Seacoast Outright
Sexual Assault Crisis Center
Sexual Harassment & Rape Prevention Program (SHARPP)
Shoals Diversity Center
South Dakota Coalition Ending Domestic and Sexual Violence
Stepping Stones, Inc.
Stonewall Alliance of Chico
The Source LGBTQ+ Center
Sussex Pride
Tennessee Equality Project
Texas Association Against Sexual Assault
The T.R.A.N.S. Program
Trans Maryland
Trans Minors Rights
Trans Queer Pueblo
Transformation Project
Transgender Education Network of Texas (TENT)

Transgender Michigan
Transgender Name and Gender Marker Change Clinic at USD School of Law
Transgender Resource Center of New Mexico
TransOhio
Tranzmission, Inc.
Unidos por la Igualdad Puerto Rico Inc.
University of Iowa Law and Policy In Action Clinic
Uptown Gay & Lesbian Alliance (UGLA)
Wake Forest University Safe Office
Waves Ahead Puerto Rico
Wisconsin Coalition Against Sexual Assault
Wisconsin Faith Voices for Justice
Women Employed
Women's Law Project
Wyoming Coalition Against Domestic Violence and Sexual Assault
Wyoming Equality
Youth OUTright