



May 30, 2024

Bishop ISD Board of Trustees
Attn: Board President Tracy Wright
twright@banqueteisd.net
Transmitted via Electronic Mail

Re: Unconstitutional Title IX Agency Action by the Department of Education

Dear Board President Wright:

I am an attorney with [Citizens Defending Freedom](#), (“CDF”) a national non-profit organization with county-level chapters across the United States. CDF educates the general public on safeguarding constitutional rights and civil liberties affecting free speech, moral conscience, and religious expression, among others.

On April 19, 2024, the United States Department of Education, (“Department”) an Executive Branch agency, announced unilateral and substantive amendments to Title IX which are set to take effect on August 1, 2024. The action by the Department—amending a law passed by Congress—violates the Constitution of the United States, to wit, Article I, Section 1, which provides “All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.”

The Department’s unilateral revision to add gender identity in Title IX occurred after multiple legislative attempts were considered in Congress—and failed.¹ Prior to the failed attempts by Congress to amend the law to add gender identity, the early Department regulations were consistent with the plain meaning of Title IX as understood and passed by Congress. Department regulations reflected biological sex as binary, as in “one sex,” or “the other sex,” and use of “both sexes,” and referencing “boys and girls” and “male and female teams.”²

Despite the clear intent of Congress, the Department has willingly and knowingly violated the separation of powers and limits of government set forth in our constitution. The Department has amended the law under the cloak of regulation, without legal authority. This action intentionally bypassed the people’s elected congressional representatives throughout the United States. The abuse of authority by the Department also denies American citizens a voice with their congressional representatives and denies women and girls the very legal protections the United States Congress intended to provide them by passage of Title IX. This abuse of authority will result in the destruction of privacy protections for women and girls in restrooms, locker rooms, shower facilities, and overnight accommodations—among others—while also unlawfully preempting numerous laws of Texas.

As a consequence of the unlawful agency action by the Department, on April 29, 2024, Governor Abbott

¹ See H.R. 1652, 113th Cong. (2013) and S.439, 114th Cong. (2015), available [here](#) and [here](#).

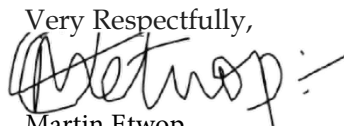
² See 34 C.F.R. 106.33, 106.34(a)(3), 106.36(c), 106.37(a)(3), 106.41(c), 106.51(a)(4), 106.58(a), 106.60(b); and 106.61. available [here](#).

issued a letter to President Biden signaling a nullification to the Title IX revision, including instructing the Texas Education Agency (“TEA”) to not comply with the rule changes.³ The response by Governor Abbott correctly asserts that the Department’s Title IX rule revision would unconstitutionally amend the statute’s historic “on the basis of sex” discrimination language to add “sex stereotypes, sexual orientation, and gender identity.” To this point, the seizure of congressional legislative authority by the Department represents a takeover of every school in the United States, including Texas educational institutions subject to enforcement actions, including your school district.

Accordingly, on April 29, 2024, Attorney General Ken Paxton filed a lawsuit against the Department, with an amended complaint and motion for a stay of action and preliminary injunction filed on May 14, 2024.⁴ The lawsuit seeks to prohibit enforcement of Department agency action based on sexual orientation or gender identity – including denial of federal financial assistance or by otherwise pursuing, charging, or assessing any penalties, fines, assessments, investigations, or other enforcement actions – including implementing, or relying on the Final Rule against the State of Texas and educational institutions subject to enforcement actions. Moreover, 22 States have recognized the magnitude of the unconstitutional action and are suing the Department under similar legal theories.⁵ In Louisiana, at least 17 school districts have also joined a State led lawsuit against the Department.⁶ In Texas, multiple districts are also poised to file or join a legal action to enjoin or stay enforcement. Your board should consider the same, either by independent legal action against the Department or joining the State of Texas lawsuit.

The Governor, the Attorney General, and other school districts defending Texas educational programs are fulfilling their duty under Article 1, Section 1, of the Texas Constitution, in that “Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States.” Without a doubt, your school district will be irreparably harmed and impaired by the unconstitutional Department rules. Your district is poised to demonstrate the same courage as other school districts in Texas and around the nation. If legal action is not taken by your district, we strongly encourage the board to pass a resolution like the enclosed sample denouncing the usurpation of constitutional authority by the Department. A Texas district has already passed a resolution defending Texas and denouncing Title IX revisions, citing the Department’s lack of constitutional authority.

Despite varying social and economic backgrounds or political belief systems, we must all stand for the United States Constitution and the State of Texas. CDF is already filing multiple legal briefs around the United States on this issue, and we must all do our part to stand for the women and girls Title IX is intended to protect. If not us, who? If not now, when?

Very Respectfully,

Martin Etwop

Copy: 4[eZab] ISD Board of Trustees

³ See Governor Greg Abbott’s Letter to President Biden, sent April 29, 2024, available [here](#).

⁴ See *State of Texas, et al. vs Department of Education, et al.* available [here](#) and [here](#) and injunction [here](#).

⁵ Russell, G. (2024, May 8) Arkansas AG leads 6 states new challenge to Biden administration Title IX rules. available [here](#).

⁶ Barras, A. (2024, May 7) Louisiana school boards seeking to block new Title IX rules, available [here](#).

BOARD OF TRUSTEES

_____ INDEPENDENT SCHOOL DISTRICT

RESOLUTION

Resolution of Disapproval for the Unconstitutional Modification to Title IX of the Education Amendments of 1972

WHEREAS, the _____ Independent School District Board of Trustees are duly elected officers in the State of Texas each whom swore an oath under Article XVI, Section 1, of the Texas Constitution to preserve, protect, and defend the Constitution and laws of Texas and the United States; and

WHEREAS, the Constitution of the United States, Article I, Section 1 provides “All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives;” and

WHEREAS, on April 19, 2024, the United States Department of Education, an Executive Branch agency, announced unilateral and substantive amendments to Title IX without legislative authority, denying women and girls the legal protections the United States Congress intended to afford them, resulting in the destruction of privacy protections in restrooms, locker rooms, shower facilities, and overnight accommodations; and unlawfully preempts numerous laws of Texas; and

WHEREAS, Title IX expressly states the plain meaning of Congress that it does not “prohibit any educational institution . . . from maintaining separate living facilities for the different sexes,” i.e., “for” males and females. 20 U.S.C. § 1686; and

WHEREAS, the United States Department of Education has violated the separation of powers and the plain meaning of Title IX Congress passed and signed into law providing that “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.” 20 U.S.C. §1681(a); and

WHEREAS, on April 29, 2024, Attorney General of the State of Texas, Ken Paxton, filed a lawsuit against the United States Department of Education to declare the unilateral modification of Title IX unlawful, seeking to prohibit enforcement based on sexual orientation or gender identity—including by denying federal financial assistance or by otherwise pursuing, charging, or assessing any penalties, fines, assessments, investigations, or other enforcement actions—and from enforcing, implementing, or relying on the Final Rule against the State of Texas or any of its instrumentalities, agencies, and political subdivisions; and

WHEREAS, on April 29, 2024, Texas Governor Greg Abbott directed the Texas Education Agency to ignore implementation of the Title IX in the State of Texas, and sent a letter to President Joe Biden condemning the Title IX mandate as an abuse of constitutional authority; and

NOW THEREFORE BE IT RESOLVED the Board of Trustees of the _____ Independent School District, in a public meeting duly called and assembled:

1. Disapproves the unconstitutional modification to Title IX of the Education Amendments of 1972;
2. Invokes the Texas Constitution, Article 1, Section 1, in that Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States;
3. Reaffirms our oath under Article XVI, Section 1, of the Texas Constitution to preserve, protect, and defend the Constitution and laws of Texas and the United States;
4. Restates that no person 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 in _____ Independent School District;
5. Supports Governor Greg Abbott in defense and nullification of the unconstitutional usurpations by the Department of Education against the State of Texas or any of its instrumentalities, agencies, and political subdivisions;
6. Supports the legal challenge by Attorney General of the State of Texas, Ken Paxton to prohibit Title IX enforcement based on sexual orientation or gender identity—including by denying federal financial assistance or by otherwise pursuing, charging, or assessing any penalties, fines, assessments, investigations, or other enforcement actions—and from enforcing, implementing, or relying on the Final Rule from taking effect on August 1, 2024;
7. Copies of this signed resolution are provided without delay to Governor Greg Abbott, Attorney General Ken Paxton, Texas Education Agency Commissioner Mike Morath, the Texas State Board of Education, and leaders in the Texas House of Representatives and Texas Senate to convey the utmost urgency of this unconstitutional action by the Department of Education.