September 11, 2022

Department of Education
Office for Civil Rights
400 Maryland Ave SW
Washington, DC 20202

Re: *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance;*
RIN: 1870-AA16; Docket ID No. ED-2021-OCR-0166

To the Office for Civil Rights:

We submit this comment on behalf of GETA, the Gender Exploratory Therapy Association (https://genderexploratory.com) to express our concerns about the United States Department of Education's proposed amendments to the regulations implementing Title IX of the Education Amendments of 1972 (the "proposed amendments"). In particular, we are concerned about the proposed amendments' treatment of the concept of "gender identity" in the regulation, and the implementation of that concept in the K-12 setting.

GETA members are practitioners and trainees in the psychotherapy professions who believe that people who are exploring their gender identity or struggling with their biological sex should have access to therapists who will provide thoughtful care without pushing an ideological or political agenda. Skilled, ethical exploratory therapy is appropriate for those with gender dysphoria, their families, and detransitioners. We reject treatments that set out to change sexual orientation or gender identity; practices that use coercive techniques have no place in health care. As GETA members, we respect client autonomy and do not impose our own beliefs, values, opinions, ideology, religion, or goals onto our clients. Although we applaud and support the DOE's efforts to ensure that gender-nonconforming students are treated with respect and dignity in schools, the proposed amendments require schools to engage in powerful psychotherapeutic interventions with gender-nonconforming children for which school personnel are not trained. As therapists, we believe that psychological approaches should be the first-line treatment for all cases of gender dysphoria, and that immediate social transition by school personnel is contrary to an effective therapeutic approach intended to explore the various possible causes of a young person's psychological distress. A holistic therapeutic approach avoids the risks of woefully premature social and medical transition and supports children's autonomy by facilitating deeper self-understanding. If implemented, the proposed amendments will curtail such an approach and, as a consequence, will harm children.

We describe five principal concerns in this comment:

(1) The proposed amendments' failure to define the concept "gender identity."

(2) The proposed amendments' creation of a system that allows the child to "self-identify" as the opposite sex, and mandates that the school "socially transition" the child without any input from mental health professionals or the child's parents. Mandatory social transition by schools is a powerful psychotherapeutic intervention by teachers and school administrators who are not trained in this area.

(3) The tendency of social affirmation within school settings to support the "affirmative care" model of psychotherapy and thereby lead to experimental medical interventions that have potentially harmful and lifelong side effects.

(4) The harmful impact on many families caused by the proposed amendments.

(5) The harm caused by this system to the mental health of other students, especially female students.

1. The Proposed Amendments Fail to Define "Gender Identity"

The principal shortcoming of the DOE's proposed amendments is that they fail to define "gender identity." There are many definitions of "gender identity" currently available in legal sources, psychological literature, cultural criticism, and popular culture. The proposed amendments simultaneously fail to define "gender identity" and at the same time create serious penalties for school officials, teachers, and other students who fail to treat a student according to that identity, thus leaving the proposed amendments hopelessly ambiguous and ripe for misuse. In this section we describe four common meanings of the term "gender identity." This list is not exhaustive, but it demonstrates that leaving that term undefined in the proposed amendments will give rise to substantial confusion and disagreement over the regulations' scope and purpose.

First, "gender identity" – and especially "gender identity" that is not aligned with one's biological sex – is often associated with the psychological condition of "gender dysphoria." "Gender dysphoria" is defined in the *Diagnostic and Statistical Manual of Mental Disorders* ("DSM-5") as a "marked incongruence between one's experienced/expressed gender and [one's biological sex], lasting at least 6 months."[1] Although the proposed amendments do not use the term "gender dysphoria," we infer that the inclusion of the term "gender identity" in the proposed amendments is intended to protect those children whose perceived "gender identity" is different from their biological sex, and hence would include children with gender dysphoria.

If this is the intended meaning of "gender identity," then the proposed amendments are setting out policies concerning how school officials, teachers, and other students should respond to a child who has a very serious mental health disorder. We identify the potentially harmful

[1] American Psychiatric Association, "Gender Dysphoria," Diagnostic and Statistical Manual of Mental Disorders, at 452 (5th ed., 2013).

consequences of this approach to gender dysphoria in the next section. At the very least, however, the proposed amendments should clarify whether, in fact, "gender identity" is synonymous with or includes the psychological condition "gender dysphoria."

A second possibility is that the proposed amendments use the term "gender identity" to mean "gender expression." This understanding of gender identity as expression is found in some state laws. For example, a Massachusetts statute defines "gender identity" as "a person's gender-related identity, *appearance or behavior*, whether or not that gender-related identity, *appearance or behavior* is different from that traditionally associated with the person's physiology or assigned sex at birth."[2] Other state laws use similar language.[3] This understanding of gender identity emphasizes the child's outward presentation of gender nonconformity – that is, where a student dresses and behaves in ways that do not traditionally align with his or her biological sex. People who are gender nonconforming in this way do not necessarily experience any discomfort with their biological sex, and hence are not necessarily gender dysphoric. They simply may be happier dressing and behaving in ways that are traditionally associated with the opposite sex.

As mental health professionals, we are absolutely supportive of gender-nonconforming expression by individuals of all ages. We do not endorse a therapeutic model that pushes or encourages children or adults to express themselves in a manner that is consistent (or inconsistent) with norms and behaviors traditionally associated with their biological sex. Nor, however, do we endorse an approach that labels all gender-nonconforming expression as a "gender identity" that requires a child's therapists, teachers, and peers to ignore the realities of biological sex. We do not think it is appropriate or accurate to instruct children that, if a biological boy prefers to wear dresses and play with dolls, that means he *is* a girl, nor do we believe young children should be taught that gender-nonconforming behavior supports belief in an ever-proliferating number of gender identities existing along a spectrum. (Although proponents of the proposed amendments may respond that the amendments would not require this, we are aware of many lessons about gender geared to younger children that take precisely that approach.)[4] Finally, because not all gender-nonconforming *expression* is an indication of gender dysphoria or a transgender identity, as a therapeutic matter the three things should not be conflated.

A third possibility – and we think the most likely possibility – is that the proposed amendments to the Title IX regulations principally uses the term "gender identity" to mean "an individual's

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[2] Mass. Gen. Laws ch. 4, § 7, fifty-ninth (2011) (emphasis added).

[3] *See also* N.M. Stat. Ann. § 28-1-2 (Q) ("'gender identity' means a person's self-perception, *or perception of that person by another*, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth.") (emphasis added); Conn. Gen. Stat. § 46a-51(21) ("'Gender identity or expression' means a person's gender-related identity, *appearance or behavior*, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's assigned sex at birth.") (emphasis added).

[4] See, e.g., *Pink, Blue and Purple*, a lesson plan for Grade One developed by Advocates for Youth and used by primary school teachers throughout the United States, https://www.advocatesforyouth.org/wp-content/uploads/2021/08/3Rs_Grade1_PinkBluePurple_2021.pdf.

internal sense of gender." This is how the U.S. Departments of Justice and Education's 2016 *Dear Colleague Letter on Transgender Students* defines the concept: "Gender identity refers to an individual's internal sense of gender."[5] Although the *2016 Dear Colleague Letter* was rescinded in 2017, this definition of the term "gender identity" is found in many state law and policy documents.[6] It is also typical in documents produced by the U.S. government concerning "gender affirming" medical treatment.[7]

Because this definition of "gender identity" turns exclusively on a child's self-perception, it is wholly subjective. That is, the child is the only individual who can determine his or her gender identity. Several state guidelines make this point: "the person best situated to determine a student's gender identity is that student himself or herself."[8] The *2016 Dear Colleague Letter*

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[5] U.S. Dep't of Justice & Dep't of Educ., *Dear Colleague Letter on Transgender Students*, at 1 (May 13, 2016); *id* at 8 ("Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.") (hereinafter *2016 Dear Colleague Letter*).

[6] *See, e.g.*, Cal. Code Regs. Tit. 2, § 11030 (b) (2022) ("'Gender identity' means each person's *internal understanding of their gender*, or the perception of a person's gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person's sex assigned at birth, or transgender.") (emphasis added); Colo. Rev. Stat. § 24-34-301(3.5) (2021) ("'Gender identity' means an individual's *innate sense* of the individual's own gender, which may or may not correspond with the individual's sex assigned at birth.") (emphasis added); Haw. Rev. Stat. § 432:1-607.3(h) (2022) ("'Actual gender identity' means a person's *internal sense* of being male, female, a gender different from the gender assigned at birth, a transgender person, or neither male nor female.") (emphasis added); Mass. Dep't of Elem. & Secondary Ed., *Guidance for Massachusetts Public Schools Creating a Safe and Supportive Environment* (2022), https://www.doe.mass.edu/sfs/lgbtq/genderidentity.html (last visited Sept 7, 2022) (hereinafter *Guidance for Massachusetts Public Schools*) ("One's gender identity is an *innate, largely inflexible characteristic* of each individual's personality that is generally established by age four . . . .") (emphasis added); N.Y. State Educ. Dep't, *Guidance to School Districts for Creating a Safe and Supportive School Environment For Transgender and Gender Nonconforming Students*, at 5 (2015), https://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf (last visited Sept 7, 2022) (hereinafter *N.Y. Guidance to School Districts*) ("One's gender identity is an *innate, largely inflexible characteristic* of each individual's personality that is generally established by age four . . . .") (emphasis added); Chicago Public Schools, *Guidelines Regarding the Support of Transgender and Gender Nonconforming Students*, at 1 (2019), https://www.cps.edu/globalassets/cps-pages/services-and-supports/health-andwellness/healthy-cps/healthy-environment/lgbtq-supportiveenvironments/guidelines_regarding_supportoftransgenderand-gender_nonconforming_students_july_2019.pdf (last visited Sept. 7, 2022) (hereinafter *Chicago Guidelines*) (defining "gender identity" as the "*deeply held sense* that individuals have of their gender, regardless of the sex they were assigned at birth") (emphasis added).

[7] *See, e,g.*, U.S. Dep't of Heath and Human Services, *Gender-Affirming Care and Young People* (March 2022), https://opa.hhs.gov/sites/default/files/2022-03/gender-affirming-care-young-people-march-2022.pdf (defining "gender identity" as "[o]ne's internal sense of self as man, woman, both or neither").

[8] *Guidance for Massachusetts Public Schools, supra*. *See also* Conn. Dep't of Educ., *Guidance on Civil Rights Protections and Supports for Transgender Students Frequently Asked Questions*, at 5 (2017), https://portal.ct.gov/-/media/SDE/Title-IX/transgender_guidance_faq.pdf (hereinafter *Conn. Civil Rights*

also maintains that "Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity."[9] Although some state laws add the caveat that school officials need not recognize a students' self-proclaimed "gender identity" if it appears that the student is asserting a sex-incongruent gender identity for an "improper purpose,"[10] the *2016 Dear Colleague Letter* provides no similar limitation. The proposed amendments to the regulations implementing Title IX also provide no limitation.

Fourth, if one moves beyond definitions of "gender identity" provided in legal and policy documents, the term becomes even more difficult to define. In addition to the now well-known concept of a "nonbinary" gender identity, other gender identities have proliferated in popular culture, including agender, bigender, demigender, pangender, omnigender, polygender, and gender-fluid. As the term "gender-fluid" suggests, these "identities" are not necessarily fixed. As explained by one popular magazine, "[g]ender-fluid typically refers to someone who prefers to express either or both maleness or femaleness, and that can vary, perhaps from day to day."[11] Given the incredible proliferation of "gender identities" in popular culture today, the proposed amendment's failure to define "gender identity" places K-12 schools in the impossible position of formally recognizing, and making significant policy accommodations for, self-proclaimed identities that are neither stable nor, in some cases, comprehensible by others.

In short, the proposed amendments fail to define the key concept of "gender identity." At a minimum, this failure leaves teachers and other school personnel in the unenviable position of trying to implement a punitive regulation that provides civil rights protections and remedies for a characteristic that has multiple, fluctuating definitions in law and society.

2. Mandatory Social Transition by Schools is a Powerful Psychotherapeutic Intervention by Untrained Teachers and School Administrators

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Protections) ("schools are expected to treat students consistent with the student's stated gender identity"); *N.Y. Guidance to Schools*, *supra*, at 5 ("It is recommended that schools accept a student's assertion of his/her/their own gender identity."); *Chicago Guidelines*, *supra*, at 4 ("At all times, the Support Coordinator and the Student Administrative Support Team shall respect the self-determination of the student.").

[9] *2016 Dear Colleague Letter*, *supra*, at 2.

[10] *See, e.g.*, *Conn. Civil Rights Protections*, *supra*, at 4; *Guidance for Massachusetts Public Schools*, *supra*.

[11] Perri O. Blumberg and Emily Becker, *Here's Your Comprehensive Gender Identity List, as Defined by Psychologists and Sex Experts*, Women's Health (July 6, 2022), https://www.womenshealthmag.com/relationships/a36395721/gender-identity-list/. *See also* Julie L. Nagoshi, et al., *Deconstructing the Complex Perceptions of Gender Roles, Gender Identity, and Sexual Orientation Among Transgender Individuals*, 22(4) Feminism & Psychology 405, 408 (2012) (discussing theories of "gender identity" that insist on the "the fluidity of gender identity").

Although the proposed amendments do not define "gender identity," as explained in the previous section there are several indications that the amendments effectively require K-12 schools to implement a self-identification ("self-ID") system – that is, a system that determines a child's "gender identity" based solely on the child's assertions. In a self-ID system, society is required to treat a person according to the gender identity that person declares, regardless of outward expression and regardless of reasonable concerns that the child asserting a transgender identity may be doing so because of other mental health issues or for improper purposes. In a self-ID system, no mental health professional is required to verify the authenticity of the child's assertion. And, significantly, no meeting is held with the child's parents. In addition, once the child has declared a new gender identity, the proposed regulation effectively mandates that the K-12 school recognizes that identity and treat it as a legally protected characteristic, thereby implementing what is called "social transition" by using new pronouns, a new name, and allowing the child to use single-sex facilities for the opposite sex.

As mental health professionals who have worked with thousands of gender-nonconforming children, we believe that a system of self-ID combined with mandatory social transition can be very harmful to a child's psychological well-being and development. For example, for a student who may be struggling with gender dysphoria, social transition may be more harmful than helpful. Gender dysphoria can have many causes, including a traumatic experience such as sexual abuse or rape.[12] Social transition may afford a child an immediate sense of relief, but the trauma remains unidentified and unaddressed. Instead of immediate social transition, the first step in working with a child who claims a new gender identity should be a meeting with a psychotherapist who is trained to diagnose or treat mental health disorders. Teachers and school counselors can certainly be part of a team of supportive professionals who, along with the child's parents, provide gender dysphoric children with support and therapeutic options. But teachers and school administrators are not mental health professionals and may not fully understand that:

- Gender and sexuality are complex, develop unpredictably over time, and are influenced by many factors (biological, psychological, social, etc.).
- Personal identity is not static. Identity exploration is a normal part of adolescent and young adult development.
- It is extremely difficult to determine if a gender identity experienced during childhood and adolescence will remain fixed into adulthood. Because identity remains in flux during adolescence, teachers and administrators should be very circumspect about implementing social interventions with far-reaching effects.
- Young people may not have the capacity to fully comprehend the impact of gender transition.
- Same-sex attracted youth are often gender nonconforming and may experience distress as they come to terms with their sexual orientation. Gay, lesbian, and bisexual youth may need help and support to accept themselves as they are.

[12] United Kingdom, *The Cass Review, Independent Review of Gender Identity Services for Children and Young People: Interim Report*, at 5-7 (February 2022) (hereinafter *The Cass Review*), Ex. A.

In sum, by requiring schools to socially transition children solely on the basis of the child's self-declared "gender identity," the proposed amendments require school personnel to embark on a powerful psychotherapeutic intervention for which they are not trained.

3. Social Affirmation in School Settings Harms Children by Interfering with Exploratory Psychotherapy and Putting them on a Pathway to Experimental Medical Interventions

First, when children who suffer from gender dysphoria come to believe that adopting an alternate gender identity will relieve their distress, and when teachers and administrators immediately endorse that belief, it prevents the exploration of other unrecognized factors that may be fueling the children's suffering. Given that gender dysphoric children so often present with other serious mental health and neurological issues,[13] instant social affirmation by school personnel often distracts attention away from those other issues and severely undermines the goals of exploratory therapy. This harms children. When a young person is socially affirmed as a first resort, rather than being helped to explore their gender identity through exploratory psychotherapy, it forecloses a pathway toward self-acceptance – that is, it may prevent them from coming to terms with their sexed body and/or with their developing sexual orientation.[14] This harms children.

Those advocating the importance of social transition and the "affirmation" approach often maintain it is necessary to prevent suicide among transgender youth and that the suicide rate among transgender youth is 41% (much higher than non-transgender youth). Suicide is obviously a serious concern for any child in mental or psychological distress. However, the studies often relied on by advocates of the gender affirmation model to justify automatic social transition and medicalization of minors have been discredited due to the selection bias in the methods used.[15] Moreover, intense focus on gender dysphoria as a singular cause of suicidal ideation or attempt is not only misleading given that so many gender dysphoric individuals present with other mental health problems that are also strongly associated with suicidal tendencies, it is also dangerous

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[13] *See* Gary Butler, et al., *Assessment and Support of Children and Adolescents with GenderDysphoria*, 103(7) Archives of Disease in Childhood 631 (2018), Ex. B; John F. Strang, et al., *Increased Gender Variance in Autism Spectrum Disorders and Attention Deficit Hyperactivity Disorder*, 43(8) Archives of Sexual Behavior 1525 (2014), Ex. C.

[14] One study found that 63.7% of boys with early onset gender dysphoria, who received 'watchful waiting' treatment and no pre-pubertal social transition, grew up to be gay or bisexual. Devita Singh, et al., *A Follow-Up Study of Boys with Gender Identity Disorder*, 12 Frontiers in Psychiatry 1, 14 (2021), Ex. D.

[15] The frequently repeated claim that 41% of 6,450 transgender respondents said they had attempted suicide at some point in their lives is taken from the National Transgender Discrimination Survey. Jack L. Turban, et al., *Association Between Recalled Exposure to Gender Identity Conversion Efforts and Psychological Distress and Suicide Attempts Among Transgender Adults*, 77(1) JAMA Psychiatry 68-76 (2020), https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2749479. However, a 2021 paper notes that the participants were recruited through transgender advocacy organizations and subjects were asked to "pledge" to promote the survey among friends and family. This recruiting method yielded a large but highly skewed sample. Roberto D'Angelo, et al., *One Size Does Not Fit All: In Support of Psychotherapy for Gender Dysphoria*, 50 Archives of Sex Behavior 7-16 (2021), Ex. E.

given the "Werther effect." This is the well-known phenomenon that certain kinds of reporting on suicide tends to generate imitation suicide attempts.[16] Finally, even when social affirmation is deemed the appropriate approach for a particular young person, the individual's holistic mental health and well-being must also be taken into account, including the possibility that he or she has physical/mental disabilities or conditions that need to be addressed *in addition to gender dysphoria*.

Second, by socially affirming a child's gender transition, school personnel often harm rather than help the children involved by pushing them down a pathway to medical transition. A recent study demonstrates that early social transition (i.e., changing the names and pronouns of young people, and then treating them as the opposite sex) tends to concretize an opposite sex or nonbinary identity in the person's mind, [17] leading them to believe that medical transition is necessary to alleviate their distress. When a young person embarks on medical transition, interventions may include puberty blockers, cross-sex hormones, or surgical procedures aimed at making the child's body look more like that of a person of the opposite sex or, in some cases, to appear "nonbinary." Insufficient quality evidence exists to understand all of the short-term and long-term consequences of these medical interventions to physical and mental health. There is no high-quality evidence demonstrating that such medical interventions are beneficial or effective in resolving gender dysphoria and improving mental health.[18] Long-term studies of the serious physical side effects of such medical interventions do not exist, but there is growing evidence that the commonly-prescribed medical interventions, especially the administration of puberty blockers, can leave children permanently infertile and unable to achieve orgasm.[19]

For these reasons, several European countries have recently pulled back from medical transitioning of minors. Earlier this year, Sweden's National Board of Health and Welfare released new guidelines for treating young people with gender dysphoria, holding that "the risks of puberty suppressing treatment with GnRH-analogues and gender-affirming hormonal treatment currently outweigh the possible benefits." The Board urged that "the treatments should

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[16] Francisco J. Acosta, et al., *Suicide Coverage in the Digital Press Media: Adherence to World Health Organization Guidelines and Effectiveness of Different Interventions Aimed at Media Professionals*, 35(13) Health Communication (2020).

[17] Kristina R Olson, et al., *Gender Identity 5 Years After Social Transition*, 150(2) Pediatrics (Aug. 2022), Ex. F.

[18] *Cass Review*, *supra*, at 63.

[19] *See, e.g.*, Shira Baram, et al., *Fertility Preservation for Transgender Adolescents and Young Adults: A Systematic Review*, 25(5) Human Reproduction Update 694 (2019) Ex. G. During a recent conference at Duke University, noted vaginoplasty surgeon Marci Bowers (a transwoman herself) reported that: "Every single child or adolescent who was truly blocked at Tanner Stage 2 [when puberty begins] has never experienced orgasm. I mean, it's really about zero." Https://gript.ie/adolescents-who-change-sex-will-never-be-able-to-achieve-sexual-satisfaction-leading-surgeon.

be offered only in exceptional cases."[20] Likewise, Finland's Council for Choices in Health Care came to almost the exact same conclusion a year earlier, noting (in translation): "The first-line intervention for gender variance during childhood and adolescent years is psychosocial support and, as necessary, gender-explorative therapy and treatment for comorbid psychiatric disorders." Finland's Council also found that "[i]n light of available evidence, gender reassignment of minors is an experimental practice"; such an intervention "must be done with a great deal of caution, and no irreversible treatment should be initiated."[21]

In the United Kingdom, following release of Dr. Hilary Cass's interim report evaluating the Tavistock's Gender Identity Development Service (GIDS), as well as her subsequent interim letter, the National Health Service recently announced that it would be closing GIDS in Spring 2023, transferring gender services to regional centers operating on a multidisciplinary model. The interim report noted, in particular, that "[t]here is lack of agreement, and in many instances a lack of open discussion, about the extent to which gender incongruence in childhood and adolescence can be an inherent and immutable phenomenon for which transition is the best option for the individual, or a more fluid and temporal response to a range of developmental, social, and psychological factors."[22] Dr. Cass stressed that "[i]t is essential that [gender dysphoric children and young people] can access the same level of psychological and social support as any other child or young person in distress."[23]

In August 2022, the UK law firm of Pogust Goodhead announced that it will be filing a class action lawsuit for damages against GIDS on behalf of children (and their families) whose new gender identity was quickly affirmed without exploratory therapy and who were then rushed onto puberty blockers and cross-sex hormones.[24] The law firm of Girard Sharp is currently soliciting clients to explore bringing a similar class action suit here in the United States.[25]

Third, social transition by school personnel may harm children by exacerbating the phenomenon of peer-group transition. The proposed regulations fail to acknowledge a difference between the cohort of youth experiencing actual gender dysphoria, and the cohort of youth adopting a gender identity without experiencing gender dysphoria. Recent evidence suggests that there is a peer conformist aspect of young people identifying as transgender or nonbinary and desiring social

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[20] National Board of Health and Welfare, Sweden, *Care of Children and Adolescents with Gender Dysphoria: Summary*, 3 (2022), Ex. H.

[21] PALKO / COHERE Finland, *Medical Treatment Methods for Dysphoria Related to Gender Variance in Minors* (2020), Ex. I.

[22] *The Cass Review*, *supra*, at 16.

[23] *Id.* at 20.

[24] Samuel Lovett, *Tavistock Gender Clinic Facing Legal Action over 'Failure of Care' Claims*, The Independent, Aug. 11, 2022, https://www.independent.co.uk/news/health/tavistock-gender-clinic-lawyers-latest-b2143006.html.

[25] *See* https://www.girardsharp.com/work-investigations-puberty-blockers.

and medical transition.[26] School policies that require *all* students to be affirmed, without question and without reference to any therapeutic diagnosis, result in some students undergoing a serious psychological intervention (social transition) without benefit of mental health treatment for their gender dysphoria, and others undergoing the same social transition without a therapeutic basis for doing so. Both cohorts are then susceptible to progressing from social transition to medical transition.

While high quality studies do not yet exist demonstrating the precise rates, sizeable numbers of youth who socially or medically transition in adolescence later come to regret such transition when they reach young adulthood.[27] School policies that affirm anyone who questions their gender identity, or who adopts an alternate gender identity, without individualized psychotherapy, will increase that number. More and more young people will come to regret their transition and suffer because they were affirmed without appropriate therapeutic exploration of the reasons or alternatives to transition.

In sum, the proposed amendments require schools to socially transition children, thus interfering with vital exploratory psychotherapy and pushing children into experimental and in many cases harmful medical interventions.

4. Families of Gender-Nonconforming Children are Harmed by Undisclosed Social Transition of Children

If implemented, the proposed amendments will also harm many families of gender-nonconforming children. As explained in Section 2 above, the proposed amendments almost certainly codify a system of self-ID and mandatory social affirmation. The proposed amendments say nothing about consultation with a child's parents before a school socially transitions a child. Indeed, many school systems in states that recognize gender identity in law now have explicit policies that bar teachers and other school personnel from notifying the child's parents about these very consequential changes without first obtaining the child's permission. For example, guidance provided to teachers in the Chicago Public School system makes clear that school personnel are required to socially transition children who assert transgender identities

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[26] Lisa Littman, *Parent Reports of Adolescents and Young Adults Perceived to Show Signs of a Rapid Onset of Gender Dysphoria*, 13(8) PLoS One (2018), Ex. J. Supporters of the self-ID and mandatory affirmation model attempted to have the *PLoS One* journal editors retract Dr. Littman's article, and activists have claimed that Dr. Littman's study has been discredited. This is incorrect. The *PLoS One* editors asked Dr. Littman to make minor changes to clarify the study design, methods, and limitations, which she did. *See* https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0214157.

[27] Numerous websites devoted to detransition stories can be found online. *See*, *e.g.*, https://www.detransvoices.org, https://post-trans.com, and https://www.transgendertrend.com/detransition. On March 12, 2022, Genspect.org hosted the first annual Detrans Awareness Day conference devoted to the stories of those who regretted their gender transition and returned to living as their biological sex. The full video of that conference can be viewed at https://www.youtube.com/watch?v=AnvZvqwIR7o. The r/detrans Reddit (with 38K+ members) also contains many such first-person accounts: https://www.reddit.com/r/detrans/.

without consulting the child's parents. "Parent(s)/guardian(s) [sic] consent is not required to address a student by their affirmed name and pronouns."[28] These guidelines also require "school staff" to hide the fact that a child has socially transitioned at school from parents unless the child gives permission. "It is not required for parents to participate" in the "Student Administrative Support Team" meetings concerning their child's "gender transition."[29] School staff are told that they "shall comply" with the Support Team's "recommendations in communicating with parents."[30] The U.S. Department of Education and Justice's *2016 Dear Colleague Letter* also indicates that parental consent is unnecessary: "The Departments interpret Title IX to require that when a student or the student's parent or guardian, *as appropriate*, notifies the school administration that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student's gender identity."[31] Lawsuits have been filed by parents who are justifiably angry that a school would socially transition their children without consulting them.

The legality of these practices under U.S. constitutional and statutory law is now being tested in the courts.[32] Our focus is on the consequences of covert social transition for the mental health of children and their parents. Based on our work with thousands of families, we are of the opinion that social transition of K-12 children without the consent of and discussion with the child's parents is an enormous overreach by schools that has destabilized many families and disrupted otherwise healthy parent-child relationships that are the foundation for the child's mental health.

We are aware that, in some situations, family relationships are not healthy and child abuse is a very real concern. We are also aware that some parents are intolerant of gender-nonconforming behavior and expression by their children. The concern is that if a child who claims an opposite-sex gender identity is "outed" to the parents, the parents will reject the child or the child's proclaimed identity, just as happened to many gay adults in their childhoods. In our experience, however, today the norm is not parental rejection of a gender-nonconforming child. Most parents are very supportive of their gender-nonconforming children. But parental support does not require unquestioning affirmation of their child's newly-disclosed gender identity. In the vast majority of cases, parents have a much deeper understanding of the child's life experiences and other mental health challenges, including recent traumas and other neurological conditions (e.g., Autism, ADHD, Anxiety Disorder). The parents may very well, and accurately, believe that their

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28 *Chicago Guidelines, supra*, at 5.

29 *Id.* at 3.

30 *Id.* at 5. *See also, N.Y. Guidance to School Districts*, *supra*, at 7 ("School personnel should speak with the student first before discussing a student's gender nonconformity or transgender status with the student's parent or guardian. For the same reasons, school personnel should discuss with the student how the school should refer to the student, e.g., appropriate pronoun use, in written communication to the student's parent or guardian.").

31 *2016 Dear Colleague Letter, supra*, at 2.

32 *See, e.g.*, Compl. John Doe et al. v. Madison Metropolitan School District, 20-CV-454 (Cir. Ct. Dane Cty., Wisc., Feb. 18, 2020); D.F. v. The School Bd. of the City of Harrisonburg, VA, CL22-1304 (Cir. Ct. Rockingham Cty., VA, Jun. 1, 2022).

child's turn to gender is a distraction from other difficulties the child is facing. Social transition in this case may distract the child – and those around him or her – from the necessary process of examining and managing other problems in the child's life.

Parents are often very concerned that the social transition of a child at school, without the parent's knowledge, will lead the child to seek out medical treatments to attempt to bring his or her body into alignment with the new gender identity. For many parents who would otherwise have no problem letting their child experiment with different identities, the push to medicalize childhood transition is the 300-pound gorilla in the room. We know of many instances where children have learned about puberty blockers, hormone treatment, and surgical procedures online, from peers at school, or even in school sex education classes. The child later demands those treatments from their parents and, in the mind of the child struggling with mental health issues, the parents' refusal to consent to such treatments becomes evidence of parental rejection. This is an incredibly difficult position for parents to be in, as they may be very concerned about disruption of their child's normal physiological development and permanent alterations to their child's body, including sterilization and loss of sexual function.

For a school to socially transition a child without consulting the parents, and to actively hide that transition from parents, is incredibly harmful to the parent-child relationship. In our experience, it also leaves the parents very distrustful of the school. Important familial and community relationships have been harmed by the system of self-ID and social transition currently operating in some state laws and education systems. The proposed amendments to the Title IX regulations would elevate that system to federal law, multiplying this harmful policy throughout the United States.

5. The Proposed Amendments Will Harm the Mental Health of other Students

As currently written, the proposed amendments interpreting Title IX to protect "gender identity" would also have a profound impact on the mental health of other students. A mandatory system of social transition based purely on self-ID means that other students could be subject to punitive measures if they fail to socially affirm a fellow student's declared "gender identity." We recognize that misgendering can be painful for a gender-nonconforming individual, and that bullying of gender-nonconforming children should never be tolerated. However, with a system of self-ID in which there appears to be no mechanism in place to ensure that a student will not misuse or even abuse the concept of "gender identity," it is unrealistic to assume that every child's assertion of a new gender identity will be authentic and stable. We are concerned that by mandating social affirmation of an individual student's self-declared gender identity by other students, the proposed amendments will breed resentment among other students. It could also lead to backlash against *all* gender-nonconforming students.

The erosion of single-sex spaces and the privacy those spaces provide for children, especially tweens and teens, will also harm the mental health of students. Other K-12 students have an interest in single-sex spaces while in a state of undress. This is true of male and female children. Today, tweens and teens are hesitant to vocalize this concern about the presence of opposite-sex peers in locker rooms and bathrooms because they risk being tarred with the brush of bigotry if

they express concern. In states where gender identity is currently recognized as a basis for using opposite-sex bathrooms and locker room facilities, policies make clear that other students' concerns should not be a basis for excluding an opposite-sex gender-nonconforming student from the facilities of his or her choice.[33] Indeed, the *2016 Dear Colleague Letter* makes clear that any other students' "discomfort" should not provide a basis for rejecting a gender-nonconforming student's request to be treated as the opposite sex. The letter states: "As is consistently recognized in civil rights cases, the desire to accommodate others' discomfort cannot justify a policy that singles out and disadvantages a particular class of students."[34]

This approach frankly trivializes the concerns of other students and especially those of female students who have a very reasonable expectation that they should be able to change clothes for gym class without having a male-bodied person in the locker room. As mental health professionals, we have worked extensively with young people who have experienced sexual trauma. As a general matter, female students are far more likely to have been sexually abused, assaulted, or raped, and the vast majority of the perpetrators of such crimes are male.[35] These girls are far more likely to feel vulnerable in school, and to experience anxiety and PTSD when they feel at risk. Undressing in the presence of a male-bodied student (regardless of how that student identifies) is precisely the kind of situation that causes serious anxiety responses in victims of sexual abuse and violence. In addition, tween and teenage students going through enormous, visible bodily changes have a very reasonable expectation to single-sex spaces for going to the bathroom and changing clothes. For this population, an approach to gender identity that allows male-bodied peers to self-ID as girls, thus allowing them access of single-sex spaces where female students are in various states of undress, is candidly callous and cruel.

Most existing school policies on this point state that the student who is uncomfortable with an opposite-sex person in a single-sex space, such as a locker room, should be offered an alternative space, presumably because the gender-nonconforming student will be stigmatized by having to use an alternative space. It is not at all clear from the proposed amendments to the Title IX regulations why the mental well-being of one group of students is being preferred over the mental well-being and privacy interests of another group. This is especially true given that the regulations in question were originally enacted in 1972 in order to open up educational opportunities to girls and women.

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[33] *See, e.g., Conn. Civil Rights Protections*, *supra*, at 6; *N.Y. Guidance to School Districts*, *supra*, at 9-10.

[34] *2016 Dear Colleague Letter*, *supra*, at 2.

[35] According to the Rape, Abuse & Incest National Network ("RAIIN"), 82% of all juvenile victims of sexual violence and incest are female, and 90% of adult rape victims are female. *See* https://www.rainn.org/statistics/victims-sexual-violence. Moreover, male perpetrators commit approximately 95% of criminal acts of sexual violence against females. Michael Planty, et al., *Female Victims of Sexual Violence, 1994-2010,* at 5 n.2 (U.S. Department of Justice, 2013), https://bjs.ojp.gov/content/pub/pdf/fvsv9410.pdf.

For the reasons stated above, we urge the U.S. Department of Education to abandon the sections of the proposed amendments that address "gender identity." The proposed amendments will be harmful to students, both those questioning their gender identities and those who are not. Students questioning their gender identities, or who are diagnosed with gender dysphoria, can be protected from abusive treatment and aided in their struggles without facing the risks posed by a policy that requires schools to affirm and validate students' gender identities based solely on the individual student's self-declarations.

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