



January 20, 2022

Catherine E. Lhamon  
Assistant Secretary for Civil Rights  
U.S. Department of Education  
Office for Civil Rights  
400 Maryland Avenue SW  
Washington, DC 20202-1100

Dear Ms. Lhamon:

We write as four members of the eight-member U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole, to inquire into an apparent dereliction of Title IX investigation and enforcement duty at the Office of Civil Rights.

When Congress enacted Title IX of the Education Amendments of 1972 it prohibited discrimination based on sex in education programs or activities receiving federal financial assistance.<sup>1</sup> Today it remains both a policy and priority of our federal government that “all students should be guaranteed an educational environment free from discrimination on the basis of sex.”<sup>2</sup> In fact, your predecessor recently called Title IX “the strongest tool we have to protect every student’s right to equal access to educational opportunities free from sex discrimination.”<sup>3</sup>

Alas, evidence indicates that your office is failing in its responsibility to the American people to adequately investigate and address the civil-rights deprivations experienced by students at American colleges and universities. When presented with abundant documentation that discrimination is occurring on these campuses in the form of gender-specific and -restricted spaces and programs, your office refuses to investigate and enforce Title IX.

For example, in September 2021 your office dismissed a complaint detailing an award program at the University of New Mexico—called “Women in STEM”<sup>4</sup>—that discriminated against male applicants based on sex because the complainant failed to identify either “an express statement that the award program is awarded on the basis of sex” or “any individuals who were denied

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<sup>1</sup> 20 U.S.C. §§ 1681–88.

<sup>2</sup> Exec. Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity (Mar. 8, 2021).

<sup>3</sup> Letter from Suzanne B. Goldberg, Acting Assistant Sec’y for Civ. Rts., Dep’t of Educ., to Educators (June 23, 2021) (available at <https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/educator-202106-tix.pdf>).

<sup>4</sup> See generally Press Release, Advance at UNM (June 16, 2021) (available at <http://news.unm.edu/news/advance-announces-2021-women-in-stem-award-winners>).



participation because of their sex.”<sup>5</sup> Your office dismissed this complaint in spite of public statements by the university that the award program was “open for women faculty,” that “eligible applicants include tenure-track and tenured women faculty members,” and that the program was “supported by an anonymous gift . . . to support research by and professorships for women faculty.”<sup>6</sup> Your office dismissed this complaint—and many others<sup>7</sup>—even though your regulations do not require legal standing before curing facial discrimination and per se facial violations of Title IX’s prohibition of sex discrimination and do not require that a complainant identify a specific individual who has suffered an individualized injury. We understand that the underlying policy here requiring a complainant to show an express statement of discrimination and to name a specific harmed individual is a departure from a decades-old policy which allowed complaints to proceed when programs were facially discriminatory. If we’re mistaken, then please let us know.

Why require a complainant to show an express statement of discrimination when the discrimination is obvious from the title of the program? Why require a complainant to name an individual who was denied participation in a program because of their sex? We assume that your office would never refuse a Title IX investigation and enforcement of a program calling itself “Men in STEM,” merely because no woman had felt brave enough to challenge the program. Likewise, no man should have to challenge a program called “Women in STEM.”

Although the gender makeup of the average American university and college campus looks vastly different today than it did when Congress enacted Title IX in 1972,<sup>8</sup> our government must still “guarantee[] an educational environment free from discrimination on the basis of sex” to all students regardless of gender. The way to stop discrimination is to stop discriminating.

**We now ask you: Why has your office willfully dismissed valid complaints of sex discrimination? Why has your office deliberately failed to stop sex discrimination on university and college campuses? Why has your office purposefully ignored the law of the land? Why has your office intentionally chosen dereliction of its duty to the American people?**

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<sup>5</sup> Dismissal Letter, Dep’t of Educ., Office of Civ. Rts., Case No. 08-20-2253 (on file with authors).

<sup>6</sup> See generally Press Release, Jessica Davis, Advance at UNM (Mar. 1, 2021) (available at <http://news.unm.edu/news/releases-20210225-6834729>).

<sup>7</sup> See Mark J. Perry, *An Update on My Efforts to Challenge Title VI and Title IX Violations in Higher Education Despite New Resistance from Biden’s Office for Civil Rights*, CARPE DIEM—AM. ENTERPRISE INST. (Oct. 15, 2021), <https://www.aei.org/carpe-diem/an-update-on-my-efforts-to-challenge-title-vi-and-title-ix-violations-in-higher-education-despite-new-resistance-from-bidens-office-for-civil-rights/>.

<sup>8</sup> Douglas Belkin, *A Generation of American Men Give Up on College: ‘I Just Feel Lost’*, WALL ST. J., Sept. 6, 2021, <https://www.wsj.com/articles/college-university-fall-higher-education-men-women-enrollment-admissions-back-to-school-11630948233> (“At the close of the 2020–21 academic year, women made up 59.5% of college students, an all-time high, and men 40.5%. . . . This education gap, which holds at both two- and four-year colleges, has been slowly widening for 40 years.”).



UNITED STATES COMMISSION ON CIVIL RIGHTS

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[www.usccr.gov](http://www.usccr.gov)

We look forward to your timely response.

Most respectfully,

A handwritten signature in black ink, appearing to read "Peter Kirsanow".

Peter Kirsanow  
Commissioner

A handwritten signature in black ink, appearing to read "J. Christian Adams".

J. Christian Adams  
Commissioner

A handwritten signature in black ink, appearing to read "Gail Heriot".

Gail Heriot  
Commissioner

A handwritten signature in black ink, appearing to read "Stephen Gilchrist".

Stephen Gilchrist  
Commissioner