



February 11, 2022

Director of Strategic Collections and Clearance  
Office of the Chief Data Officer  
Office of Policy Evaluation and Policy Development  
U.S. Department of Education  
400 Maryland Avenue SW  
LBJ Room 6W201  
Washington, DC 20202-8240

## Re: Public Comments on Docket No.: ED-2021-SCC-0158

To Whom It May Concern:

**Independent Women's Forum (IWF)** is a non-profit, non-partisan 501(c)(3) organization founded by women to foster education and debate on legal, social, and economic policy issues. **Independent Women's Law Center (IWLC)**, a project of IWF, supports this mission by advocating—in the courts, before administrative agencies, in Congress, and in the media—for equal opportunity, individual liberty, and the continued legal relevance of biological sex. **Independent Women's Voice (I WV)** is a 501(c)(4) advocacy organization that builds support for these principles and policy changes, in order to enhance people's freedom, opportunities, and well-being.

### ***Background***

On December 13, 2021, the U.S. Department of Education's Office for Civil Rights (OCR) published a revised proposal to amend the **Civil Rights Data Collection (CRDC)**, a biennial collection of school district and school-level civil rights data. Participation in the CRDC is mandatory; nearly all public schools are required to report to OCR, through the CRDC, on approximately 1,700 data points included in the survey.

OCR has proposed to amend the CRDC to add a **"nonbinary" sex category** that will, for the first time, create a new sex category in addition to "male" and "female." OCR has proposed to add the "nonbinary" sex category to thirty (30) different data points within the CRDC.

IWF, IWLC, and I WV strongly oppose any changes to the CRDC that will encourage schools to collect data on the sex of students other than biological sex recorded at birth.

**A. Adding “nonbinary” as a new sex category to the CRDC will impair efforts to enforce anti-discrimination law and erase females as a distinct legal category.**

By allowing minor students to choose a sex classification other than male or female, OCR’s proposal will impair efforts to collect data on whether schools are upholding their federal obligations to treat girls and boys equally. For example, categorizing biological females as non-binary will limit opportunities for girls to participate in programs to increase their participation in STEM fields and will undermine efforts to require schools to offer equal athletic opportunities to female athletes. Put simply, erasing the legal categories of male and female will jeopardize all educational programs designed to help women and girls and throw enforcement of civil rights statutes into chaos.

Moreover, doing so will also eradicate females as a distinct category worthy of legal protection and impair the ability of schools to prevent and address, for example, sexual harassment and assault.

**B. Adding “nonbinary” as a new sex category to the CRDC will violate parental rights and federal law.**

OCR’s proposal will inevitably incentivize schools to inquire, question, and record sex based preferences of minor children without parental consent and in violation of federal law. Indeed, adding “nonbinary” as a new sex category would likely require schools to violate Protection of Pupil Rights Amendment (PPRA), which affords parents of minor students the right to consent before a child is subject to a mandatory survey, analysis, or evaluation, if it is funded in whole or in part as part of a program administered by the U.S. Department of Education and reveals certain private information.

Under the PPRA, schools are prohibited from inquiring about a student’s “sex behavior or attitudes” without complying with the parental consent provisions in the law. This has been interpreted to include inquiring about a student’s sexual orientation or gender identity. Yet, OCR’s proposal would permit and/or require a school to inquire about a student’s sexual identification and gender identity preferences, an act otherwise prohibited by the PPRA if parental consent has not been obtained.

**Conclusion**

CRDC amendment would significantly impair efforts to enforce federal anti-discrimination law, undermine parental rights, and violate federal student privacy law, and therefore, we oppose the amendment and any effort to add a third category to data collection efforts based on sex.

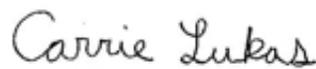
Respectfully submitted,



**Inez Stepman**  
*Independent Women’s Forum*



**Jennifer C. Bracer**  
*Independent Women’s Law Center*



**Carrie Lukas**  
*Independent Women’s Voice*