



June 16, 2025

Submitted via www.regulations.gov

Chris Wright, Secretary
U.S. Department of Energy
c/o David Taggart
Office of the General Counsel
1000 Independence Avenue SW
Washington, DC 20585

RE: Docket Number DOE-HQ-2025-0015, Rescinding New Construction Requirements Related to Nondiscrimination in Federally Assisted Programs or Activities

Dear Mr. Taggart:

Education Law Center is a non-profit organization that pursues justice and equity for public school students by enforcing their right to a high-quality education in safe, equitable, non-discriminatory, integrated, and well-funded learning environments. We seek to support and improve public schools as the center of communities and the foundation of a multicultural and multiracial democratic society. To achieve these goals, we engage in litigation, research and data analysis, policy advocacy, communications, and strategic partnerships and collaborations. As part of our mission, ELC works hard to ensure that all students can attend safe, supportive, and accessible schools that are free from discriminatory practices.

Education Law Center offers the following **significant, adverse comment** in opposition to the Department of Energy's direct final rule, "Rescinding New Construction Requirements Related to Nondiscrimination in Federally Assisted Programs or Activities," published in the Federal Register on May 16, 2025, and **urges its immediate withdrawal**. This direct final rule is inconsistent with civil rights laws and the goals of Section 504 as it denies individuals with disabilities equal protection under the law and has been issued through an improper process.

The direct final rule would rescind critical portions of the Department of Energy ("DOE")'s regulations implementing Section 504 of the Rehabilitation Act. Docket Number DOE-HQ-2025-0015 would rescind 10 C.F.R. § 1040.73, which requires recipients to ensure that new construction and alteration is fully accessible to people with disabilities. Significantly, the direct final rule seeks to rescind the regulation that requires compliance with the Uniform Federal Accessibility Standards. These standards provide guidelines to recipients of federal funds for constructing new, and altering existing, buildings that promote accessibility. The DOE, however, labels these standards as "unnecessary and unduly burdensome" in this direct final rule.

These regulations are not “unnecessary.” As the Supreme Court has recognized, “elimination of architectural barriers was one of the central aims of the [Rehabilitation] Act.” *Alexander v. Choate*, 469 U.S. 287, 297 (1985). Access standards are crucial to making new construction and alterations accessible. Architects and contractors need a comprehensive set of design rules to ensure that new construction and alterations are built to be fully accessible to people with disabilities. Without access standards, recipients of federal funds would be encouraged to develop new construction that is inaccessible to people with disabilities.

Similarly, these regulations are not “unduly burdensome.” With regard to existing buildings, the regulations offer flexibility. The regulation—reached in a compromise between Congress and federal agencies—carefully balances the challenge of addressing barriers to people with disabilities in existing buildings with the opportunity for new construction and alterations to achieve greater accessibility going forward. The proposed direct final rule would destroy this careful compromise.

Moreover, this direct final rule has been improperly issued without going through notice-and-comment rulemaking procedures. The direct final rule process is intended for routine or uncontroversial rules that are unlikely to raise objections. Eliminating access standards, on which recipients of federal funding have relied and which courts have enforced for decades, cannot, in any instance, be considered routine or uncontroversial. Therefore, we urge the immediate withdrawal of this direct final rule.

Respectfully,

A handwritten signature in cursive script, appearing to read "Robert Kim".

Robert Kim, Esq.
Executive Director
Education Law Center



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Washington, DC 20585

RE: Docket Number DOE-HQ-2025-0016, Nondiscrimination on the Basis of Sex in Sports Programs Arising Out of Federal Financial Assistance

Dear Mr. Taggart:

Education Law Center is a non-profit organization that pursues justice and equity for public school students by enforcing their right to a high-quality education in safe, equitable, non-discriminatory, integrated, and well-funded learning environments. We seek to support and improve public schools as the center of communities and the foundation of a multicultural and multiracial democratic society. To achieve these goals, we engage in litigation, research and data analysis, policy advocacy, communications, and strategic partnerships and collaborations. As part of our mission, ELC works hard to ensure that all students can attend safe, supportive, and accessible schools that are free from discriminatory practices.

Education Law Center offers the following **significant, adverse comment** in opposition to the Department of Energy's direct final rule, "Nondiscrimination on the Basis of Sex in Sports Programs Arising Out of Federal Financial Assistance," published in the Federal Register on May 16, 2025, and **urges its immediate withdrawal**. This direct final rule is inconsistent with the nation's civil rights laws as it undermines the opportunity for all students—especially women and girls—to play sports and receive the full benefit of their education. Moreover, it is improper for the Department to issue this proposal through the direct final rule process.

This direct final rule would rescind the following requirement in 10 C.F.R. § 1042.450: "where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of these Title IX regulations, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact."

This regulation is crucial to ensure that all students, but especially women and girls, have access to sports. Women's and girls' interest and participation in traditionally male-dominated sports has steadily increased. For instance, during the 2023-2024 school year, 1,372 high school girls played baseball.¹ If this direct final rule goes into effect, schools could effectively ban women and girls from playing particular, non-contact sports by solely offering a boys-only team. This effect would be detrimental as sports participation is linked to better performance in school, including better grades, better scores on standardized testing, and increased graduation rates.² Participation in sports is also linked to lower rates of depression and higher levels of self-esteem.³

To justify this direct final rule, DOE claims that the current regulation “ignore[s] differences between the sexes.” This rationale is offensive and assumes a uniform difference in skill and ability between men and women participating in sports. Relying on this antiquated rationale denies women and girls the ability to receive the full benefit of their education. In addition, DOE states that the rescission is necessary to align with President Trump's anti-trans sports ban executive order, which claims to promote “fairness” and “safety” for women and girls.⁴ Yet, that executive order discriminates against transgender women and girls by banning them from playing on women's and girls' sports teams. As evident by this DFR, the Trump Administration is intent on harming transgender women and girls, rather than protecting them.

Moreover, this direct final rule has been improperly issued without going through notice-and-comment rulemaking procedures. The direct final rule process is intended for routine or uncontroversial rules that are unlikely to raise objections. Allowing for discrimination and curtailing the substantive civil rights of women and girls, as this regulation does, cannot, in any instance, be considered routine or uncontroversial. Therefore, we urge the immediate withdrawal of this direct final rule.

Respectfully,



Robert Kim, Esq.
Executive Director
Education Law Center

¹ The National Federation of State High School Associations, *High School Athletics Participation Survey 1* (2023-2024), <https://www.nfhs.org/media/7213111/2023-24-nfhs-participation-survey-full.pdf>.

² Nat'l Coalition for Women and Girls in Education, *Title IX: Advancing Opportunity through Equity in Education* 41–42 (2017), <https://www.ncwge.org/TitleIX45/Title%20IX%20at%2045-Advancing%20Opportunity%20through%20Equity%20in%20Education.pdf>.

³ *Id.* at 41.

⁴ Exec. Order No. 14201, 90 Fed. Reg. 9279 (Feb. 5, 2025).



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Chris Wright, Secretary
U.S. Department of Energy
c/o David Taggart
Office of the General Counsel
1000 Independence Avenue SW
Washington, DC 20585

RE: Docket Number DOE-HQ-2025-0025, Rescinding Regulations Related to Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

Dear Mr. Taggart:

Education Law Center is a non-profit organization that pursues justice and equity for public school students by enforcing their right to a high-quality education in safe, equitable, non-discriminatory, integrated, and well-funded learning environments. We seek to support and improve public schools as the center of communities and the foundation of a multicultural and multiracial democratic society. To achieve these goals, we engage in litigation, research and data analysis, policy advocacy, communications, and strategic partnerships and collaborations. As part of our mission, ELC works hard to ensure that all students can attend safe, supportive, and accessible schools that are free from discriminatory practices.

Education Law Center offers the following **significant, adverse comment** in opposition to the Department of Energy's direct final rule, "Rescinding Regulations Related to Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," published in the Federal Register on May 16, 2025, and **urges its immediate withdrawal**. This direct final rule is inconsistent with the nation's civil rights laws, undermines the protections they provide, and has been issued through an improper process.

This direct final rule seeks to rescind a critical protection within the Department of Energy's ("DOE") regulations implementing Title IX of the Education Amendments of 1972 (Title IX)—namely 10 C.F.R. § 1042.110(b), which ensures women and girls have opportunities to participate in educational programs. This regulation allows schools to take proactive steps to overcome the effects of discrimination that have resulted in the underrepresentation of women and girls in certain educational fields, such as Science, Technology, Engineering, and Mathematics ("STEM") and technical training. Schools can and should create policies to increase women's and girls' participation in fields where they continue to be underrepresented, including by offering programs, scholarships, and other services to expand their participation.

By rescinding these critical protections, this direct final rule would negatively impact educational and career opportunities for women and girls. Gender gaps in certain fields remain significant, thus necessitating schools take affirmative action to support increased participation of women and girls in those fields. Currently, a large disparity exists between the percentages of men and women working in STEM; in 2023, women made up only 28% of the STEM workforce.¹ Deeply entrenched stereotypes about women and girls contribute to their underrepresentation in STEM-related fields.² Because of this underrepresentation, women and girls also have difficulty finding role models and mentors, compared to their male counterparts.³ Additionally, unconscious biases continue to disadvantage women and girls by impacting hiring decisions, grant funding, and promotions.⁴ The current regulation, which this direct final rule aims to eliminate, seeks to rectify these disparities, not just in STEM, but in all male-dominated fields where women face the same barriers to entry and advancement.

Moreover, this direct final rule has been improperly issued without going through notice-and-comment rulemaking procedures. The direct final rule process is intended for routine or uncontroversial rules that are unlikely to raise objections. Allowing for discrimination and curtailing the substantive civil rights of women and girls, as this regulation does, cannot, in any instance, be considered routine or uncontroversial. Therefore, we urge the immediate withdrawal of this direct final rule.

Respectfully,

A handwritten signature in cursive script, appearing to read "Robert Kim".

Robert Kim, Esq.
Executive Director
Education Law Center

¹ MIT Professional Education, *The Gender Gap in STEM: Still Gaping in 2023*, last visited June 16, 2025, <https://professionalprograms.mit.edu/blog/leadership/the-gender-gap-in-stem/>.

² *Id.*

³ *Id.*

⁴ *Id.*



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Chris Wright, Secretary
U.S. Department of Energy
c/o David Taggart
Office of the General Counsel
1000 Independence Avenue SW
Washington, DC 20585

RE: Docket Number DOE-HQ-2025-0024, Rescinding Regulations Related to Nondiscrimination in Federally Assisted Programs or Activities (General Provisions)

Dear Mr. Taggart:

Education Law Center is a non-profit organization that pursues justice and equity for public school students by enforcing their right to a high-quality education in safe, equitable, non-discriminatory, integrated, and well-funded learning environments. We seek to support and improve public schools as the center of communities and the foundation of a multicultural and multiracial democratic society. To achieve these goals, we engage in litigation, research and data analysis, policy advocacy, communications, and strategic partnerships and collaborations. As part of our mission, ELC works hard to ensure that all students can attend safe, supportive, and accessible schools that are free from discriminatory practices.

Education Law Center offers the following **significant, adverse comment** in opposition to the Department of Energy's direct final rule, "Rescinding Regulations Related to Nondiscrimination in Federally Assisted Programs or Activities (General Provisions)," published in the Federal Register on May 16, 2025, and **urges its immediate withdrawal**. This direct final rule is inconsistent with the nation's civil rights laws, undermines the protections they provide, and has been issued through an improper process.

More specifically, this direct final rule would remove language that prohibits actions that would "have the effect of" discrimination (disparate impact) and replace it with language that merely prohibits the "intent" of discrimination (disparate treatment). Relying solely on disparate treatment would eliminate the Department of Energy's longstanding ability to address more systemic discrimination and would increase inequality in colleges and universities, small businesses, state governments, and other entities that accept funding from the Department of Energy. Disparate impact recognizes that policies may promote discrimination, even if such policies might seem neutral. Thus, by gutting a key tool for rooting out discriminatory policies, the direct final rule is contrary to the objective of Title VI. Moreover, the direct final rule is contrary to well-established U.S. Supreme Court precedent, which has long recognized disparate impact as

valid grounds for a discrimination claim. *Griggs v. Duke Power Company*, 404 U.S. 424 (1971); *see also Alexander v. Sandoval*, 532 U.S. 275 (2001).

The prohibition on discrimination based on race, color, and national origin by recipients of federal financial assistance has for decades allowed individuals the opportunity to live, learn, and work free from discrimination. Yet this regulation seeks to narrow the scope of Title VI's prohibitions and rescind provisions that prohibit policies and practices with discriminatory effects, undermining the law's promises and subjecting people to unlawful and harmful discrimination. The Department of Energy fails to provide a reasoned explanation for this change. Now is the time to strengthen civil rights enforcement, to recommit to equal protection under the law, and to act together to ensure that no person is excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity receiving federal financial assistance. This direct final rule will instead undermine equal access to programs and perpetuate unlawful discrimination by removing longstanding protections against unjustified disparate impacts as well as requirements to provide language access.

This rule has been improperly issued without going through notice-and-comment rulemaking procedures. The direct final rule process is intended for routine or uncontroversial rules that are unlikely to raise objections. Permitting discrimination, as this regulation does, cannot, in any instance, be considered routine or uncontroversial. Therefore, we urge the immediate withdrawal of this direct final rule.

Respectfully,

A handwritten signature in cursive script, appearing to read "Robert Kim".

Robert Kim, Esq.
Executive Director
Education Law Center