

December 10, 2018

Roger Severino, Director
Office of Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Director Severino,

On behalf of the 16 undersigned Jewish organizations, we write to express our deep concern about purported efforts by the Department of Health and Human Services Office of Civil Rights (OCR) to establish a legal definition of sex under Title IX of the Education Amendments Act of 1972.

The *New York Times* recently reported that OCR is circulating a memo encouraging federal agencies to adopt a definition of sex as determined “on a biological basis that is clear, grounded in science, objective, and administrable.”¹ This memo proposes explicitly defining sex as “a person’s status as male or female based on immutable biological traits identifiable by or before birth” and also encourages the Departments of Education, Labor, and Justice adopt this language.² If implemented, this narrow definition would essentially erase federal recognition for 1.4 million Americans who identify with a gender different than that which they were assigned at birth.³ We believe this definition is a discriminatory attack on the transgender, gender non-conforming, non-binary, and intersex communities and urge you to abandon this effort.

Jewish tradition teaches that all people are created *b'tzelem Elohim*, in the Divine image, and are worthy of dignity and respect. As organizations grounded in Jewish values, we have an ethical and moral responsibility to fight for a society that ensures the humanity, dignity, and equality of all people. Every person is entitled to live without fear of persecution, harassment, or discrimination – particularly from the federal government, whose fundamental responsibility must always be to protect its people.

For centuries, there has been recognition within Judaism and Jewish movements of a diverse spectrum of sex and gender identities. Across Jewish legal codes and rabbinic commentary, there are hundreds of references to at least six different genders.⁴ Many of our texts proudly affirm the existence of transgender, intersex, and genderfluid individuals and acknowledge that gender may

¹ <https://www.nytimes.com/2018/10/21/us/politics/transgender-trump-administration-sex-definition.html>

² Ibid.

³ Ibid.

⁴ http://www.transtorah.org/PDFs/Classical_Jewish_Terms_for_Gender_Diversity.pdf

change after birth. These texts have long understood what the medical community now widely accepts: there is no biological rationale for limiting sex to the male-female binary.⁵

Narrowing the definition of sex would be contradictory to principles of fundamental fairness as well as established legal perspective, as multiple federal courts have ruled that federal sex discrimination laws – including Title VII, Title IX, the Fair Housing Act, Equal Credit Opportunity Act, and Section 1557 of the Affordable Care Act – also prohibit discrimination against transgender people.⁶ Adopting a narrow definition of sex would hinder the federal government’s ability to investigate gender discrimination at schools and universities, fund health programs, and investigate hate crimes. Transgender people are already more vulnerable to increased discrimination, attacks, and incidents of hate. Now more than ever, they need critical nondiscrimination protections. However, the proposed OCR definition would undermine the ability of millions of people to live free from discrimination.

As Jewish organizations, we believe firmly that every person deserves to be treated with human dignity, equally, and consistent with their gender identity under federal law. Transgender, gender non-conforming, non-binary, and intersex people are our neighbors, community members, and family members – and they cannot be defined out of existence. We strongly urge OCR to reject any plan to adopt a narrow definition of sex.

Sincerely,
American Conference of Cantors
Anti-Defamation League
Bend the Arc: Jewish Action
Central Conference of American Rabbis
Jewish Alliance for Law and Social Action
The Jewish Federations of North America
Jewish Women International
Keshet
National Council of Jewish Women
Network of Jewish Human Service Agencies
Rabbinical Assembly
Reconstructing Judaism
Reconstructionist Rabbinical Association
T’ruah: The Rabbinic Call for Human Rights
Union for Reform Judaism
Women of Reform Judaism

⁵ https://www.lambdalegal.org/sites/default/files/publications/downloads/resource_trans-professional-statements_09-18-2018.pdf and <https://www.apa.org/news/press/releases/2018/10/erase-transgender-definition.aspx>
⁶<https://transequality.org/federal-case-law-on-transgender-people-and-discrimination>