



Office of the Attorney General
Washington, D. C. 20530

April 29, 2025

MEMORANDUM FOR ALL FEDERAL AGENCIES

FROM: THE ATTORNEY GENERAL 

SUBJECT: IMPLEMENTATION OF EXECUTIVE ORDER 14168:
DEFENDING WOMEN FROM GENDER IDEOLOGY EXTREMISM
AND RESTORING BIOLOGICAL TRUTH TO THE FEDERAL
GOVERNMENT

I. INTRODUCTION TO IMPLEMENTING EXECUTIVE ORDER 14168

This memorandum provides guidance for federal agencies to implement Executive Order 14168, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” issued January 20, 2025, to defend women’s rights by recognizing sex distinctions in federal policy. It builds on the Department of Justice’s February 12, 2025, guidance clarifying that *Bostock v. Clayton County*, 590 U.S. 640 (2020) does not mandate gender-identity-based policies, reinforcing Titles VII and IX’s focus on sex. It reaffirms that federal law, including Titles VII and IX, recognizes sex distinctions and directs agencies to uphold these in policy and practice. Agencies must maintain sex-separated intimate facilities (e.g., bathrooms, locker rooms) and athletic programs based on sex, not gender identity. The Department of Justice, alongside the Equal Employment Opportunity Commission and the Department of Education, will enforce compliance, ensuring employers and educational institutions do not compel individuals to share such spaces or compete athletically with the opposite sex. That approach aligns with *Bostock*, which neither requires gender-identity-based access to single-sex spaces nor weakens Title IX’s protections for women. Statutory and constitutional religious exemptions remain fully applicable and will be enforced. Immediate compliance actions and the legal basis for those actions follow.

II. IMMEDIATE COMPLIANCE ACTIONS

The following actions are required of federal agencies to implement Executive Order 14168. While the full legal analysis supporting these requirements is provided in subsequent

sections, these compliance actions represent the immediate steps agencies must take to fulfill their obligations under the law.

All federal agencies should take the following steps to ensure compliance with Executive Order 14168 and federal law:

A. Maintain Sex-Separated Employee Facilities Under Title VII

Federal agencies must not remove single-sex intimate spaces for employees, including but not limited to bathrooms, locker rooms, and dormitories. These spaces must be provided to men and women based on sex, not gender identity. *Bostock* does not require employers, including the federal government, to compel employees to share intimate spaces with the opposite sex; rather, forcing such sharing could violate Title VII by creating hostile work environments or constructive discharges, and affected employees may bring suit to enforce their rights.

B. Enforce Title VII Compliance for Employers to Protect Single-Sex Spaces

The Department of Justice and EEOC will cooperate, using their Title VII enforcement and guidance authorities under Sections 706 and 707, to ensure employers do not require employees to share intimate spaces with members of the opposite sex based on gender identity. The EEOC should initiate actions against private employers, and the DOJ will pursue claims against both private and public employers—whether referred by the EEOC or developed internally—where such policies remove access to single-sex facilities in a manner that violates Title VII.

C. Uphold Religious Organization Exemptions Under Title VII

The Department of Justice and EEOC will review their current dockets of investigations, charges, litigation, and actions to ensure religious exemptions are applied appropriately. They will dismiss all actions where a religious organization is charged with violating Title VII based on conduct consistent with its religious principles and eligible for exemption under applicable law (e.g., 42 U.S.C. § 2000e-1(a)).

D. Ensure Sex-Separated Educational Facilities Under Title IX

The Department of Justice and Department of Education will cooperate, using their Title IX enforcement and guidance authorities, to ensure schools and universities subject to Title IX provide separate bathrooms, locker rooms, and similar facilities for men and women based on sex, not gender identity. Policies requiring students to share intimate spaces with the opposite sex impair Title IX rights and may be actionable. *Bostock* does not alter this mandate, and interpreting Title IX to prohibit sex-specific facilities would frustrate its purpose of ensuring privacy and equal opportunity, especially given physiological changes students undergo during education.

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E. Protect Separate-Sex Athletics Under Title IX

The Department of Justice and Department of Education will use their Title IX enforcement and guidance authorities to ensure schools and universities operating or sponsoring separate-sex athletics do not require students to compete against, or participate in contact sports with, members of the opposite sex based on gender identity. Athletic opportunities may be offered to both sexes, including in co-ed programs, but separate-sex competition must reflect sex to preserve Title IX's guarantee of equal opportunity for women—a purpose upheld by single-sex teams for nearly 50 years. Permitting opposite-sex participation based on gender identity undermines this intent and discriminates by negating the single-sex nature of such activities. The DOJ will pursue actions and intervene in existing suits where such policies blur biological distinctions.

III. LEGAL BASIS

A. Constitutional Principles

It is an unremarkable and obvious truth that there are recognized differences between men and women based on biology. The Constitution and Federal law acknowledge the reality that “[p]hysical differences between men and women . . . are enduring,” *United States v. Virginia*, 518 U.S. 515, 533 (1996), and it is the responsibility of the federal government to properly enforce the law. At the same time, the Equal Protection Clause of the Constitution prohibits the states from imposing sex-based classifications unless it can establish a basis under heightened constitutional scrutiny. *See id.* at 531-33.

B. Title VII Basis

Title VII of the Civil Rights Act of 1964 reinforces these constitutional principles by prohibiting employment discrimination. It applies not only to certain private employers and state and local governments, 42 U.S.C. § 2000e-2, but also the federal government. Regarding the federal government, it provides that “[a]ll personnel actions affecting employees or applicants for employment” in Executive Branch agencies “shall be made free from any discrimination based on race, color, religion, *sex*, or national origin.” 42 U.S.C. § 2000e-16(a) (emphasis added).

Under Title VII, discrimination includes any employment-related action motivated, even in part, by a protected characteristic like sex. 42 U.S.C. § 2000e-2(m); *see also Comcast Corp. v. National Association of African American-Owned Media*, 589 U.S. 327, 337 (2020). Employment-related actions—including actions that affect the terms and conditions of employment, such as hiring, firing, promotion, demotion, selection for interviews, training opportunities, and work assignment—are covered by Title VII.

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In *Bostock*, the Supreme Court interpreted Title VII to extend to certain forms of discrimination based on gender identity and sexual orientation. But nothing in the decision requires ignoring biological distinctions between men and women. On the contrary, the Supreme Court assumed that the term “sex,” as used in Title VII “refer[s] only to biological distinctions between male and female.” *Bostock*, 590 U.S. at 655. The Supreme Court also expressly reserved the question of how its holding might apply to other facts and other statutes. *Id.* at 681 (“Whether other policies and practices might or might not qualify as unlawful discrimination . . . are questions for future cases, not these.”). *Bostock* did not “purport to address bathrooms, locker rooms, or anything else of the kind” under Title VII or any other statute. *Bostock*, 590 U.S. at 681.

In fact, *Bostock*’s reasoning suggests that sex-separated facilities do not run afoul of Title VII so long as they do not reflect intentional treatment of an individual “worse than others who are similarly situated.” *Id.* at 657. Men and women are not similarly situated where the physiological differences between the sexes are relevant. See *Jespersen v. Harrah’s Operating Co.*, 444 F.3d 1104, 1109-10 (9th Cir. 2006) (“Grooming standards that appropriately differentiate between the genders are not facially discriminatory.”); *Gerdorn v. Cont’l Airlines, Inc.*, 692 F.2d 602, 606 (9th Cir. 1982) (en banc), *cert. denied*, 460 U.S. 1074 (1983) (recognizing that “physiologically based policies which set a higher maximum weight for men than for women of the same height” would not be problematic where “no significantly greater burden of compliance was imposed on either sex”). And insofar as the use of sex-separated bathrooms and similar facilities might inadvertently inconvenience individuals, such incidental effects are not discriminatory adverse employment action or hostile work environment under Title VII. See, e.g., *Smith v. Oakland Scavenger Co.*, 127 F.3d 1106, 1997 WL 661335, at *3 (9th Cir. 1997) (table); *O’Brien v. City of New York, Dept. of Educ.*, 686 F. Supp. 3d 221, 240-41 (E.D.N.Y. 2023) (employers refusal to provide teacher, who identified as man, with key to restroom labeled as men’s did not constitute adverse employment action, for purposes of his claim for race, sex, and national origin discrimination under Title VII); *Sealy v. State Univ. of New York at Stony Brook*, 834 F. App’x 611, 615 (2d Cir. 2020); *Johnson v. Eastchester Union Free Sch. Dist.*, 211 F. Supp. 2d 514, 518 (S.D.N.Y. 2002) (an inconvenience, such as an increased commute or unfavorable hours, is not an adverse employment action under Title VII). Because males are not similarly situated to females when using the restroom, changing, or showering, neither Title VII nor *Bostock* requires employers, including the federal government, to impose novel gender-identity rules on “single-sex” spaces for employees.

Treating *differently* situated people differently—men and women are simply not similarly situated for policies under which physiological differences are relevant—also does not conflict with the Equal Protection Clause. In requiring Virginia Military Institute (VMI) to admit women, the Supreme Court stated that “[a]dmitting women to VMI would undoubtedly require alterations

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necessary to afford members of each sex privacy from the other sex in living arrangements, and to adjust aspects of the physical training programs.” *United States v. Virginia*, 518 U.S. 515, 550 n.19 (1996); *id.* (noting that, when the service academies admitted women, Congress specified that standards for women “shall be the same as those required for male individuals, except for those minimum essential adjustments in such standards required because of physiological differences between male and female individuals”). *Virginia* involved a claim under the Equal Protection Clause, rather than Title VII; but the Supreme Court’s implicit approval of policies that ensure privacy of the sexes from each other and that consider the physiological differences between men and women strongly suggests that such policies are not discriminatory.

It is thus no surprise that courts have repeatedly rejected challenges to sex-specific policies and facilities where physiological differences between the sexes are relevant. For example, many courts have held that “regulations promulgated by employers which require male employees to conform to different grooming and dress standards than female employees is not sex discrimination within the meaning of Title VII.” *Fountain v. Safeway Stores, Inc.*, 555 F.2d 753, 755 (9th Cir. 1977) (collecting cases). And for the more than 50 years that Title VII has been in place, no court has held that Title VII requires *eliminating* sex-separated bathrooms or locker rooms. On the contrary, the failure to have sex-specific bathrooms and locker rooms will, in some circumstances, itself create liability under Title VII. *See, e.g., Pucino v. Verizon Wireless Commc’ns, Inc.*, 618 F.3d 112, 118 (2d Cir. 2010) (concluding that evidence that “there was an attempt to force female employees to use restrooms that had no locks” could support a hostile work environment claim); *DeClue v. Cent. Illinois Light Co.*, 223 F.3d 434, 437 (7th Cir. 2000) (suggesting that failure to offer “toilet facilities sufficiently private to meet [a female] plaintiff’s needs . . . may have been a perfectly good claim of sex discrimination”); *James v. Nat’l R.R. Passenger Corp.*, No. 02-civ-3915, 2005 WL 6182322, at *5 (S.D.N.Y. Mar. 28, 2005) (holding that a jury could reasonably conclude that a policy of offering only unisex bathrooms and changing rooms could have a disparate impact on women in violation of Title VII). *Bostock* did not disturb this body of case law.

The *Bostock* decision also did not disturb the settled exceptions to Title VII’s general prohibition, including that Title VII permits “religious organizations” and “religious educational institutions” to employ people who share their own religion in most circumstances. 42 U.S.C. § 2000e-1(a). The Supreme Court unanimously upheld the constitutionality of this exemption, allowing a religiously affiliated, non-profit entity to make employment decisions based on religion, even if the position related to non-religious activity of the organization. *Corp. of the Presiding Bishop v. Amos*, 483 U.S. 327 (1987). The *Bostock* decision identified three such protections for religious liberty that may limit the reach of its decision: the “express statutory exception for religious organizations” in Title VII itself, the Religious Freedom Restoration Act, and the First Amendment’s protection of the “employment relationship between a religious institution and its

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ministers.” 590 U.S. at 682 (citing *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171, 188 (2012)).¹

Beyond the religious protections expressly noted in *Bostock*, Title VII contains two additional protections for the hiring decisions of religious organizations. Title VII makes clear that “it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.” 42 U.S.C. § 2000e-2(e). Nor shall it be “an unlawful employment practice for an employer to hire and employ employees . . . on the basis of his religion . . . in those certain instances where religion . . . is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.” *Id.* “Because Title VII defines ‘religion’ broadly to include ‘all aspects of religious observance and practice, as well as belief,’ 42 U.S.C. 2000e(j), these exemptions include decisions to employ only persons whose beliefs and conduct are consistent with the employer’s religious precepts.” *See* 82 Fed. Reg. 49,677 (internal quotation marks omitted).

Finally, *Bostock* allows employers to “hire and employ employees . . . on the basis of [employees’] . . . sex . . . in those certain instances where . . . sex . . . is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.” 42 U.S.C. § 2000e-2(e)(1). Again, *Bostock* presumed that, as used in Title VII, “‘sex . . . refer[ed] only to biological distinctions between male and female.” 590 U.S. at 642. And the bona fide occupational qualification provision rests on the understanding that an employee’s sex may, in some narrow circumstances, interfere with the employee’s ability to perform the job. *See International Union, United Auto., Aerospace & Agri. Implement Workers of Am. v. Johnson Controls*, 499 U.S. 187, 204 (1991); *see also Dothard v. Rawlinson*, 433 U.S. 321, 335-36 (1977) (recognizing that male sex was a bona fide occupational qualification “for the job of correctional counselor in a ‘contact’ position in an Alabama male maximum-security penitentiary”); *Wilson v. Chertoff*, 699 F. Supp. 2d 364 (D. Mass. 2010) (recognizing that female sex is a bona fide

¹ The intersection between the enforcement of Title VII and the protections of RFRA and the First Amendment will be addressed in further guidance to be issued by the Department of Justice, in consultation with the EEOC and the Department of Labor, under Executive Order 14168: Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, 90 Fed. Reg. 8615 (January 20, 2025).

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occupational qualification for a TSA employee hired “to conduct pat-down searches of female passengers”). In these cases, employers may hire or employ employees based on their sex.

C. Title IX

Title IX is even clearer than Title VII in extending its protections to sex rather than gender identity. “Title IX prohibits sex discrimination by recipients of federal education funding.” *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005). Title IX specifically equalizes opportunities for women by extending its protections based on “sex” alone. 20 U.S.C. § 1681(a). And Title IX includes express references to “one sex” and “the other sex,” as well as to “both sexes,” usage that confirms the ordinary, binary meaning of the term. 20 § 1681(a)(2), (8). Courts have thus repeatedly held that “sex” in Title IX does not mean gender identity. *Adams v. Sch. Bd. of St. Johns Cty.*, 57 F.4th 791, 813–14 (11th Cir. 2022) (“There simply is no alternative definition of ‘sex’ for transgender persons as compared to non-transgender persons under Title IX.”); *Alabama, et al. v. U.S. Sec. of Educ., et al.*, No. 24-12444, 2024 WL 3981994, at *4 (11th Cir. Aug. 22, 2024) (“sex” in Title IX is “biological sex and not gender identity” (cleaned up)).

Title IX provides, subject to express exemptions, that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681. The text of Title IX differs from Title VII in several respects, including in that it does not use precisely the same “because of such individual’s . . . sex” language that the Court relied on in *Bostock*. Compare 42 U.S.C. § 2000e-2, with 20 U.S.C. § 1681. And while Title VII imposes a regulatory prohibition on covered employers, Title IX acts as a condition on the receipt of certain federal funding. See *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286-87 (1998). The Supreme Court has explained that, when Congress acts pursuant to its power under the Spending Clause, a “central concern . . . [is] ensuring that the receiving entity of federal funds [had] notice” of its prospective liability. *Id.* (internal quotation marks and citation omitted).

When the physiological differences of the sexes are relevant to education programs or activities, sex should be taken into account. Several indicia from the statute establish this proposition. First, Congress expressly provided that “notwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.” 20 U.S.C. § 1686. That this provision is phrased as a rule of construction, rather than an exemption, is a textual indicator that Congress did not believe that its general prohibition on sex discrimination must be read to cover different living facilities. And Congress appears to have provided similar interpretive guidance in stating that Title IX “shall not preclude father-son or mother-daughter activities at an educational institution,” so long as “reasonably comparable

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activities [are] provided for students of the other sex,” § 1681(8). Second, Congress expressly exempted certain single-sex activities from Title IX’s reach where it is not clear that physiological differences are relevant. For example, Congress expressly exempted from Title IX the “membership practices of” sororities and fraternities, 20 U.S.C. § 1681(6)(A), or “voluntary youth service organization” that traditionally serve minors of a single sex, § 1681(6)(B); and programs and activities undertaken in connection with Boys State, Boys Nation, Girls State, and Girls Nation, § 1681(7).

What is more, Congress has long hailed the rise of women’s athletics as one of the crowning achievements of Title IX. Although athletics was not expressly discussed in the text of Title IX, Congress tasked the Executive Branch with issuing regulations on the subject. *See* Pub. L. 93-380, § 844, 88 Stat. 484 (Aug. 21, 1974) (“The Secretary shall prepare and publish ... proposed regulations implementing the provisions of Title IX of the Education Amendments of 1972 relating to the prohibition of sex discrimination in federally assisted education programs, which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports.”). Title IX regulations enacted soon after the law was passed recognized that because of inherent biological differences, schools may provide “separate toilet, locker room, and shower facilities on the basis of sex,” so long as the facilities “provided for students of one sex shall be comparable to such facilities provided for students of the other sex.” 34 C.F.R. § 106.33. Similar regulations allow schools to have “separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.” 34 C.F.R. § 106.41(b).

Title IX regulations also prohibit recipients of federal funds from providing athletics separately based on sex. *See* 7 C.F.R. § 15a.450(a).² The regulations except from that prohibition, however, programs where the “selection” for the relevant athletic teams “is based upon competitive skill” or where “the activity involved is a contact sport.” *Id.* § 15a.450(b). Offering athletics separately prevents members of one sex from dominating athletic events based on an inherent physical advantage. *See, e.g., Yellow Springs Exempted Vill. Sch. Dist. Bd. of Educ. v. Ohio High Sch. Athletic Ass’n*, 647 F.2d 651, 657–58 (6th Cir. 1981) (noting that contrary regulations requiring sex integration regardless of skill or other considerations “might result in male dominance of all teams and cause a return to pre-Title IX conditions, a result completely at variance

² Title IX’s implementing regulations are contained in a Title IX “common rule” promulgated jointly by 21 agencies in 2000. *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 65 Fed. Reg. 52,858 (Aug. 30, 2000). The Department of Agriculture (“USDA”) adopted the common rule for its own operations in 2017. *Education Programs or Activities Receiving or Benefitting from Federal Financial Assistance*, 82 Fed. Reg. 46,655 (Oct. 6, 2017).

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with the statute's purpose"); *cf. O'Connor v. Bd. of Educ. of Sch. Dist. 23*, 449 U.S. 1301, 1307 (1980) (Stevens, Circuit Justice) (observing in the equal-protection context that "[w]ithout a gender-based classification in competitive contact sports, there would be a substantial risk that boys would dominate the girls' programs and deny them an equal opportunity to compete in interscholastic events"). The potential for such inherent advantages is not limited to sports organized as "teams" such as basketball and soccer, or sports involving "teams" of individuals that compete collectively against other "teams." That potential also exists in wholly individual sports as well. The regulation does not require integration of all sports where the competitors compete as individuals but allows both group and individual sports to be offered separately to each sex, so long as the teams of competitors satisfy the competitive-skill or contact-sport exception, and the recipient otherwise "provide[s] equal athletic opportunity for members of both sexes." 7 C.F.R. § 15a.450(c).

The Supreme Court's holding with respect to firings based on gender identity and sexual orientation under Title VII does not apply to Title IX or to questions of sex-separated facilities and athletics. The Court has emphasized that "Title VII ... is a vastly different statute from Title IX." *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 175 (2005). Attempts by the prior administration to expand the definition of "sex" beyond its normal scope have been appropriately enjoined, and those injunctions have not been disturbed by the Supreme Court. *See Dep't of Educ. v. Louisiana*, 603 U.S. 866 (2024). All federal agencies should continue to interpret the prohibitions of Title IX based on sex as distinct from those under Title VII. But even setting those differences aside, as noted above, the prohibition of both Title VII and Title IX against discriminating—meaning "treating an individual worse than others who are similarly situated," *Bostock*, 580 U.S. at 657, fully permits agencies to recognize biological distinctions between the sexes. *See Sex Segregation in Youth Rodeo Events Under Title IX Regulations*, 45 Op. O.L.C. __ (Jan. 13, 2021) (slip op. at 7-9)

Religious exemptions also apply to Title IX recipients. The statute provides that its prohibition "shall not apply to an educational institution which is controlled by a religious organization if the application of [the prohibition] would not be consistent with the religious tenets of such organization." 20 U.S.C. § 1681(a)(3); *see also id.* § 1687 (defining "program or activity" to exclude "any operation of an entity which is controlled by a religious organization if the application of section 1681 . . . would not be consistent with the religious tenets of such organization"). Although under existing regulations "eligible institutions may 'claim the exemption' in advance by 'submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions . . . [that] conflict with a specific tenet of the religious organization,' 34 C.F.R. § 106.12(b), they are not required to do so to have the benefit of it." 82 Fed. Reg. 49,679. In addition, organizations that do not qualify for

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that exemption may still claim the protection of RFRA where applicable, *id.*, as well as the constitutional protections described *supra*.

IV. CONCLUSION

As Executive Order 14168 stated, “[e]fforts to eradicate the biological reality of sex fundamentally attack women by depriving them of their dignity, safety, and well-being. The erasure of sex in language and policy has a corrosive impact not just on women but on the validity of the entire American system. Basing Federal policy on truth is critical to scientific inquiry, public safety, morale, and trust in government itself.”

The Department of Justice stands ready to help agencies comply with these legal requirements. Questions about this guidance should be directed to the Office of Legal Policy at the Department of Justice (DOJ.OLP@usdoj.gov) or through your agency's designated DOJ liaison.