



November 13, 2023

Hon. Xavier Becerra  
U.S. Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201.

**Re: Notice of Proposed Rulemaking (NPRM) – Discrimination on the Basis of Disability in Health and Human Service Programs or Activities. RIN 0945-AA15. Docket ID number HHS–OCR–2023–0013.**

**Submitted electronically.**

Dear Secretary Becerra:

Thank you for the opportunity to comment on the above-referenced NPRM. The Association of Christian Schools International (ACSI) is the largest Protestant school association and serves 2,300 member schools in the United States alone and another 3,000 schools outside the U.S. for a total of over 5,000 member schools around the globe. Through extended services and resources beyond formal membership, ACSI has the privilege of serving and influencing over 25,000 Christian schools all over the world. ACSI exists to strengthen Christian schools and equip Christian educators worldwide as they prepare students academically and inspire them to become devoted followers of Jesus Christ.

Our comment focuses on the discussion in the preamble regarding whether “gender dysphoria” can be a disability under the Rehabilitation Act given the statutory exclusion of “gender identity disorders” from the definition of disability.

First, we urge the Department to reconsider its conclusion that gender dysphoria can be a disability. We are persuaded by the arguments in the dissenting opinion in *Williams v. Kincaid*, F.4th 759 (4th Cir. 2022). The term “gender identity disorders” in the statute encompasses “gender dysphoria.” Although transgender identification itself is no longer an element of the diagnosis in the DSM-5, it remains a necessary precondition to gender dysphoria. In other words, a person cannot experience gender dysphoria without first experiencing gender incongruity. In addition, the preamble fails to address the multiple court decisions that disagree with the majority opinion in *Williams*.

Second, deeming gender dysphoria to be a disability under the Rehabilitation Act will almost certainly have negative consequences for ACSI member schools and other educational institutions. Christian schools respect the dignity of the human person in part by recognizing the reality that there are two sexes; they would want to bring health and healing to children who are experiencing incongruence with the reality of their biological sex. Many, including most Christians, would consider it cruel and counter-scientific to distort the body by removing sex organs and permanently sterilizing minors. If a Christian school is a recipient of federal financial assistance, as some indeed are, its policies and practices may conflict with the Department’s interpretation and application of Section 504.

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This raises serious questions which are not addressed in the NPRM. For example:

- What sorts of actions *would* be considered gender dysphoria discrimination?
- How would that be viewed for purposes of admissions, athletics, dress codes, student conduct codes, employee conduct codes, hiring standards, private spaces, pronoun policy and usage, and employee health plans.

Third, the Department should make clear that the First Amendment and the Religious Freedom Restoration Act (RFRA) protect Christian and other religious schools from potential applications of Section 504 that contradict their religious beliefs. The myriad policies in conflict with the realities of the Christian commitment to the dignity of the human person, based on the fact of each person's having been created by God and in His image, call for clarity by the Department. Given the lack of clarity about what gender dysphoria discrimination entails and how it could violate the dignity of the human person, the Department should make clear its commitment to RFRA and the First Amendment and explain how religious schools have a safe harbor for their calling to help children who struggle with their identity.

Finally, given that Section 504 applies only to recipients of federal financial assistance, it is imperative for the Department to clarify its understanding of the term "federal financial assistance." Certain federal district courts have held that mere tax-exempt status is "federal financial assistance" and thus triggers the application of laws applying to recipients thereof. Many ACSI member schools are tax-exempt and receive no federal grants, loans, or other benefits. Especially if the Department maintains its erroneous understanding of the Act's exclusion of "gender identity disorders," our members and others must know whether the Department believes that Section 504 applies to them.

Thank you for your consideration of these points.

Respectfully submitted,



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