



What Can Single-Sex Institutions Do in Light of DOE's Title IX Attack on Transgender Admissions at Smith College?

Blogs

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In June 2025, a group calling itself “Defend Education” filed a complaint against Smith College for discrimination on the basis of sex-based discrimination based on its admission of transgender women. Smith has admitted transgender women since 2015 and currently considers “any applicants who self-identify as women.” On May 4, 2026, the Department of Education opened a Title IX investigation.

The DOE alleges Smith violated Title IX by “admitting men” and providing access to “women’s intimate spaces.” The DOE advances the theory that Title IX’s single-sex exemptions turn on “biological sex” rather than gender identity. Nothing in the statute or the regulations sets forth the “biological sex” definition DOE advances.

Even if DOE could provide legal support for its biological sex definition, the investigation has other fundamental flaws. Under 20 U.S.C. § 1681(a)(1), the admissions prohibition applies only to public undergraduate institutions, not private ones. This means a private college or university—such as a private women’s college—is not legally barred by Title IX from making admissions decisions that differentiate by sex at the undergraduate level.

But in her recent article in the Chronicle of Higher Education, Katherine Mangan poses the question: “The Law Allows Smith College to Admit Transgender Students. Could Trump’s Attack Work Anyway?” In her article, Mangan warns that, even if legally infirm, the investigation could chill women’s colleges’ inclusion policies—echoing recent patterns where institutions preemptively curtailed DEI initiatives in response to executive actions lacking legal merit.

While it is far from clear that DOE plans to expand its efforts beyond Smith, cautious single-sex institutions may want to consider reviewing their own policies and procedures. For example, they could: (a) conduct a privileged Title IX risk assessment focused on the admissions-policy carveout for private undergraduate institutions, aligning public-facing statements with the statutory framework; (b) adopt clear, board-approved gender identity

and admissions definitions that expressly reconcile single-sex missions with inclusive criteria, and cross-reference facility-access, housing, and privacy protocols; (c) tighten compliance infrastructure with documented grievance, privacy, and safety procedures applicable to all students, emphasizing individualized assessments and nondiscrimination; (d) prepare an investigation-response playbook, including document retention, media strategy, and coalition coordination with peer institutions; (e) stress-test policies through tabletop exercises and counsel-reviewed FAQs to avoid inconsistent communications; and (f) establish litigation reserves and joint-defense frameworks to deter coercive enforcement and support swift relief if necessary.

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