



March 12, 2025

Via Electronic Mail: OCR@ed.gov

Craig Trainor
Acting Assistant Secretary
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100

Request for Investigation regarding Violations of Title IX of the Higher Education Act of 1972 by Kenyon College

Dear Acting Assistant Secretary Trainer

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to promote the rule of law, ensure due process and equal protection for all Americans, and combat invidious discrimination on the basis of race, color, national origin, and sex in America’s schools. Accordingly, AFL respectfully requests that the Department of Education open an investigation of the Kenyon College (“Kenyon”) located in Gambier, Ohio.

The Department of Education Office for Civil Rights (“OCR”) enforces Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 et seq., and its implementing regulations, which prohibit discrimination on the basis of sex in education programs and activities operated by entities receiving federal financial assistance from the Department of Education. Kenyon College is a recipient of federal financial assistance and is therefore subject to Title IX.

AFL requests that OCR exercise its regulatory authority set forth in 34 C.F.R. § 104.61, to initiate an investigation.

BACKGROUND

On February 12, 2025, Kenyon’s President Julie Kornfeld, Provost Jeff Bowman, and Vice President for Student Affairs Celestino Limas published a statement

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announcing Kenyon’s response to Ohio Senate Bill 104’s passage.¹ The bill requires all educational institutions to “designate each student restroom, locker room, changing room, or shower room that is accessible by multiple students at the same time, whether located in a school building or located in a facility used by the school for a school-sponsored activity, for the exclusive use by students of the male biological sex only or by students of the female biological sex only” by the bills effective date, February 25, 2025. OHIO REV. CODE ANN. § 3319.90(B)(1).

In the statement, Kenyon’s president and top administrators explained that Kenyon would designate multi-occupancy gender-neutral restrooms, locker rooms, changing rooms or shower rooms to be for use by either “men” or “women.” While the statement stated that “[t]he law prohibits Kenyon from knowingly permitting members of the ‘male biological sex’ to use multi-occupancy student restrooms, locker rooms, changing rooms or shower rooms designated for use by members of the ‘female biological sex,’ and vice versa,” the statement stated that no changes would be made to multi-occupancy restrooms at Kenyon located in academic and administrative buildings because these restrooms “are not considered student restrooms within the meaning of the Ohio law, as they are not, and cannot be, designated for use exclusively by students.” The statement continues, “[s]tudents are permitted to use these restrooms if they choose to do so, but the student restroom requirements outlined above [requiring designating restrooms based on biological sex] do not apply to these facilities.”²

KENYON’S BATHROOM POLICY ANNOUNCED ON FEBRUARY 12, 2025 DOES NOT COMPLY WITH FEDERAL LAW

On January 20, 2025, President Trump signed Executive Order 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*.³ The order establishes that it is the official policy of the United States to recognize two sexes, male and female, defining “sex” as “an individual’s immutable biological classification as either male or female [and] is not a synonym for and does not include the concept of ‘gender identity.’”

Further, Executive Order 14168 states that “[e]ach agency and all Federal employees shall enforce laws governing sex-based rights, protections, opportunities, and accommodations to protect women and men as biologically distinct sexes.”⁴ The Order also states that “[a]gencies shall effectuate this policy by taking appropriate action to ensure that intimate spaces designated for women, girls, or females (or for men, boys,

¹ *Required Changes to Certain Campus Restrooms*, KENYON (Feb. 12, 2025), <https://perma.cc/K66F-YHPU>.

² *Id.*

³ Exec. Order 14,168, 90 Fed. Reg. 8615 (Jan. 30, 2025).

⁴ *Id.* at 8616.

or males) are designated by sex and not identity.” Kenyon’s policy does not allow for female-only restrooms in academic and administrative buildings.

Furthermore, Kenyon’s failure to provide separate restrooms for men and women in academic and administrative buildings appears to violate Title IX. OCR has opened a directed investigation in a similar case to investigate whether Denver Public Schools “discriminates against students on the basis of sex by installing multi-stall, all gender restrooms in District school facilities, in violation of Title IX and its implementing regulations,” as described by Acting Assistant Secretary for Civil Rights Craig Trainor.⁵

Kenyon’s policy opens the door for female students to fear harassment when they use restrooms in academic and administrative buildings. Women on college campuses already have a high rate of sexual harassment,⁶ and this policy is likely to amplify harassment at Kenyon. Kenyon’s president’s and top administrators’ carve-out for academic and administrative buildings discriminates and harasses female students who do not feel safe sharing intimate spaces with biological men. The Department of Education’s regulations specify that sexual harassment is “based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity” 34 C.F.R. § 106.2. The evaluation includes consideration of the following:

- (i) The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
- (ii) The type, frequency, and duration of the conduct;
- (iii) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- (iv) The location of the conduct and the context in which the conduct occurred; and
- (v) Other sex-based harassment in the recipient’s education program or activity.

⁵ *Press Release, U.S. Department of Education Launches Investigation into Denver Public Schools for Converting Girl’s Restroom to All-Gender Facility*, Dep’t of Educ. (Jan. 28, 2025), <https://perma.cc/KX6V-LG59>.

⁶ See e.g. Leila Wood et al., *Sexual Harassment at Institutions of Higher Education: Prevalence, Risk, and Extent* at 1, J. OF INTERPERSONAL VIOLENCE (May 2021), <https://perma.cc/BT76-JUYQ> (“Evidence indicates that 50% to 90% of undergraduate women experience sexual harassment while in school”).

34 C.F.R. § 106.2. These criteria should be satisfied here. Under the policy, a female student requiring use of a restroom during class in an academic building has limited alternatives if the single-use facilities are already occupied, perhaps by another female student in the same uncomfortable situation.

REQUEST FOR INVESTIGATION

Accordingly, we ask that OCR promptly open a directed investigation into the allegations in the complaint, take all actions necessary to remedy the unlawful practices and procedures and order all appropriate relief.

Thank you for your attention to this crucial matter, and do not hesitate to contact us for further information.

Sincerely,

/s/ Will Scolinos

America First Legal Foundation

Cc: Candice Jackson, Deputy General Counsel, Office of the General Counsel