

United States Senate

September 6, 2022

Honorable Tom Vilsack
Secretary
U.S. Department of Agriculture
212A Whitten Building
1400 Independence Avenue, SW
Washington, DC 20250

Honorable Cindy Long
Administrator
Food and Nutrition Service
U.S. Department of Agriculture
Braddock Metro Center II
1320 Braddock Place
Alexandria, VA 22314

Dear Secretary Vilsack and Administrator Long,

I write today to express my ardent opposition to the memorandum entitled “Application of *Bostock v. Clayton County* to Program Discrimination Complaint Processing – Policy Update” issued by the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA) on May 5, 2022 (CRD 01-2022). Further, I am seeking clarification on the implications of the document on schools.

This memorandum states that USDA will expand Title IX’s prohibition on sex discrimination to also prohibit discrimination on the basis of sexual orientation and gender identity in the Food and Nutrition Act of 2008. This redefinition has no basis in statute and lacks evidence of congressional intent. Beyond this blatant overstep of authority, the document needlessly puts children at risk of losing access to lunch by excluding schools from the National School Lunch Program (NSLP) if they cannot affirm progressive gender ideology.

Since the Department of Education issued a notice of interpretation and proposed a rule to greatly expand the definition of sex discrimination under Title IX programs and activities, children, parents and schools have experienced havoc as it relates to clear policies in athletics, locker rooms and bathrooms. This understanding of what constitutes sex discrimination has never been affirmed in law. Now, instead of focusing on ensuring kids in need can eat lunch at school, USDA has adopted an expansive and harmful understanding of the law in an attempt to scare schools into adopting progressive ideology.

While I appreciate USDA’s clarification that they will honor Title IX’s exemption for religious schools, concerns remain about the scope of this guidance into school policies unrelated to the administration of the NSLP. Schools that honor safety and privacy for children in sex-segregated spaces, such as in athletics and bathrooms, are concerned that their policies will place their eligibility in the NSLP at risk.

It is for the above reasons that I ask for a prompt and thorough response to the following questions:

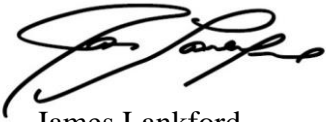
1. Will FNS enforce the prohibitions on discrimination reflected in USDA’s memorandum entity-wide (as in Title IX’s prohibitions) or limit its enforcement to discrimination directly related to the administration and delivery of NSLP? Will FNS enforcement be similarly limited with respect to its other programs? For example, will a school be at risk of being prohibited from participating in the NSLP if they maintain sex-segregated bathrooms absent a religious exemption?
2. How will USDA evaluate compliance with this new guidance? What metrics does USDA use to measure compliance and what efforts will USDA make to ensure all schools are made aware of these standards prior to any enforcement action?

3. The USDA requirement for schools that participate in NSLP to post the “And Justice for All” poster derives from an internal departmental regulation (DR 4300-003). Does USDA view this requirement as legally enforceable? If so, would the requirement to hang the new poster including sexual orientation and gender identity language be subject to the Title IX religious exemption?

4. What efforts is USDA making to communicate to state agencies and NSLP recipients the legal limitations of this memorandum? What further public guidance will USDA provide for this purpose?

I look forward to receiving your timely reply.

In God We Trust,

A handwritten signature in black ink, appearing to read "James Lankford", with a stylized flourish at the end.

James Lankford
United States Senator