

January 20, 2026

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U.S. Department of Health and Human Services
Office for Civil Rights
Attention: Disability NPRM, RIN 0945-AA27
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

RE: Department of Health and Human Services (HHS), Notice of Proposed Rulemaking, 45 CFR Part 84, RIN 0945-AA27, 90 Fed. Reg 59478 (Dec. 18, 2025) – OPPOSE

To Whom It May Concern:

I write on behalf of Disability Rights Education and Defense Fund (DREDF). DREDF is a national nonprofit law and policy center dedicated to advancing and protecting the civil and human rights of people with disabilities. Founded in 1979 by people with disabilities and parents of children with disabilities, DREDF remains board- and staff-led by members of the communities for whom we advocate. DREDF pursues its mission through education, advocacy, and law reform efforts, and is nationally recognized for its expertise in the interpretation of federal civil rights laws protecting persons with disabilities.

DREDF opposes the Department of Health and Human Services' Notice of Proposed Rulemaking which seeks to allow recipients of HHS dollars to discriminate against people with gender dysphoria based on disability. The proposed rule is contrary to the text of Section 504 of the Rehabilitation Act and would harm people with gender dysphoria. Further, the proposal is part of an ongoing coordinated campaign against the transgender community by the administration. Animus toward a group of people is not a lawful basis for rulemaking.

In his remarks at the December 18, 2025, press conference announcing the proposed rule along with several other anti-trans policies, Secretary Robert F. Kennedy, Jr. invoked the legacy of Senator Ted Kennedy, a lead sponsor of the Americans with Disabilities Act (ADA). DREDF worked on the passage of the ADA and later the enactment of the ADA Amendments Act of 2008 (which amended both the ADA and Section 504). DREDF collaborated closely with Senator Kennedy and other congressional leaders throughout these legislative processes. DREDF knows that Congress intended Section 504 and the ADA to be construed as broadly as possible to protect people with all different types of disabilities from discrimination. As the statute explicitly states, “[t]he definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the

terms of this Act." 42 U.S.C. § 12102(4)(A). Congress intended executive agencies like HHS to follow its direction. See ADA Amendments Act of 2008, 110 P.L. 325, sec. 2 (Findings and Purposes), (b)(6) (describing Congress's "expectation" that the EEOC amend its regulations to conform to the Amendments Act). The proposed rulemaking is contrary to this congressional direction.

Further, DREDF rejects in the strongest possible terms Secretary Kennedy's statement that protecting people with gender dysphoria from disability discrimination somehow harms people with other disabilities. This sentiment is contrary to foundational principles of the disability rights movement, which is a cross-disability movement. People with disabilities should not be excluded based on diagnosis. People with all different kinds of disabilities are stronger when we work together and resist efforts to divide us. Including people with gender dysphoria within the protections of Section 504 does not harm people with other disabilities.

The proposed rule would promote disability discrimination against people with gender dysphoria in HHS-funded programs. People with gender dysphoria could be turned away from basic health and human services, or face mistreatment when accessing these programs, regardless of whether the services are related to gender dysphoria. People with gender dysphoria already face barriers in accessing HHS-funded programs. These programs include not only healthcare services but school readiness programs like Head Start, services for parents and children interacting with foster care, adoption, and child welfare systems, and supports for independent living funded by HHS's Administration for Community Living.

Research shows that transgender people, including those with gender dysphoria, disproportionately have negative experiences with healthcare providers. A 2022 study of 92,329 transgender people showed that about half (47%) had a negative experience with a health provider related to being transgender in the prior year, such as being turned away, denied medical care, or harassed. Mistreatment was even more common (58%) among respondents who identified as having a disability. Many transgender people postpone or forgo needed healthcare and other necessary services due to concerns about mistreatment and discrimination. Ankit Rastogi, *et al.*, *Health and Wellbeing: A Report of the 2022 U.S. Transgender Survey* 28, 31 (Jun. 2025). The proposed rule would make these barriers even worse by encouraging disability discrimination based on bias or stereotypes about people with gender dysphoria.

Most courts considering the question have ruled that gender dysphoria is not categorically excluded from federal disability rights protections. In *Williams v. Kincaid* (4th Cir. 2022), the Fourth Circuit carefully considered the question and ruled that people with gender dysphoria can be covered. First, the appellate court explained that "gender dysphoria" differs dramatically from now-rejected diagnosis of "gender identity disorder" (GID). While GID focused exclusively on a person's gender identity and treated that identity itself as a "disorder," gender dysphoria is a term that describes

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clinically significant distress and other disabling symptoms. Second, the court reviewed the express direction given by Congress in the 2008 to construe the definition of "disability" broadly, to "maximum extent permitted" by the law. Third, the court weighed the principle of constitutional avoidance and noted evidence that the original GID exclusion was itself motivated by discriminatory animus toward transgender people. *See, e.g.*, 135 Cong Rec S 10765 (Sept. 7, 1989). *Williams* is the only appellate court ruling on the issue. Every court decision after *Williams* has ruled that gender dysphoria is not categorically excluded.

The proposed rule was announced at a press conference that featured harshly negative statements about transgender people as a group. The Deputy Secretary of HHS said that recognizing transgender people is "at the root of the evils we face," shows a "hatred for nature as God designed it," and "can destroy nations from within." He described the position that people with gender dysphoria can be protected from disability discrimination as "perverted." The same day, HHS released two additional rules designed to harm transgender people. 90 Fed. Reg 59441, 59463. Bigotry is not a lawful basis for rulemaking.

This Administration has taken many actions to harm transgender youth and adults. These include not only the three rules released on December 18, 2025, but at least eight anti-trans Executive Orders and EO rescissions from January 2025 to the present. DREDF opposes these actions and any discrimination against transgender people, including trans people with and without disabilities.

Finally, the period provided for this rulemaking for comments has been insufficient. Only 30 days were provided. The 30 days overlapped with the holiday and end of year break. During the comment period, DREDF discovered that the rulemaking portal was incorrectly closed for several days. It was not reopened under DREDF and others contacted the agency. The comment period should be extended by another 30 days.

Thank you for the opportunity to share our views on this rulemaking.

Sincerely,



Claudia Center
Legal Director