

*Submitted via regulations.gov.*

May 15, 2023

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U.S. Department of Education  
400 Maryland Avenue SW  
Washington DC, 20202

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**Re: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams (Federal Register 88, no. 71); ED-2022-OCR-0143**

We the undersigned 212 LGBTQI+ justice, civil rights, and education organizations are pleased to submit this comment in response to the proposed rulemaking by the U.S. Department of Education (“the Department”) for Title IX §106.41, addressing nondiscrimination in school sports where separate-sex teams are lawfully permitted.<sup>1</sup> We believe that transgender, nonbinary, and intersex youth in schools should have equal opportunity to participate in school sports consistent with their gender identity and that restrictions that target transgender, nonbinary, and intersex youth should not be permissible.

The proposed rule, as intended and properly understood, makes participation consistent with gender identity the only approach to sex-separated school sports teams that does not risk a covered entity violating Title IX. For a covered entity who nonetheless seeks to adopt or apply exclusionary eligibility criteria, the proposed rule requires that “for each sport, level of competition, and grade or education level,” the restriction be “substantially related to achievement of an important educational objective” and “minimize harm.”<sup>2</sup> Through guidance accompanying the regulatory text (“the preamble”), the Department makes clear that policies that categorically ban transgender students from participating in school sports consistent with their gender identity could never satisfy this test, and thus such policies necessarily violate Title IX.<sup>3</sup> In addition, the Department expressly names transphobic myths as unacceptable grounds for any restriction targeting transgender, nonbinary, and intersex youth in schools, meaning that policies that rely on such myths will likewise fail the test.<sup>4</sup> If properly interpreted and robustly enforced, the proposed rule represents a significant and important step towards ensuring equal educational opportunity by severely limiting restrictions on participation in school sports consistent with gender identity.<sup>5</sup>

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<sup>1</sup> U.S. Department of Education, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams,” *Federal Register* 88, no. 71 (April 13, 2023), <https://www.federalregister.gov/documents/2023/04/13/2023-07601/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

<sup>2</sup> *Id.* at 22891.

<sup>3</sup> *Id.* at 22873.

<sup>4</sup> *Id.* at 22872.

<sup>5</sup> *Id.* at 22891.

However, in the context of an ongoing and highly coordinated effort to denigrate, erase, and further stigmatize transgender youth and the broader LGBTQI+ community, we cannot assume good actors, nor should we undervalue revisions that would best support implementation of a strong Title IX rule. We must also name that the discussion in the preamble of “prevention of sports-related injury” and “fairness in competition” can be construed as giving credence to transphobic myths even as it makes clear that the Department intends to closely scrutinize efforts to use overbroad generalizations and sex-based stereotypes to justify restrictions on students’ equal participation consistent with their gender identity. For these reasons, we urge revisions to support strong implementation and advance full inclusion of transgender, nonbinary, and intersex students in school sports.

### Current Landscape: Transgender, Nonbinary, and Intersex Students’ Opportunities to Participate

Transgender, nonbinary, and intersex young people face substantial barriers to equal opportunity in school sports, including being prevented or discouraged from playing sports by school staff or coaches<sup>6</sup> and being forced to use locker rooms that do not correspond with their gender identity (which has been found to be associated with a decreased likelihood of participation in school sports).<sup>7</sup> Recently, these barriers have taken the form of outright bans on transgender students playing school sports on separate-sex teams consistent with gender identity, denying them the opportunity to play alongside their cisgender peers. This type of categorical ban has been enacted in 21 states to date.<sup>8</sup>

In addition to what the Department describes as “categorical” bans, other discriminatory restrictions similarly harm students by effectively preventing them from participating in sports on equal terms, or often from participating at all. These include requirements that target transgender and intersex students by barring their participation absent proof of medical interventions such as hormone therapy or surgery,<sup>9</sup> or proof of specific hormone levels, anatomical development, or

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<sup>6</sup> The 2015 National School Climate Survey was the first to ask specifically about being prevented or discouraged from playing school sports and found that transgender students were more likely than all other LGBTQ+ students to report such discrimination. Joseph G. Kosciw, Emily A. Greytak, Noreen M. Giga, Christian Villenas, David J. Danischewski, *The 2015 National School Climate Survey: The experiences of LGBTQ+ youth in our nation’s schools*, p. 87 (New York: GLSEN, 2016), <https://www.glsen.org/research/2015-national-school-climate-survey>.

Analysis of 2019 National School Climate Survey data similarly found that transgender students were more likely than all other LGBTQI+ students to report being prevented or discouraged from participating in school sports by school staff; nonbinary students were more likely than cisgender LGB students to report being prevented or discouraged from participating in school sports by school staff. Transgender girls were most likely to report this type of discrimination with more than one in five (21%) reporting that they were prevented or discouraged from playing sports. Caitlin M. Clark, Joseph G. Kosciw, and Jacquelyn Chin, “LGBTQ Students and School Sports Participation,” GLSEN (2021), <https://www.glsen.org/research/lgbtq-students-and-school-sports-participation>.

<sup>7</sup> Joseph G. Kosciw, Emily A. Greytak, Adrian D. Zongrone, Caitlin M. Clark, Nhan L. Truong, *The 2017 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation’s schools*, p. 42 (New York: GLSEN, 2018). <https://www.glsen.org/research/2017-national-school-climate-survey>.

<sup>8</sup> The 21 states with categorical bans applying to K-12 are: Alabama, Arizona, Arkansas, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Montana, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming. GLSEN and TransAthlete.com, “Trans and Nonbinary Athletic Inclusion Policies” (updated April 2023), <https://maps.glsen.org/trans-and-nonbinary-athletic-inclusion-policies/>. Note that some state categorical bans target transgender girls and women for exclusion. See, e.g., *West Virginia HB3293 (April 2021)*; Florida SB 1028 (July 2021) (creating § 1006.205(3)(a), Fla. Stat., the “Fairness in Women’s Sports Act”).

Temporary injunctions have been issued blocking enforcement of categorical bans in Idaho, Utah, Indiana, and West Virginia. See *Hecox v. Little*, 479 F. Supp. 3d 930 (D. Idaho 2020), *aff’d*, No. 20-35813, 2023 WL 1097255 (9th Cir. Jan. 30, 2023); *B.P.J. by Jackson v. W. Virginia State Bd. of Educ.*, No. 23-1078, 2023 WL 2803113 (4th Cir. Feb. 22, 2023); *A.M. by E.M. v. Indianapolis Pub. Schs.*, No. 1:22-CV-01075-JMS-DLP, 2022 WL 2951430 (S.D. Ind. July 26, 2022), *appeal dismissed*, No. 22-2332 (7th Cir. Jan. 19, 2023); *Roe v. Utah High School Activities Ass’n*, No. 220903262, 2022 WL 3907182 (D. Ct. Utah Aug. 19, 2022). In some states, a categorical ban also applies to postsecondary school sports; in others, the categorical ban only applies to secondary or high school sports. See Movement Advancement Project, “Equality Maps: Bans on Transgender Youth Participation in Sports,” [https://www.mapresearch.org/equality-maps/youth/sports\\_participation\\_bans](https://www.mapresearch.org/equality-maps/youth/sports_participation_bans).

<sup>9</sup> Nine states have active discriminatory restrictions. Eleven states that have enacted categorical bans previously imposed discriminatory restrictions, including three states that made surgery a requirement for participation consistent with gender identity. In states without a comprehensive policy, school districts may impose discriminatory restrictions through case-by-case assessments. For example, in Michigan, the participation of transgender girls consistent with gender identity in high school interscholastic sports is determined on a case-by-case basis (transgender boys are

amended identification documents that amount to requirements for such interventions. For many students, across all ages and levels of school and competition, such requirements call for medical interventions that may not be medically indicated and may even be contraindicated or otherwise unwanted by the individual. At all levels of school, such requirements may place real, unjustifiable pressure on students to undergo medical interventions based on the requirements and timetables of school sports eligibility, rather than basing such decisions on their own medical needs. Even students for whom such interventions represent medically necessary gender-affirming care often cannot access this care due to cost, insurance coverage, limited availability of providers, and an increasing number of state-level prohibitions on participation. For all of these reasons, such restrictions may exclude many, most, or virtually all transgender students from sports participation even if they are not “categorical” as described by the Department.

CDC data show that transgender students are significantly less likely to report having played on a school sports team in the past year than their cisgender peers.<sup>10</sup> Transgender students who are Black, Indigenous, and people of color (BIPOC) experience compounded marginalization in school sports. For example, Black transgender youth were significantly less likely to report having played on a school sports team in the past year than both non-Black transgender students and Black cisgender students.<sup>11</sup> Another recent study of CDC data found that transgender girls of color were significantly less likely to report participating in school sports than other girls.<sup>12</sup>

GLSEN’s National School Climate Survey (NSCS) of LGBTQ+ students found that nearly half (46.0%) of transgender secondary students, including those who identify as nonbinary, were prevented from playing on a school sports team consistent with gender identity.<sup>13</sup> More than one in four (27.7%) of nonbinary students reported the same. Between 2019 and 2021, the percentage of transgender and nonbinary students reporting that they had been barred from school sports more than doubled.<sup>14</sup>

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able to participate consistent with gender identity). GLSEN and TransAthlete.com, “Trans and Nonbinary Athletic Inclusion Policies,” (updated April 2023), <https://maps.glsen.org/trans-and-nonbinary-athletic-inclusion-policies/>.

<sup>10</sup> 41% of transgender youth reported participating on at least one school sports team in the past year, compared to 59% of cisgender youth. J. Rhodes Perry and Somjen Frazer, *On All Sides: How Race & Gender Influence Health Risk for Transgender Students of Color* (Washington, DC: Advocates for Youth, 2020), <https://advocatesforyouth.org/wp-content/uploads/2020/09/On-All-Sides-Full-Report.pdf>.

Similarly, GLSEN has found that LGBTQ+ students were half as likely as non-LGBTQ students to participate in both interscholastic and intramural sports, that transgender and nonbinary students were less likely to participate in sports than their cisgender peers. Clark, Kosciw, and Chin, “LGBTQ Students and School Sports Participation.”

See also Caitlin M. Clark and Joseph G. Kosciw, “Engaged or excluded: LGBTQ youth’s participation in school sports and their relationship to psychological well-being,” *Psychology in the Schools* 59, no. 1 (2022): 95-114, <https://doi.org/10.1002/pits.22500>.

<sup>11</sup> 36% of Black transgender youth reported that they participated in at least one school sports team, compared to 40% of non-Black transgender youth, 54% of Black cisgender youth, and 59.2% of non-Black cisgender youth. J. Rhodes Perry and Shoshana K. Goldberg, “Sports Participation and Health of Black Transgender Youth,” Advocates for Youth (2021), <https://www.advocatesforyouth.org/wp-content/uploads/2021/07/Black-Trans-Youth-Sports-Participation-and-Health-Policy-Brief.pdf>.

<sup>12</sup> Raina V. Voss, Lisa M. Kuhns, Gregory Phillips II, Xinzi Wang, Sigrid F. Wolf, Robert Garofalo, Sari Reisner, and Lauren B. Beach, “Physical Inactivity and the Role of Bullying Among Gender Minority Youth Participating in the 2017 and 2019 Youth Risk Behavior Survey,” *Journal of Adolescent Health* (2022), <https://doi.org/10.1016/j.jadohealth.2022.08.020> (finding that transgender girls were less likely to participate in school sports and that, after adjusting for demographics, Black, Hispanic, and Asian transgender girls were significantly less likely to indicate that they participated in school sports).

<sup>13</sup> Joseph G. Kosciw, Caitlin M. Clark, Leesh Menard, *The 2021 National School Climate Survey: The experiences of LGBTQ+ youth in our nation’s schools*, (New York: GLSEN), pp. 91-93 <https://www.glsen.org/research/2021-national-school-climate-survey>.

<sup>14</sup> 51.5 % of transgender boys reported being prevented from playing on a sports team consistent with their gender identity in 2021, compared to 15.8% in 2019. 45.9% of transgender girls reported being prevented from playing on a sports team consistent with their gender identity in 2021, compared to 21.0% in 2019. 37.1% of trans nonbinary students and 53.2% of students who identified as transgender only reported being prevented from playing on a sports team consistent with their gender identity in 2021, compared to 16.9% of trans students who identified as neither male or female in 2019. 27.7% of nonbinary students who do not identify as transgender reported being prevented from playing on a sports team consistent with their gender identity in 2021, compared to 10.7% in 2019. Kosciw, et al., *The 2021 National School Climate Survey*, p. 92, <https://www.glsen.org/research/2021-national-school-climate-survey>; Clark, et al., “LGBTQ Students and School Sports Participation,” p. 3, <https://www.glsen.org/research/lgbtq-students-and-school-sports-participation>.

In addition to unfairly depriving transgender, nonbinary, and intersex students of the educational and wellbeing benefits conferred by participation in school sports, restrictions on participation that target these students adversely impact their educational progress and mental health. Data show that experiencing anti-LGBTQI+ discrimination, including in the form of being barred from playing school sports consistent with gender identity, is associated with a nearly threefold increase in absences due, lower GPAs, decreased educational aspirations, lower levels of self-esteem, higher levels of depression, and a twofold increase in the likelihood of reporting that the student seriously considered suicide in the past year, compared to LGBTQI+ students who did not report experiencing such discrimination.<sup>15</sup> The Trevor Project’s 2022 National Survey on LGBTQ Youth Mental Health found that 83% of transgender and nonbinary youth aged 13-24 reported that they have worried about transgender people being denied the ability to play sports due to state or local laws.<sup>16</sup> The same study found that, compared to their cisgender LGB peers, transgender and nonbinary youth were more likely to report seriously considering suicide (53% vs. 33%) and were twice as likely to report attempting suicide (19% vs. 9%).<sup>17</sup>

Though openly motivated by a desire to exclude transgender students (often specifically transgender girls and women), these categorical bans also lead to the exclusion of young people with innate variations in their physical sex characteristics (also known as intersex variations)<sup>18</sup>, who under the vague and arbitrary lines in state laws might be deemed ineligible for a separate-sex team based on one or more bodily traits.<sup>19</sup> While less is known about the experiences of intersex students with school sports (owing to the absence of inclusive data collection), intersex students often avoid or are discouraged from participating in sports for fear of scrutiny. For example, a recent *Washington Post* article highlighted the story of a nonbinary intersex student whose mother felt compelled to encourage them to pursue “art and music and other things” instead of sports because of the scrutiny and discrimination they would likely encounter in school sports.<sup>20</sup>

Restricting students’ ability to participate in school sports consistent with their gender identity institutes a system of gender policing that creates a hostile environment for transgender and cisgender students alike. In Utah, a school “investigated” a cisgender girl after the parents of two girls she defeated in a school athletic competition questioned whether the winning athlete was transgender.<sup>21</sup> Exclusionary restrictions on participation consistent with gender identity encourage harmful scrutiny of all women and girls who others might deem to be “too tall,” “too muscular,”

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<sup>15</sup> Kosciw, et al., *The 2021 National School Climate Survey*, pp. 34-37, 43-44, <https://www.glsen.org/research/2021-national-school-climate-survey>. Among LGBTQ+ students who said they did not plan to graduate high school or were unsure if they would graduate, 31.4% said it was because of the hostile climate created by gendered school policies and practices.

<sup>16</sup> The Trevor Project, “2022 National Survey on LGBTQ Youth Mental Health,” 2022, at 14, [https://www.thetrevorproject.org/survey-2022/assets/static/trevor01\\_2022survey\\_final.pdf](https://www.thetrevorproject.org/survey-2022/assets/static/trevor01_2022survey_final.pdf).

<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Hecox v. Little*, *Brief for Amicus Curiae interACT*, at \*3-4 (Dec. 21, 2020) (“Each year, tens of thousands of children are born intersex. “Intersex” is an umbrella term describing a wide range of natural variations in physical traits—including external genitals, internal sex organs, chromosomes, and hormones—that do not fit typical binary notions of male and female bodies. Each year, as many as 2% of all babies are born with these variations. This incidence rate is similar to the percentage of the U.S. population that is Jewish (about 1.9%) or Mormon (about 1.6%).”) (internal cites omitted).

<sup>19</sup> *See, e.g. Hecox*, 479 F. Supp. at 984 (“This excludes some girls with intersex traits because they cannot establish a ‘biological sex’ of female based on these verification metrics.”)

<sup>20</sup> Anne Branigin, “Intersex youths are also hurt by anti-trans laws, advocates say,” *Washington Post*, July 16, 2022, <https://www.washingtonpost.com/nation/2022/07/16/intersex-anti-trans-bills/>.

<sup>21</sup> Courtney Tanner, “Utah parents complained a high school athlete might be transgender after she beat their daughters,” *Salt Lake Tribune*, Aug. 18, 2022, <https://www.sltrib.com/news/education/2022/08/18/utah-parents-complained-high/>.

or otherwise “unfeminine.” Because of racist and sexist stereotypes that have tended to link “femininity” with whiteness, any restrictions on students’ ability to participate in school sports consistent with their gender identity are likely to particularly harm BIPOC women and girls.<sup>22</sup>

All students should have access to the benefits of school sports participation. For transgender, nonbinary, intersex, and other LGBTQI+ students, these benefits are particularly impactful and may serve as a protective factor against higher rates of depression and suicidality.<sup>23</sup> Among transgender and nonbinary students, participation in sports is associated with higher GPAs,<sup>24</sup> increased feelings of school belonging,<sup>25</sup> higher self-esteem,<sup>26</sup> and lower levels of depression.<sup>27</sup>

Many states have already acted to support transgender, nonbinary, and intersex students’ equal opportunities to participate in school sports. As early as 2007, states adopted policies or guidance expressly supporting and facilitating the equitable participation of transgender students in school sports consistent with their gender identities.<sup>28</sup> Sixteen states and the District of Columbia have implemented such policies.<sup>29</sup> In at least one state, Oregon, the trans-inclusive school athletics participation policy expressly addresses the participation of nonbinary and intersex students.<sup>30</sup>

A recent analysis of CDC data found that there was no negative impact on the participation of girls and women in school sports in states that had implemented trans-inclusive state athletics policies.<sup>31</sup> In fact, early evidence from California and Connecticut suggests that trans-inclusive policies are

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<sup>22</sup> National Women’s Law Center, “Fulfilling Title IX’s Promise: Let Transgender and Intersex Students Play,” June 2022, [https://nwlc.org/wp-content/uploads/2019/09/NWLC\\_Trans50th\\_FactSheet.pdf](https://nwlc.org/wp-content/uploads/2019/09/NWLC_Trans50th_FactSheet.pdf).

<sup>23</sup> Among LGBTQI+ youth, transgender, nonbinary, and intersex students have elevated suicide risk. More than half (53%) of transgender and nonbinary youth seriously considered attempting suicide in the past year, compared to 45% of LGBTQ youth. The Trevor Project, 2022 National Survey on LGBTQ Youth Mental Health, (West Hollywood, California: The Trevor Project, 2022), <https://www.thetrevorproject.orgsurvey-2022/>. Nearly 1 in 5 intersex youth (19%) attempted suicide in the past 12 months, compared to 14% of LGBTQ youth who are not intersex. Myeshia N. Price, Amy E. Green, Jonah DeChants, and Carrie Davis, *The mental health and wellbeing of LGBTQ youth who are intersex*, (New York: The Trevor Project, 2021), 11, <https://www.thetrevorproject.org/wp-content/uploads/2021/12/Intersex-Youth-Mental-Health-Report.pdf>. LGBTQI+ youth have greater exposure to universal risk factors for depression and other mental health issues. Protective factors are those that promote mental health, well-being, and resilience. See, e.g. Stephen T. Russell and Jessica N. Fish, “Mental Health in Lesbian, Gay, Bisexual, and Transgender (LGBT) Youth,” *Annual Review of Clinical Psychology* 12 (2016): 465–487.

<sup>24</sup> GLSEN, “Physical Inactivity and the Role of Bullying Among Gender Minority Youth Participating in the 2017 and 2019 Youth Risk Behavior Survey.” (Stating that “transgender youth may stand to benefit more than nontransgender youth from the protective effects of physical activity” giving “the minority stress experiences faced by transgender youth and their associated risk for stress-linked health disparities, (e.g., poor mental health, substance use, and obesity).”)

<sup>25</sup> GLSEN, “The Experiences of LGBT Students in School Athletics (Research Brief),” 2013 <https://www.glsen.org/sites/default/files/2020-06/The%20Experiences%20of%20LGBT%20Students%20in%20Athletics.pdf>; The Trevor Project, “Research Brief: The Well-Being of LGBTQ Youth Athletes,” August 2020, <https://www.thetrevorproject.org/wp-content/uploads/2020/08/LGBTQ-Youth-Sports-and-Well-Being-Research-Brief.pdf>.

<sup>26</sup> Russell B. Toomey and Stephen T. Russell, “An initial investigation of sexual minority youth involvement in school-based extracurricular activities,” *Journal of Research on Adolescence* 23, no. 2 (2013): 304-318, <https://doi.org/10.1111%2Fj.1532-7795.2012.00830.x>; Clark, Kosciw, and Chin, “LGBTQ Students and School Sports Participation.”

<sup>27</sup> Clark, Kosciw, and Chin, “LGBTQ Students and School Sports Participation.”

<sup>28</sup> Clark, Kosciw, and Chin, “LGBTQ Students and School Sports Participation”; The Trevor Project, “Research Brief: The Well-Being of LGBTQ Youth Athletes.”

<sup>29</sup> Jayda Evans, “Ten years on, WIAA’s transgender policy keeps conversation going,” *The Seattle Times*, April 4, 2017, <https://www.seattletimes.com/sports/high-school/ten-years-on-wiaas-transgender-policy-keeps-conversation-going/>.

<sup>30</sup> GLSEN and TransAthlete.com, “Trans and Nonbinary Athletic Inclusion Policies” (updated April 2023), <https://maps.glsen.org/trans-and-nonbinary-athletic-inclusion-policies/>.

<sup>31</sup> Oregon School Activities Association, “Excerpt from 2022-2023 OSAA Handbook, Executive Board Policies,” Winter 2019, <https://www.osaa.org/docs/handbooks/GenderIdentityParticipationBP.pdf>. At least one other state, New Jersey, expressly addresses the participation of nonbinary students. See New Jersey State Interscholastic Athletic Association (NJSIAA), “Transgender Policy - Frequently Asked Question,” June 8, 2022, <https://www.njsiaa.org/sites/default/files/documents/2022-06/Transgender%20FAQ%27s%20Approved%206-8-22.pdf>.

<sup>32</sup> Shoshana K. Goldberg, “Fair Play: The Importance of Sports Participation for Transgender Youth,” Center for American Progress (February 8, 2021), 14-16, <https://www.americanprogress.org/issues/lgbtq-rights/reports/2021/02/08/495502/fair-play>. Florida and South Carolina have since passed anti-trans youth athlete laws, however, these were not implemented at the time of this analysis and would not affect the findings of this study. See GLSEN and TransAthlete.com, “Trans and Nonbinary Athletic Inclusion Policies” (updated April 2023), <https://maps.glsen.org/trans-and-nonbinary-athletic-inclusion-policies/>.

correlated with increased participation of girls in school sports.<sup>32</sup> In contrast, where states enacted trans-exclusionary policies, girls' overall participation in high school sports *declined*.<sup>33</sup>

#### Analysis and Recommendations

The proposed rule creates a test for any restriction on participation consistent with gender identity: for “each sport, level of competition, and grade or education level,” any restriction must be justified on the grounds that it is “substantially related to achievement of an important educational objective,”<sup>34</sup> and must “minimize harm” to the transgender, nonbinary, and intersex students who face additional barriers to participation (and potentially exclusion).<sup>35</sup>

The Department clarifies in the preamble that, to be “substantially related to achievement of an important educational objective,” there must be a “‘direct, substantial relationship between’ a recipient’s objective and the means used to achieve that objective,” that does not rely “on overly broad generalizations about the talents, capacities, or preferences of male and female students.”<sup>36</sup> The Department clearly states that categorical bans, such as those that “exclude all transgender girls and women from participating on any female athletic teams,” cannot be justified under this rule.<sup>37</sup>

The preamble likewise communicates several objectives that would not count as being substantially related to achievement of an important educational objective, including “administrative convenience” and transphobic and sexist objectives such as “communicating or codifying disapproval of a student or a student’s gender identity,” “excluding transgender students from sports,” “requir[ing] adherence to sex stereotypes,” as well as any stated objective that is in reality “a pretext for an impermissible interest in singling out transgender students for disapproval or harm.”<sup>38</sup> Furthermore, the proposed rule requires that any restriction on participation consistent with gender identity “minimize harm” to the transgender, nonbinary, and intersex students who would face exclusion or additional barriers to participation under that restriction.<sup>39</sup> These elements and others elaborated upon in the preamble indicate that, if properly interpreted and robustly enforced, the proposed rule would effectively prohibit restrictions on transgender, nonbinary, and intersex students’ participation in sex-separated school sports teams consistent with gender identity in K-8 and most high school sports.

***The regulatory text should expressly affirm a presumption of participation consistent with gender identity.***

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<sup>32</sup> Goldberg, “Fair Play,” 14-16 (Feb. 8, 2021).

<sup>33</sup> *Id.* at 14-15.

<sup>34</sup> U.S. Department of Education, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams,” 22891.

<sup>35</sup> *Id.* at 22891.

<sup>36</sup> *Id.* at 22873.

<sup>37</sup> *Id.* at 22873.

<sup>38</sup> *Id.* at 22872.

<sup>39</sup> *Id.* at 22891.

The proposed rule affirms the deep harm imposed by eligibility “[c]riteria that limit or deny students’ eligibility to participate in sports consistent with their gender identity... [including because such criteria] force individual students to disclose that they are transgender...; subject them to ‘embarrassment, harassment, and invasion of privacy’...; and can communicate disapproval of transgender students, ‘which the Constitution prohibits.’”<sup>40</sup> The Department also rightly acknowledges that students excluded by eligibility criteria are left with “no viable opportunity to participate in athletics if the only other option is to participate on a team that does not align with their gender identity.”<sup>41</sup>

As intended and properly understood, the proposed rule rightly establishes participation consistent with gender identity as the only approach to sex-separated school sports teams that does not risk a covered entity violating Title IX. The Department should expressly affirm in §106.41 that, where school athletics are lawfully separated by sex, there is a presumption of participation on separate-sex teams consistent with gender identity. In the preamble, the Department should expressly affirm that the burden is always on a covered entity to overcome the rule’s presumption of participation consistent with gender identity.

Furthermore, to the Department’s current discussion in the preamble of the applicability of the proposed rule to the sports participation of nonbinary students,<sup>42</sup> the Department should add that Title IX has long recognized that, when a school chooses to offer only gender-specific teams in a sport, students thereby excluded must have a reasonable opportunity to participate.<sup>43</sup> Accordingly, where only boys’ and girls’ teams are offered, nonbinary students should have the opportunity to try out for the team on which they are most comfortable.

***The regulatory text should specify that any exclusionary restriction must address a well-founded and substantial concern affecting equal opportunities in school athletics and cannot be based on overbroad generalizations or sex-based stereotypes.***

The standard in the proposed Title IX rule already prohibits schools from “rely[ing] on overly broad generalizations about the talents, capacities, or preferences of male and female students.”<sup>44</sup> For clarity and accessibility purposes, the regulatory text should make clear that, to be substantially related to the achievement of an important educational objective, the given restriction must address a well-founded and substantial concern affecting equal opportunities in school athletics and cannot be based on overbroad generalizations or sex-based stereotypes.

As discussed below, opponents of equal educational opportunity rely on deeply problematic “evidence” to justify the exclusion of transgender students. The Department should provide additional clarity regarding justifications for exclusionary restrictions that would fail to satisfy the Department’s proposed test due to reliance on evidence that uses overbroad generalizations or sex-

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<sup>40</sup> *Id.* at 22877.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 22869.

<sup>43</sup> § 106.41(b).

<sup>44</sup> U.S. Department of Education, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams,” 22873.

based stereotypes, or otherwise fails to establish a well-founded and substantial concern affecting equal opportunities in school athletics.

***The Department makes clear that categorical bans on participation consistent with gender identity are impermissible; the regulatory text should expressly include this prohibition.***

The preamble makes clear that “categorical” bans, such as those that “exclude all transgender girls and women from participating on any female athletic teams... would not satisfy the proposed regulation because, in taking a one-size-fits-all approach, they rely on overbroad generalizations that do not account for the nature of particular sports, the level of competition at issue, and the grade or education level of students to which they apply.”<sup>45</sup> We commend the Department for making clear that the bans enacted in 21 states at the time of this submission violate Title IX. To support strong implementation, the Department should include language expressly prohibiting categorical bans in §106.41.

The Department should also provide additional examples of categorical bans in the preamble. For example, where youth are unable to access gender-affirming medication, a restriction requiring such medication is a de facto categorical ban.<sup>46</sup> Finally, the Department should provide guidance for administrators implementing the rule, including those in states that have enacted categorical bans.

***The Department should rule out “injury prevention” as a permissible justification for restrictions on participation consistent with gender identity.***

The Department names “prevention of sports-related injury” as an example that a recipient “might assert... as an important educational objective in its athletic programs, particularly for older students in competitive athletic programs,” as a justification for restrictions on transgender, nonbinary, and intersex students’ opportunity to play on a male or female team consistent with gender identity.<sup>47</sup> The Department does not indicate that recipients will succeed in asserting such a justification and acknowledges that “prevention of sports-related injury does not necessarily require schools to adopt or apply sex-related criteria that would limit or deny a student’s eligibility to participate on a male or female team consistent with their gender identity.”<sup>48</sup> Our organizations understand and agree that preventing injury is an important educational interest, however, this discussion could be misconstrued as suggesting that there is any evidence behind the transphobic and sexist myth that transgender, nonbinary, or intersex students pose a risk of injury to their cisgender peers. These harmful, stigmatizing myths assume that transgender and intersex women and girls are bigger, faster, and stronger than cisgender, endosex women, and thus a danger to cisgender women and girls who must be protected.<sup>49</sup>

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<sup>45</sup> *Id.*

<sup>46</sup> Fifteen states have passed laws banning best-practice medication and surgical care for transgender youth. See Movement Advancement Project, “Equality Maps: Healthcare Laws and Policies,” [https://www.lgbtmap.org/equality-maps/healthcare\\_laws\\_and\\_policies](https://www.lgbtmap.org/equality-maps/healthcare_laws_and_policies).

<sup>47</sup> U.S. Department of Education, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams,” 22872.

<sup>48</sup> *Id.*

<sup>49</sup> Lindsay Pieper, Jaime Schultz, Libby Sharrow, Anna Baeth, and Anne Lieberman, “A statement from Athlete Ally on the future of women’s sport, co-authored by affiliated academics and endorsed by leading scholars in the fields of Kinesiology, Law and Policy, and Gender Studies:



When summarizing or discussing the justifications for eligibility restrictions put forth by proponents of excluding transgender students, the Department must be incredibly cautious in its framing in order to avoid echoing discriminatory and invalidating rhetoric that relies on the same overbroad generalizations and sex-based stereotypes that the proposed rule takes off the table. Furthermore, the Department should consider how justifying restrictions on participation consistent with gender identity by reference to prevention of injury creates a hostile environment not only for transgender, nonbinary, and intersex students but for any student who is perceived as not conforming to gender stereotypes.<sup>50</sup> Again, these restrictions encourage students to scrutinize and harass female peers who others deem to be “too tall,” “too muscular,” or otherwise “unfeminine,” and are likely to particularly harm BIPOC girls and women owing to racist and sexist stereotypes that have tended to link “femininity” with whiteness.<sup>51</sup>

Just as the Department rightly excludes the “false assumption that transgender students are more likely to engage in inappropriate conduct than other students,”<sup>52</sup> the Department should rule out “prevention of injury” as a permissible justification for restrictions on participation consistent with gender identity. Participation in sports always includes risks. Schools have a multitude of nondiscriminatory options to reduce risks, several of which it names in the preamble, including “appropriate coaching and training, requiring use of protective equipment, and specifying rules of play.”<sup>53</sup> A covered entity might also disallow an entire sport deemed too risky.<sup>54</sup> With effective, nondiscriminatory options available, discriminatory restrictions that could limit or preclude the participation of transgender, nonbinary, and intersex youth in intercollegiate athletics do not pass the test the Department proposes.

***The Department should rule out “fairness in competition” as a permissible justification for restrictions on participation consistent with gender identity.***

The preamble also discusses “fairness in competition” as an example that a recipient “might assert... as an important educational objective in its athletic programs, particularly for older students in competitive athletic programs,” as a justification for restrictions on transgender, nonbinary, and intersex students’ opportunity to play on a male or female team consistent with gender identity.<sup>55</sup> As with “prevention of injury,” the Department does not indicate that recipients will succeed in asserting such a justification and acknowledges that “ensuring fair competition... does not necessarily require schools to adopt or apply sex-related criteria that would limit or deny a student’s eligibility to participate on a male or female team consistent with their gender

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The Future of Women’s Sports Includes Transgender Women and Girls,” Athlete Ally, November 15, 2021, [http://www.athleteally.org/wp-content/uploads/2021/11/The-Future-of-Womens-Sport-includes-Transgender-Women-and-Girls-Statement\\_11.15.21.pdf](http://www.athleteally.org/wp-content/uploads/2021/11/The-Future-of-Womens-Sport-includes-Transgender-Women-and-Girls-Statement_11.15.21.pdf).

<sup>50</sup> Cf. *Doe v. Boyertown Area School District*, 897 F.3d 518 (3d Cir. 2018).

<sup>51</sup> *Hecox vs. Little*, brief amicus curiae National Women’s Law Center, Lawyers’ Committee for Civil Rights Under Law and 60 Additional Organizations in Support of Appellees and Affirmance, December 20, 2021, available at <https://nwlc.org/wp-content/uploads/2020/12/ECF-Stamped-Hecox-Amicus-12.21.2020.pdf> (“Black and brown women and girls are routinely targeted, shamed, and dehumanized for not conforming to society’s expectations of femininity.”)

<sup>52</sup> U.S. Department of Education, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams,” at 22874.

<sup>53</sup> *Id.* at 22869.

<sup>54</sup> For example, some schools disallow dodgeball because of the risks involved. Arianna Prothero, “Should Schools Still Play Dodgeball?” EducationWeek, December 10, 2019, <https://www.edweek.org/leadership/should-schools-still-play-dodgeball/2019/12>.

<sup>55</sup> U.S. Department of Education, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams,” 22872.

identity.”<sup>56</sup> Again, our organizations understand and agree that fairness is an important educational interest, but this discussion could be misconstrued as suggesting that there is any evidence behind the transphobic and sexist myth that transgender or intersex youth—and, in practice, specifically transgender or intersex women and girls—have an inherent athletic advantage over their cisgender, endosex peers.<sup>57</sup>

Opponents of equal educational opportunity rely on deeply problematic “evidence” to justify exclusion, including appeals to “common sense,” anecdotal evidence, and extrapolating from data on cisgender, presumptively endosex males to make claims about transgender and intersex women.<sup>58</sup> To take one example: justifications for restrictions often focus on testosterone levels, but there is a significant overlap in testosterone levels among men and women who are elite athletes,<sup>59</sup> and testosterone alone is not a predictor of athleticism or athletic advantage.<sup>60</sup>

More broadly, any suggestion that the purpose of sex-separated teams is to equalize all physiological differences among athletes is misleading and obscures the intent of permitting sex-separated teams, namely to promote equal access and opportunity to the educational benefits of school sports in a context where the lack of opportunities for girls and women reflected structural sexism. The regulations have never required that a student demonstrate adherence to some imagined standard of the “average boy” or “average girl,” respectively, to be eligible to participate on a sex-separated school team, and to allow such a requirement is anathema to Title IX.

There are over 200 genetic differences that impact athletic ability,<sup>61</sup> including blood flow, muscle mass, pain threshold, and respiratory and cardiac functions, none of which are subject to scrutiny for a student’s eligibility.<sup>62</sup> Those who excel in sports and go on to compete in elite and professional athletes commonly have genetic, anatomical, and physiological differences that differentiate them from average people. Consider Michael Phelps, the most-decorated Olympic

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<sup>56</sup> *Id.*

<sup>57</sup> Pieper, et al, “The Future of Women’s Sports Includes Transgender Women and Girls,” [http://www.athlealely.org/wp-content/uploads/2021/11/The-Future-of-Womens-Sport-includes-Transgender-Women-and-Girls-Statement\\_11.15.21.pdf](http://www.athlealely.org/wp-content/uploads/2021/11/The-Future-of-Womens-Sport-includes-Transgender-Women-and-Girls-Statement_11.15.21.pdf).

<sup>58</sup> E-Alliance, “Transgender Women Athletes and Elite Sport: A Scientific Review” (2022), Commissioned by the Canadian Centre for Ethics in Sports, <https://www.cces.ca/transgender-women-athletes-and-elite-sport-scientific-review>.

<sup>59</sup> A study of 693 Olympic athletes found “a complete overlap” in testosterone levels of men and women in the study, despite different mean values; 16.5% of men demonstrated testosterone levels lower than the normal reference range for men and 13.7% of women demonstrated testosterone levels higher than the normal reference range for women. Marie-Louise Healy, James Gibney, Claire Pentecost, Mike J. Wheeler, and P. H. Sonksen. “Endocrine profiles in 693 elite athletes in the postcompetition setting,” *Clinical endocrinology* 81, no. 2 (2014): 294-305, <https://doi.org/10.1111/cen.12445>.

<sup>60</sup> For example, a study of teenagers competing in Olympic weightlifting found that higher testosterone levels were *negatively* correlated with performance among teenage girls after controlling for body mass. Blair Crewther, Zbigniew Obminski, and Christian Cook, “The effect of steroid hormones on the physical performance of boys and girls during an Olympic weightlifting competition,” *Pediatric Exercise Science* 28, no. 4 (2016): 580-587.

Another study found “no evidence to implicate testosterone” in the athletic success of intersex women with hyperandrogenism. Malcolm A. Ferguson-Smith and L. Dawn Bavington, “Natural selection for genetic variants in sport: the role of Y chromosome genes in elite female athletes with 46, XY DSD,” *Sports Medicine* 44, no. 12 (2014): 1629-1634. See also Rebecca M. Jordan-Young, Katrina Karkazis, “4 Myths about Testosterone: Don’t let sports competitions be shaped by misguided ‘T Talk,’” *Scientific American*, June 18, 2019, <https://blogs.scientificamerican.com/observations/4-myths-about-testosterone/>; Katrina Karkazis, Rebecca Jordan-Young, Georgiann Davis, and Silvia Camporesi, “Out of bounds? A critique of the new policies on hyperandrogenism in elite female athletes,” *The American Journal of Bioethics* 12, no. 7 (2012): 3-16, <https://doi.org/10.1080/15265161.2012.680533>; Pieper, et al., “The Future of Women’s Sports Includes Transgender Women and Girls.”

<sup>61</sup> Guth, L. M., & Roth, S. M. (2013). Genetic influence on athletic performance. *Current opinion in pediatrics*, 25(6), 653. <https://doi.org/10.1097%2FMOP.0b013e3283659087>.

<sup>62</sup> For examples, see Ross Tucker and Malcolm Collins, “What Makes Champions? A Review of the Relative Contribution of Genes and Training to Sporting Success,” *British Journal of Sports Medicine* 46, no. 8 (2012): 555-561; Goran Ranković, Vlada Mutavdžić, Dragan Toskić, Adem Preljević, et al., “Aerobic Capacity as an Indicator in Different Kinds of Sports,” *Journal of the Association of Basic Medical Sciences* 10, no. 1 (2010): 44-48; Ysabel Jacobs, Tania Spiteri, Nicolas H. Hart, and Ryan S. Anderton, “The Potential Role of Genetic Markers in Talent Identification and Athlete Assessment in Elite Sport,” *Sports* 6, no. 8 (2018): <https://doi.org/10.3390/sports6030088>.

athlete of all time. Phelps possesses “a disproportionately vast wingspan... Double-jointed ankles give his kick unusual range. In a quirk that borders on supernatural, Phelps apparently produces just half the lactic acid of a typical athlete — and since lactic acid causes fatigue, he’s simply better equipped at a biological level to excel in his sport.”<sup>63</sup> Likewise, consider cross-country skier and seven-time Olympic medalist Eero Mäntyranta, who was born with a genetic variation that lets his blood carry 50% more oxygen than his competitors. As one writer asked, “[w]hat does ‘a level playing field’ mean for skiers who trained just as hard as Mäntyranta but were left behind him, gasping for air as he won the Olympic 15K race by 40 seconds, a margin never equaled at the Games before or since?”<sup>64</sup>

Beyond physiological differences, studies indicate socioeconomic status and access to external resources, such as coaching, facilities, and nutrition, enhance athletic performance.<sup>65</sup> In critiquing an earlier Olympic rule restricting participation consistent with gender identity, one scholar notes that such restrictions obscure “the reality that the diverse distribution of physical characteristics [not to mention psychological, environmental, and social ones] are essential to sport.”<sup>66</sup>

Our organizations reject the premise that “fairness in competition” can ever justify discrimination against transgender, nonbinary, and intersex students. This premise is inconsistent with principles of equal opportunity, the text of Title IX, and existing evidence about sports opportunities. At a bare minimum, the Department should make clear that it does not presume this rationale will ever justify such restrictions and must provide clear guidelines regarding impermissible categories of evidence, as discussed below.

***The Department should discuss categories of evidence that cannot be used justify an exclusionary restriction.***

The Department should discuss categories of evidence that cannot satisfy the requirement that a restriction be substantially related to the achievement of an important educational objective. For example, the Department should clarify that discriminatory policies purportedly justified by the following categories of evidence fail to satisfy the test the rule proposes:

- Anecdotal evidence, including but not limited to evidence that particular transgender, nonbinary, or intersex students excelled in athletics generally or in a particular event<sup>67</sup>;

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<sup>63</sup> Monica Hesse, “We celebrated Michael Phelps’s genetic differences. Why punish Caster Semenya for hers?” *The Washington Post*, May 2, 2019, [https://www.washingtonpost.com/lifestyle/style/we-celebrated-michael-phelpss-genetic-differences-why-punish-caster-semenya-for-hers/2019/05/02/93d08c8c-6c2b-11e9-be3a-33217240a539\\_story.html](https://www.washingtonpost.com/lifestyle/style/we-celebrated-michael-phelpss-genetic-differences-why-punish-caster-semenya-for-hers/2019/05/02/93d08c8c-6c2b-11e9-be3a-33217240a539_story.html).

<sup>64</sup> David Epstein, Magic Blood and Carbon-Fiber Legs at the Brave New Olympics, *Scientific American*, Aug. 5, 2016, <https://www.scientificamerican.com/article/magic-blood-and-carbon-fiber-legs-at-the-brave-new-olympics/>;

Ruth McKernan, A skier with gold medals in his blood, *The Independent*, Aug. 1, 1993, <https://www.independent.co.uk/news/sci-ence/science-a-skier-with-gold-medals-in-his-blood-in-endurance-sports-a-plentiful-supply-of-oxygen-to-the-muscles-is-vital-to-success-ruth-mckernan-on-a-family-blessed-by-a-mutant-gene-1458723.html>.

<sup>65</sup> Andrew B. Bernard and Meghan R. Busse, “Who Wins the Olympic Games: Economic Resources and Medal Totals,” *Review of Economic and Statistics* 86, no. 1 (2004): 413-417.

<sup>66</sup> Buzuvis E. Hormone check: critique of olympic rules on sex and gender. *Wisconsin J Law Gender Soc.* 2016; 31:29–55.

<sup>67</sup> Overwhelmingly, claims of purported “dominance” or displacement” in US school sports have cited two examples involving transgender young women: a case involving Connecticut high school track athletes, Andraya Yearwood and Terry Miller (*Soule et al. v. Connecticut Association of Schools*) and Lia Thomas, who was an elite NCAA Division I swimmer before and after transition. These examples do not support such claims and, if anything, they actually undermine them. In *Soule et al. v. Connecticut Association of Schools*, four cisgender girls challenged Connecticut’s inclusive and affirming policy of allowing transgender girls to compete in girls’ high school sports, claiming that the participation of two transgender girls “deprived them of a ‘chance to be champions,’” and, as a result, adversely impacts their future employment opportunities.” In affirming the

- The application of evidence from one sports context to another (e.g., from Olympic volleyball to intramural volleyball). Scientific studies on athletic performance typically measure extremely specific variables such as “muscle surface area” or “lower handgrip strength.”<sup>68</sup> Recipients who rely on such evidence should not be permitted to generalize results to different sports (e.g., from NCAA track to NCAA soccer).
- Evidence that equates or assumes that cisgender men’s performance is the same as transgender or intersex women’s performance. To make inferences about transgender or intersex women’s athletic abilities, recipients should be limited to relying on evidence regarding transgender or intersex women—rather than studies that explicitly or presumptively include only cisgender, endosex men.
- Evidence that conflates what is considered “normal” for cisgender, endosex women with what is sufficient for transgender or intersex women to sufficiently mitigate potential advantages.<sup>69</sup>

For years, proponents of exclusionary restrictions on school sports participation consistent with gender identity have relied on deeply problematic evidence to justify exclusion.<sup>70</sup> We commend the Department for naming the role that overbroad generalizations and transphobic myths have played in justifying discriminatory bans. Clear guidance on unacceptable evidence is critical to supporting strong implementation and advancing equal educational opportunity.

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District Court’s judgment and dismissing the complaint, the U.S. Court of Appeals for the 2nd Circuit states “All four Plaintiffs [cisgender student athletes competing in girls track and field] regularly competed at state track championships as high school athletes, where Plaintiffs had the opportunity to compete for state titles in different events. And, on numerous occasions, Plaintiffs were indeed ‘champions,’ finishing first in various events, even sometimes when competing against Yearwood and Miller. *See Soule et al. v. Connecticut Association of Schools, Case No. 21-cv-1365* (2d Cir. Dec. 16, 2022), *reh’g en banc granted*, (Feb. 21, 2023). Lia Thomas is the first openly transgender woman to win a NCAA Division I athletics competition. Her winning time in the 500-yard freestyle finals was a personal best of 4:33.82, but did not break any record and was well behind the meet, NCAA or American record of 4:24.06 that was set by Olympian and cisgender woman Katie Ledecky in 2017 when she swam for Stanford University. At the championship, two cisgender women broke records in other events. *See* Brooke Migdon, “Lia Thomas: ‘Trans women are not a threat to women’s sports’” *The Hill*, May 31, 2022, <https://thehill.com/changing-america/respect/diversity-inclusion/3506803-lia-thomas-trans-women-are-not-a-threat-to-womens-sports/>; Io Dodds, “Critics accuse trans swimming star Lia Thomas of having an unfair advantage. The data tells a different story,” *The Independent*, May 31, 2022, <https://www.independent.co.uk/news/world/americas/lia-thomas-trans-swimmer-ron-desantis-b2091218.html>.

<sup>68</sup> E-Alliance, “Transgender Women Athletes and Elite Sport: A Scientific Review” (2022), <https://www.cces.ca/transgender-women-athletes-and-elite-sport-scientific-review>.

<sup>69</sup> *Id.*

<sup>70</sup> The first enacted categorical ban on the participation of transgender students in school sports consistent with gender identity, [Idaho H.B.500 \(2020\)](#), references a 2012 *Psychology Today* web article titled “The Battle of the Sexes - Men vs Women: No clear winner” to make sweeping statements about the athletic advantage that individuals assigned male at birth supposedly have. The article is not a peer-reviewed medical or other scientific article and includes no citations to such sources. The article makes no mention of transgender people, nonbinary people, or intersex people; it also makes no mention of sports. The same article has been cited, sometimes unattributed, in several other anti-transgender youth athlete bills.

***The Department should clarify that restrictions cannot be justified in the context of K-12 and college intramural and club sports.***

The proposed rule states: “the Department currently believes that there would be few, if any, sex-related eligibility criteria applicable to students in elementary school that could comply with the proposed regulation, and that it would be particularly difficult for a recipient to comply with the proposed regulation by excluding students immediately following elementary school from participating on male or female teams consistent with their gender identity. The Department welcomes comments on whether any sex-related eligibility criteria can comply with this proposed regulation when applied to students in these earlier grades and, if so, the types of criteria that may comply with the proposed regulation.”<sup>71</sup>

Title IX’s applicability to school sports depends on the premise that athletics programs are an educational opportunity and so school athletics are valued for, above all else, the educational benefits they confer.<sup>72</sup> The purpose of permitting sex-separated school sports teams under Title IX is to foster the equal participation of girls and women in school sports in a context where they have been systematically excluded and denied.<sup>73</sup> Congress additionally recognized that the principles of equal opportunity may operate differently with regard to certain “intercollegiate athletic activities ... considering the nature of particular sports.”<sup>74</sup>

With this proposed rule, the Department makes clear that, for a restriction on participation consistent with gender identity to satisfy the heightened intermediate-scrutiny standard, it must be appropriately tailored with respect to age, sport, and level of competition, and must not rely on overbroad sex-based generalizations or assumptions, including assumptions of categorical or overwhelming advantage. Considering these factors, the Department should further clarify that the presumption of participation consistent with gender identity cannot ever be overcome in the K-12 and college intramural and club sports context.

As discussed above, restrictions on participation consistent with gender identity are not necessary to ensure fairness in school sports, nor are they necessary for entry to elite and professional sports. Imposing restrictions on participation consistent with gender identity is particularly egregious in K-12 contexts since playing K-12 school sports, at best, complements pathways to elite and

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<sup>71</sup> U.S. Department of Education, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams,” 22875.

<sup>72</sup> Congress had the opportunity to review and disapprove the 1975 regulations implementing Title IX, including provisions relating to school athletics. During the Congressional review period, several bills were introduced that opposed the notion that school athletics conveyed educational benefits protected by Title IX and specifically to exempt “elite,” revenue-generating intercollegiate athletics. Congress declined to pass legislation exempting any school athletics from Title IX and, by declining to disprove the 1975 regulations implementing Title IX, indicated tacit approval for the Department to establish standards that provide limited discretion to establish separate teams for certain team sports, while maintaining fundamental guardrails to ensure all students can equally enjoy the benefits of participation in sports.

See, e.g., S.2106 - 94th Congress (1975-1976): A bill to amend Title IX of the Education Amendments of 1972, (July 15, 1975); “H.R.8394 - 94th Congress (1975-1976): A bill to amend title IX of the Education Amendments of 1972” (July 8, 1975); “H.Con.Res.311 - 94th Congress (1975-1976): Concurrent resolution to disapprove certain sections of the Department of Health, Education, and Welfare regulations relating to nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance applicable to athletic programs and grants,” (June 17, 1975); “S.Con.Res.52 - 94th Congress (1975-1976): Concurrent resolution disapproving certain regulations of the Department of Health, Education, and Welfare,” (July 16, 1975); Women’s Sports Foundation, “History of Title IX” (August 13, 2019) <https://www.womenssportsfoundation.org/advocacy/history-of-title-ix/>.

<sup>73</sup> Elizabeth Sharrow, “Title IX’s interpretation has reshaped athletics in good and bad ways,” Washington Post (June 30, 2022), <https://www.washingtonpost.com/outlook/2022/06/20/title-ixs-interpretation-has-reshaped-athletics-good-bad-ways/>; Elizabeth A. Sharrow, “‘Female athlete’ politic: Title IX and the naturalization of sex difference in public policy.” *Politics, Groups, and Identities* 5, no. 1 (2017): 46-66.

<sup>74</sup> Section 844 of the Education Amendments of 1974, Pub. L. 93–380 (Aug. 21, 1974).

professional competition. Nearly all of the best high-school-aged basketball players, for example, compete for teams in the American Athletic Union (AAU) or other travel leagues.<sup>75</sup> In track and field, the best young athletes attend invitation-only events hosted by non-school entities like the National Scholastic Athletics Foundation (NSAF). To be clear, organizations governing elite, non-school youth sports should allow for the participation of transgender, nonbinary, and intersex youth; some have already adopted trans-inclusive policies.<sup>76</sup> However, the content of such policies—or their absence—does not set the bar for rules governing the participation of transgender, nonbinary, and intersex students in the Title IX-covered setting of school sports.

Where elite and professional competition currently imposes restrictions on participation consistent with gender identity, transgender, nonbinary, and intersex athletes who aspire to compete at these levels will take steps to meet eligibility rules if that is feasible and the right decision for them given their individual needs and the various barriers they face. The Department must not add to these barriers given that the purpose of Title IX covering school athletics is to ensure equal opportunity to benefit from sports participation. School sports build community,<sup>77</sup> promote school spirit and belonging,<sup>78</sup> and convey many health and social benefits. Participation in sports has been shown to broadly benefit children and youth and is reflected in physical development and fitness,<sup>79</sup> social skills,<sup>80</sup> and mental health and wellbeing,<sup>81</sup> including higher self-esteem<sup>82</sup> and lower levels of depression and suicidality.<sup>83</sup> Playing sports is also associated with benefits by conventional

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<sup>75</sup> Morgan McDaniel, “How AAU Is Dominating High School Basketball,” *Complex*, August 7, 20217, <https://www.complex.com/sports/2017/08/aaui-is-dominating-high-school-basketball>.

<sup>76</sup> National Scholastic Athletics Foundation, “Transgender Participation Policy & Procedure,” November 11, 2021, [https://www.nationalscholastic.org/indoor\\_nationals/transgender/](https://www.nationalscholastic.org/indoor_nationals/transgender/).

<sup>77</sup> Martin Van Boekel, Okan Bulut, Luke Stanke, Jose R. Palma Zamora, Yoojeong Jang, Youngsoo Kang, and Kyle Nickodem, “Effects of participation in school sports on academic and social functioning,” *Journal of Applied Developmental Psychology* 46 (2016): 31-40, <https://doi.org/10.1016/j.appdev.2016.05.002>; Reed W. Larson, “Toward a psychology of positive youth development,” *American psychologist* 55, no. 1 (2000): 170, <https://psycnet.apa.org/buy/2000-13324-016>.

<sup>78</sup> Richard Bailey, “Physical education and sport in schools: A review of benefits and outcomes,” *Journal of school health* 76, no. 8 (2006): 397-401, <https://doi.org/10.1111/j.1746-1561.2006.00132.x>; Rochelle M. Eime, Janet A. Young, Jack T. Harvey, Melanie J. Charity, and Warren R. Payne, “A systematic review of the psychological and social benefits of participation in sport for children and adolescents: informing development of a conceptual model of health through sport,” *International journal of behavioral nutrition and physical activity* 10, no. 1 (2013): 1-21, <https://doi.org/10.1186/1479-5868-10-981>.

<sup>79</sup> Stuart J. H. Biddle and Mavis Asare, “Physical activity and mental health in children and adolescents: a review of reviews,” *British journal of sports medicine* 45, no. 11 (2011): 886-895, <https://doi.org/10.1136/bjsports-2011-090185>; Alison R. Snyder, Jessica C. Martinez, R. Curtis Bay, John T. Parsons, Eric L. Sauters, and Tamara C. Valovich McLeod, “Health-related quality of life differs between adolescent athletes and adolescent nonathletes,” *Journal of sport rehabilitation* 19, no. 3 (2010): 237-248, <https://doi.org/10.1123/jsr.19.3.237>.

<sup>80</sup> Bailey, “Physical education and sport in schools: A review of benefits and outcomes”; Eime, et al., “A systematic review of the psychological and social benefits of participation in sport for children and adolescents”; Snyder, et al. (2010); Nicholas L. Holt, Kacey C. Neely, Linda G. Slater, Martin Camiré, Jean Côté, Jessica Fraser-Thomas, Dany MacDonald, Leisha Strachan, and Katherine A. Tamminen, “A grounded theory of positive youth development through sport based on results from a qualitative meta-study,” *International review of sport and exercise psychology* 10, no. 1 (2017): 1-49, <https://doi.org/10.1080/1750984X.2016.1180704>.

<sup>81</sup> Eime, et al., “A systematic review of the psychological and social benefits of participation in sport for children and adolescents.”

<sup>82</sup> Paul J. C. Adachi and Teena Willoughby, “It’s not how much you play, but how much you enjoy the game: the longitudinal associations between adolescents’ self-esteem and the frequency versus enjoyment of involvement in sports,” *Journal of youth and adolescence* 43, no. 1 (2014): 137-145, <https://doi.org/10.1007/s10964-013-9988-3>; Carly B. Slutzky and Sandra D. Simpkins, “The link between children’s sport participation and self-esteem: Exploring the mediating role of sport self-concept,” *Psychology of Sport and Exercise*, 10(3), 381-389, <https://doi.org/10.1016/j.psychsport.2008.09.006>; Sara Pedersen and Edward Seidman, “Team sports achievement and self-esteem development among urban adolescent girls,” *Psychology of Women Quarterly* 28, no. 4 (2004): 412-422.

<sup>83</sup> Lindsay A. Taliaferro, Marla E. Eisenberg, Karen E. Johnson, Toben F. Nelson, and Dianne Neumark-Sztainer, “Sport participation during adolescence and suicide ideation and attempts,” *International Journal of Adolescent Medicine and Health* 23, no. 1 (2011): 3-10, <https://doi.org/10.1515/ijamh.2011.002>; Lindsay A. Taliaferro, Barbara A. Rienzo, R. Morgan Pigg, M. David Miller, and Virginia J. Dodd, “Associations between physical activity and reduced rates of hopelessness, depression, and suicidal behavior among college students,” *Journal of American College Health* 57, no. 4 (2009): 427-436, <https://doi.org/10.3200/jach.57.4.427-436>; Erin M. Boone and Bonnie J. Leadbeater, “Game on: Diminishing risks for depressive symptoms in early adolescence through positive involvement in team sports,” *Journal of Research on Adolescence* 16, no. 1 (2006): 79-90, <https://doi.org/10.1111/j.1532-7795.2006.00122.x>.

academic metrics. Students who play sports are more likely to graduate from high school, attend college, have higher grade point averages, and score higher on standardized tests.<sup>84</sup>

***The Department should distinguish minimally burdensome procedures to establish a student’s gender identity from restrictions on participation consistent with gender identity. With both, there must be a consideration of barriers, including legislative attacks on transgender people and trans youth in particular.***

The Department should treat any procedures related to establishing a student’s gender identity identically across school sports and other activities covered by section 106.31(a)(2) in its 2022 proposed Title IX rule.<sup>85</sup> Such procedures must be flexible and minimally burdensome. Like religious beliefs, the sincerity of a student’s gender identity “is generally not in dispute”<sup>86</sup> and is “generally presumed or easily established.”<sup>87</sup> Notably, the Department has also long applied sincerity standards under other provisions of law, such as Title IX’s religious exemption and the Religious Freedom Restoration Act.<sup>88</sup>

While the gender marker on a state-issued ID or amended birth certificate may be accepted as a means of establishing eligibility, students should not be limited to these means given the cost involved and the potential interaction with discriminatory state legislation, such as those prohibiting amending the gender marker on a birth certificate or requiring proof of surgery before an amended birth certificate or Driver’s License reflecting the individual’s gender identity will be issued.<sup>89</sup> Other methods of establishing a student’s gender identity that should be considered sufficient for eligibility purposes include a statement from a family member, health care provider, friend, or another community member, or the student’s consistent assertion of that gender identity at school.<sup>90</sup>

In the intercollegiate context, if the Department allows any restrictions, it should make clear that imposing a restriction that state laws bar a student from fulfilling violates Title IX because it functions as a categorical ban—which the Department has made clear “would not satisfy the proposed regulation.”<sup>91</sup> Where transgender youth are unable to access gender-affirming medication, a restriction requiring such medication is a de facto categorical ban.<sup>92</sup> The

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<sup>84</sup> Van Boekel, Bulut, Stanke, et al., “Effects of participation in school sports on academic and social functioning”; National Coalition for Women and Girls in Education (NCWGE), *Title IX at 45: Advancing Opportunity through Equity in Education* (Washington, DC: NCWGE, 2017), 41-42, <https://www.ncwge.org/TitleIX45/Title%20IX%20at%2045-Advancing%20Opportunity%20through%20Equity%20in%20Education.pdf>.

<sup>85</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 FR 41390, 41571 (Jul. 12, 2022), 41390, 41571.

<sup>86</sup> *Moussazadeh v. Tx. Dep’t of Crim. Just.*, 703 F.3d 781, 790 (5th Cir. 2012) (applying Religious Land Use and Institutionalized Persons Act (RLUIPA)).

<sup>87</sup> Equal Employment Opportunity Comm’n, Compliance Manual Section 12: Religious Discrimination, <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>.

<sup>88</sup> 42 U.S.C. § 2000bb-1.

<sup>89</sup> Movement Advancement Project, “Equality Maps: Identity Document Laws and Policies,” [https://www.lgbtmap.org/equality-maps/identity\\_document\\_laws](https://www.lgbtmap.org/equality-maps/identity_document_laws).

<sup>90</sup> See, e.g., Mass. G.L. c. 4, § 7; California Dep’t of Educ.

<sup>91</sup> U.S. Department of Education, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams,” 22873.

<sup>92</sup> Fifteen states have passed laws banning best-practice medication and surgical care for transgender youth. See Movement Advancement Project, “Equality Maps: Healthcare Laws and Policies,” [https://www.lgbtmap.org/equality-maps/healthcare\\_laws\\_and\\_policies](https://www.lgbtmap.org/equality-maps/healthcare_laws_and_policies).

Department should also require recipients to consider insurance or cost barriers that result in the disproportionate exclusion of students from low-income households.<sup>93</sup>

### ***The Department should rule out deeply invasive and harmful “sex testing.”***

The preamble explains that any criteria, including physical examinations, medical testing, or treatment, must minimize harm, but it does not rule out particular criteria that are deeply invasive and harmful. The Department should explicitly state that requiring visual inspections of anatomy or medical examinations of student-athletes would violate Title IX because they inherently cause significant harm to affected students and are never necessary to advance an important educational objective.

As it stands, intrusive “sex testing” or “sex verification” examinations remain on the table. These kinds of restrictions invade students’ privacy and bodily autonomy, are often applied arbitrarily based on prejudice against protected groups, and send deeply stigmatizing and damaging messages that are antithetical to a supportive, nondiscriminatory educational environment.

In international sports, “sex verification” rules have for decades resulted in invasive scrutiny, public outing and shaming, and have driven girls and women with intersex traits out of sports, often with devastating personal results.<sup>94</sup> Eligibility criteria that target particular sex traits often amount to a requirement that transgender students and students with intersex variations undergo medical or surgical interventions – which may be unwanted or at odds with the individual’s medical needs – in order to conform to sex-related stereotypes as a condition of athletic participation on the separate-sex team that aligns with their identity. For intersex students and their families, such pressures from schools may compound the pain of past pressures or unnecessary interventions to “normalize” their sex traits in childhood.<sup>95</sup>

Recognizing the deep harm of these restrictions, the American Medical Association (AMA) has adopted a policy opposing “[m]andatory testing, medical treatment or surgery for transgender athletes and athletes with [intersex traits] and affirm[ing] that these athletes be permitted to

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<sup>93</sup> Nine states have Medicaid policies that explicitly exclude transgender-related health coverage for all ages and two exclude transgender-related health coverage for minors. See Movement Advancement Project. “Equality Maps: Healthcare Laws and Policies: Medicaid,” [https://www.lgbtmap.org/equality-maps/healthcare\\_laws\\_and\\_policies/medicaid](https://www.lgbtmap.org/equality-maps/healthcare_laws_and_policies/medicaid). See also Movement Advancement Project, April 2021, LGBTQ Policy Spotlight: Efforts to Ban Health Care for Transgender Youth. [www.lgbtmap.org/2021-spotlight-health-care-bans](http://www.lgbtmap.org/2021-spotlight-health-care-bans).

<sup>94</sup> See, e.g., Claudia Wiesemann, “Is there a right not to know one’s sex? The ethics of ‘gender verification’ in women’s sports competition,” *Journal of Medical Ethics* 37, no. 4 (2011): 216-220, <https://www.jstor.org/stable/23034791>; Erin E. Buzuvis, “Transsexual and Intersex Athletes,” in *Sexual Minorities in Sports: Prejudice at Play*, ed. Melanie L. Sartore-Baldwin (Boulder, CO: Lynne Rienner Publishers, 2013), 59-67; Ritchie, Robert, John Reynard, and Tom Lewis, “Intersex and the Olympic games,” *Journal of the Royal Society of Medicine* 101, no. 8 (2008): 395-399, <https://doi.org/10.1258%2Fjrm.2008.080086>; Isheeta Sharma, “Santhi Soundarajan & The Misogyny Of Sex Verification Tests In Sports,” *Feminism in India*, November 25, 2020, <https://feminisminindia.com/2020/11/25/santhi-soundarajan-gender-determination-test/>; Nihal Koshie, “The rising star who ended her life much before Dutee Chand challenged the rules,” *Indian Express*, September 9, 2018, <https://indianexpress.com/article/sports/sport-others/the-girl-before-dutee-chand-pratima-gaonkar-5346699/>.

<sup>95</sup> Intersex infants and children are already at risk for unnecessary and non-consensual surgeries to change their sex traits outside the specific context of athletics. The consequences of subjecting someone to these procedures, which include clitoral reductions, vaginoplasties, and gonadectomies, without their own consent are often dire and permanent; chronic pain, urinary incontinence, sexual dysfunction, sterilization, and post-traumatic stress disorder are well-documented. See, e.g., Geneva Abdul, “This Intersex Runner Had Surgery to Compete. It Has Not Gone Well,” *New York Times*, Dec. 16, 2019, <https://www.nytimes.com/2019/12/16/sports/intersex-runner-surgery-track-and-field.html>; U.N. Gen. Assembly, Hum. Rts. Council, 32 Sess. Report of The Special Rapporteur on The Right of Everyone to The Enjoyment of The Highest Attainable Standard Of Physical And Mental Health, 14 (2016); Human Rights Watch & interACT, “‘I Want To Be Like Nature Made Me’: Medically Unnecessary Surgeries on Intersex Children in the US” (2017), <https://www.hrw.org/report/2017/07/25/i-want-be-nature-made-me/medically-unnecessary-surgeries-intersex-children-us>.



compete in alignment with their identity,” opposing the “use of specific hormonal guidelines to determine gender classification for athletic competitions,” and opposing the satisfaction of “third-party requirements to certify or confirm an athlete’s gender through physician participation.”<sup>96</sup>

The department should state explicitly that “sex testing” violates Title IX and is never necessary to advance an important educational objective because of the serious harm it causes to students.

## Conclusion

Transgender, nonbinary, and intersex students commonly experience barriers to participating in school sports. These barriers have been exacerbated by coordinated efforts to denigrate, erase, and further stigmatize LGBTQI+ people, particularly transgender children and youth. The revisions proposed here will help ensure Title IX is given “a sweep as broad as its language” and “origins dictate,” consistent with case law<sup>97</sup> and President Biden’s Executive Orders on implementing the landmark *Bostock v. Clayton County, Georgia* ruling and advancing equity for LGBTQI+ and other communities that experience marginalization.<sup>98</sup>

This rulemaking is essential, but it must be part of a comprehensive approach to advancing gender justice in school athletics by addressing actually existing gender disparities all women and girls face in school athletics compared to men and boys. For example, the National Coalition for Women and Girls in Education (NCWGE) has asked the Department to review and revise Title IX athletics guidance to address disparities in the quality of sports facilities and equipment available to girls and women, to increase compliance reviews at schools, and to expand data collection to better identify and address disparities.<sup>99</sup> Furthermore, leading women and gender justice organizations with long histories of advocating for gender equity in schools support the inclusion of transgender, nonbinary, and intersex girls and women in school sports and view it as part of their broader efforts to advance gender justice.<sup>100</sup>

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<sup>96</sup> American Medical Association, “Physicians oppose mandatory gender-based treatments for athletes,” November 15, 2022, <https://www.ama-assn.org/delivering-care/population-care/physicians-oppose-mandatory-gender-based-treatments-athletes>; “Athlete Ally, interACT, NWLC and NCTE Respond to AMA Inclusive Policy,” November 17, 2022, <https://www.athleteally.org/athlete-ally-interact-nwlc-and-ncte-respond-to-ama-inclusive-policy/?fbclid=IwAR2G-gzO3dkoNhs5gl4AWjP7pmeWvlllx7-lMwAxV48aTCDipfl3KiJbbok>.

<sup>97</sup> *Bostock v. Clayton County, Georgia*, 140 S.Ct. 1731, 1742 (2020); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 608 (4th Cir. 2020); *Back v. Hastings on Hudson Union Free Sch. Dist.*, 365 F.3d 107 (2d Cir. 2004); *Kahan v. Slippery Rock Univ. of Pa.*, 50 F. Supp. 3d 667 (W.D. Pa. 2014); *Tingley-Kelley v. Trs. of Univ. of Pa.*, 677 F. Supp. 2d 764 (E.D. Pa. 2010); *Doe v. Brimfield Grade Sch.*, 552 F. Supp. 2d 816 (C.D. Ill. 2008); *Montgomery v. Independent Sch. Dist. No. 709 F.Supp.2d 1081 (D. Minn. 2000)*; *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1048 (7th Cir. 2017).

<sup>98</sup> Executive Order 13985 of January 20, 2021, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” 86 Fed. Reg. §14 (January 25, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf>; Executive Order 13988 of January 20, 2021 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation), 86 Fed. Reg. §14 (January 25, 2021) <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf>; Executive Order 14021 of March 8, 2021, “Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity,” 86 Fed. Reg. §46 (March 11, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-03-11/pdf/2021-05200.pdf>; Executive Order 14075 of June 15, 2022, “Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals,” 87 Fed. Reg. §118 (June 21, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-06-21/pdf/2022-13391.pdf>.

<sup>99</sup> NCWGE, *Title IX At 50: A Report by the National Coalition for Women and Girls in Education* (Washington, DC: NCWGE), <https://www.ncwge.org/TitleIX50/NCWGE%20Title%20IX%20At%2050%20-%206.2.22%20vF.pdf>.

<sup>100</sup> WSF and NWLC-led Letter to President Biden Regarding Athletics NPRM, August 11, 2021, <https://nwlc.org/resource/wsf-nwlc-letter-to-president-biden-regarding-athletics-nprm/>. NCWGE called for full inclusion of transgender, nonbinary, and intersex students in its Title IX at 50 Report. NCWGE, *Title IX At 50: A Report by the National Coalition for Women and Girls in Education* (Washington, DC: NCWGE), <https://www.ncwge.org/TitleIX50/NCWGE%20Title%20IX%20At%2050%20-%206.2.22%20vF.pdf>.

We look forward to continuing to dialogue and work with the Department to fully enforce Title IX and make equal educational opportunity a reality. If you would like to discuss these recommendations, please contact Aaron Ridings of GLSEN at [aaron.ridings@glsen.org](mailto:aaron.ridings@glsen.org). Thank you for your consideration.

Sincerely,  
GLSEN

American School Counselor Association  
interACT: Advocates for Intersex Youth  
National Association of School Psychologists  
National Center for Transgender Equality  
National Education Association

*Joined by:*

National Organizations

A Better Balance  
AACTE  
Advocates for Youth  
All4Ed  
American Atheists  
American Humanist Association  
Athlete Ally  
Autistic Self Advocacy Network  
Autistic Women & Nonbinary Network  
Bayard Rustin Center for Social Justice  
Campaign for Our Shared Future  
Campus Pride  
CenterLink: The Community of LGBTQ Centers  
EDGE Consulting Partners  
EDIT Lab at Northwestern University  
EducateUS: SIECUS In Action  
Equal Rights Advocates  
FORGE, Inc.  
Gender Spectrum  
Girls Inc.  
GLMA: Health Professionals Advancing LGBTQ+ Equality  
Healthy Teen Network  
Human Rights First  
If/When/How: Lawyering for Reproductive Justice  
Interfaith Alliance  
Know Your IX  
Movement Advancement Project  
National Association of Social Workers  
National Black Justice Coalition

National Center for Youth Law  
National LGBTQ Task Force  
National Organization for Women Foundation  
National PTA  
National Women's Law Center  
Parents Across America  
ParentsTogether  
Positive Women's Network-USA  
Princess Janae Place Inc  
Public Justice  
Rainbow Health Consulting  
Sam & Devorah Foundation for Trans Youth  
SIECUS: Sex Ed for Social Change  
Southeast Asia Resource Action Center  
Stand with Trans  
Stop Sexual Assault in Schools  
The Consortium of Higher Education LGBT Resource Professionals  
The Education Trust  
The Every Voice Coalition  
The GenderCool Project  
The Inclusion Playbook  
Transathlete  
Transgender Law Center  
Transgender Legal Defense & Education Fund  
Union for Reform Judaism  
Unitarian Universalist Association  
Whitman-Walker Institute  
Withycombe Consulting

State & Local Organizations

Ace and Aro Alliance of Central Ohio  
Affirmations Community Center  
AIDS Foundation Chicago  
Akron AIDS Collaborative  
Alaska School Psychology Association  
All Under One Roof LGBT Advocates of Southeastern Idaho  
Association of School Psychologists of Pennsylvania  
Binghamton University Q Center  
Bradbury Sullivan LGBT Center  
Brave Space Alliance  
California Association of School Counselors  
Caribbean Equality Project  
Central Valley Coalition for Trans and Gender Diverse Equality  
Central Valley Pride  
Central Valley Pride Center

Centre LGBT+  
City University of New York LGBTQI+ Council  
College of Staten Island - LGBTQ Resource Center  
College of Staten Island, City University of New York  
Colorado Children's Campaign  
Colors+  
Compass LGBTQ Community Center  
Connecticut Association of School Psychologists  
Connecticut Council of Administrators in Special Education (ConnCASE)  
Delaware Association of School Psychologists  
Eastern PA Trans Equity Project  
Education Law Center - Pennsylvania  
Equality Community Center  
Equality Florida  
Equality Loudoun  
Equality North Carolina  
Equality Virginia  
Equitas Health  
EyesOpenIowa  
Fabulous Arts Foundation  
FAIRNY  
First City Pride Center  
Florida Association of School Psychologists  
Four Corners Rainbow Youth Center  
Gender Justice LA  
Georgia School Counselor Association  
Grand Rapids Pride Center  
Guilford Green Foundation & LGBTQ Center  
Hawai'i Association of School Psychologists  
Hudson Pride Center  
Hugh Lane Wellness Foundation  
Indiana Association of School Psychologist  
Jackson Pride Center  
Kansas Association of School Psychologists  
Kentucky Youth Law Project, Inc.  
Lancaster LGBTQ+ Coalition  
LGBT Center of Raleigh  
LGBT Center of SE Wisconsin  
LGBT Life Center  
LGBTQ Center of the Cape Fear Coast  
LGBTQ+ Community Center of Southern Nevada  
Lila LGBTQ Inc.  
Lionel Cantu Queer Resource Center, UCSC  
Louisiana Trans Advocates  
Louisville Youth Group

MaineTransNet  
Maryland School Counselor Association  
Massachusetts School Counselors Association  
Massachusetts Transgender Political Coalition  
Mazzoni Center  
Metropolitan Community Church of Baton Rouge  
Metropolitan Community Church of Knoxville  
Michigan Organization on Adolescent Sexual Health (MOASH)  
MO School Counselor Association  
Naper Pride  
Naples Pride  
NASW - ME Chapter  
New Jersey Abortion Access Fund  
New Jersey Association of School Psychologists  
New York Association of School Psychologists  
New York State School Counselor Association  
North Carolina School Counselor Association (NCSCA)  
North Dakota Human Rights Coalition  
Northwest Arkansas Equality, Inc.  
Ohio Psychological Association  
Ohio School Counselor Association  
Oklahomans for Equality (OKEQ)  
Olympic Pride  
One Colorado  
one-n-ten  
Our Spot KC  
Out Alliance  
OutFront Kalamazoo  
OUTMemphis  
OutNebraska  
Outright Vermont  
Pacific Pride Foundation  
Parents Organized for Public Education  
Pennsylvania School Counselors Association  
Phoenix Pride  
Pride Action Tank  
Pride at Work - Rochester Finger Lakes Chapter  
Pride Center of Terre Haute Inc.  
Pride On Foot  
PRISM  
Prism Counseling & Community Services  
Prism United  
PROMO  
Queermunity Collaborative  
QUEERSPACE collective

Rainbow Rose Center  
Resource Center  
Rhode Island School Psychologists Association  
RISE: Healthy for Life  
Sacramento LGBT Community Center  
San Diego Black LGBTQ Coalition  
San Diego Pride  
Serotiny Counseling  
Shenandoah LGBTQ Center  
Shoals Diversity Center  
Sioux Falls Pride  
SMYAL  
SOJOURN: Southern Jewish Resource Network for Gender and Sexual Diversity  
Somos Familia  
Spencer Pride, Inc.  
St. Louis Queer+ Support Helpline  
Sussex Pride  
Tennessee Equality Project  
Tennessee School Counselor Association (TSCA)  
Texas Association of School Psychologists  
The Atlanta Pride Committee  
The Center for Sexuality & Gender Diversity  
The Frederick Center  
The Human Rights Alliance  
The LIAM Foundation  
The LOFT LGBTQ+ Community Center  
The Mahogany Project  
The Pride Center at Equality Park  
The Spectrum Center  
The Welcome Project PA  
TRACTION  
Transgender Awareness Alliance (TAA)  
Transgender Michigan  
Transhealth  
Transinclusive Group  
UCSB A.S. Trans & Queer Commission  
Uptown Gay and Lesbian Alliance (UGLA)  
Vermont School Counselor Association  
Washington Association of School Social Workers  
Washington State Association of School Psychologists  
West Virginia School Psychologists Association  
Youth Outlook  
Youth OUTright WNC  
Youth Pride, Inc.

GLSEN State & Local Chapters

GLSEN Arizona  
GLSEN Arkansas  
GLSEN Austin  
GLSEN Bluegrass  
GLSEN Bucks County  
GLSEN Central New Jersey  
GLSEN Central Ohio  
GLSEN Collier County  
GLSEN Connecticut  
GLSEN Greater Cincinnati  
GLSEN Greater Fort Wayne  
GLSEN Greater Huntsville  
GLSEN Greater Kansas City  
GLSEN Green Bay  
GLSEN Kansas  
GLSEN Los Angeles  
GLSEN Lower Hudson Valley  
GLSEN Maryland  
GLSEN Massachusetts  
GLSEN Merced  
GLSEN Mid-Hudson  
GLSEN New Hampshire  
GLSEN New Mexico  
GLSEN Northeast Ohio  
GLSEN Northern New Jersey  
GLSEN Northern Utah  
GLSEN Northern Virginia  
GLSEN Northwest Ohio  
GLSEN Omaha  
GLSEN Oregon  
GLSEN Philly  
GLSEN Phoenix  
GLSEN Richmond  
GLSEN San Diego County  
GLSEN Southeast Michigan  
GLSEN Southern New Jersey  
GLSEN Tampa Bay  
GLSEN Tennessee  
GLSEN Upstate New York  
GLSEN Washington State