

To: Members of the House Education Committee

From: Education Law Center

Re: House Bill 972 – Discrimination against transgender students in athletics

Date: March 29, 2022

The Education Law Center opposes HB 972 and urges a no vote on the legislation. We support the full inclusion of transgender students in school athletics and all extracurricular opportunities. Excluding transgender students from participating alongside their cisgender peers is harmful to all students and undermines the learning environment for everyone.

HB 972 would interfere with the rights of transgender students to participate with the team that corresponds with the student’s gender identity in school sponsored sports in Pennsylvania high schools and colleges. It allows any student who is “harmed” by such students’ participation to initiate litigation against a school or college. It will force high school and college athletic programs to enforce rules that violate students’ rights and has the potential to put the schools in conflict with their sport’s governing bodies.

Worst of all, the bill shows a complete lack of compassion and understanding for thousands of students who are transgender. These young people just want to be their true selves and be treated fairly in school. Transgender students in Pennsylvania face high rates of discrimination and harassment in schools. Fifty six percent of LGBTQ students reported verbal harassment on the basis of their gender expression, 20 percent reported physical harassment and 10 percent reported physical assault – for expressing their gender.¹ Bills like HB 972 will make this climate worse and put even more transgender students at risk for self-harm and suicide.

The bill promotes discrimination against transgender students. The U.S. Supreme Court and many federal courts have consistently affirmed that discrimination on the basis of sexual orientation, transgender status, gender identity, or gender expression is unlawful discrimination “on the basis of sex” and prohibited by law.² The Pennsylvania Human Relations Commission recognizes discrimination based on gender identity/expression or sexual orientation as sex discrimination.³

¹ See GLSEN, School Climate for LGBTQ Students in Pennsylvania (2019), available at <https://www.glsen.org/sites/default/files/2021-01/Pennsylvania-Snapshot-2019.pdf>

² See e.g. *Bostock v. Clayton County*, 140 S.Ct. 1731 (2020) (discrimination on the basis of sexual orientation and gender identity is inherently a form of illegal sex discrimination under Title VII); *Adams by and through Kasper v. School Board of St. Johns County*, No. 18-13592, 2021 WL 2944396 (11th Cir. Jul. 14, 2021)(heightened scrutiny applied, bathroom policy violated equal protection rights of transgender student); *United States EEOC v. Scott Med. Health Ctr., P.C.*, 217 F. Supp. 3d 834, 841 (W.D. Pa. 2016).

³ Pennsylvania Human Relations Commission, Guidance on Discrimination on the Basis of Sex under the Pennsylvania Human Relations Act 3 (Aug. 2, 2018) (delineating prohibitions in the PHRA against discrimination on the basis of sex prohibit discrimination on the basis of sex assigned at birth, sexual orientation, transgender identity, gender transition, gender identity, and gender expression).

Courts have affirmed the rights of transgender people under the Equal Protection Clause and Title IX's broad prohibition against discrimination based on sex and sex stereotyping. Federal civil rights like Title IX are not a 'states' issue – transgender students have the same right to safety and dignity no matter what state they live in.

A similar law in West Virginia has been successfully challenged in court, and others are in litigation. Pennsylvania's law would certainly face such a challenge. Federal courts in Pennsylvania have already protected the rights of transgender students in multiple cases.⁴

High school and college students are already facing difficulty transitioning to in-person education and experiencing mental health concerns related to the pandemic. This law will add to rather than diminish the mental health challenges facing students and increase the potential for bullying or harassment by peers and staff.

A survey by the National Center for Transgender Equality found that 77% of transgender youth had experienced harassment, physical or sexual violence or discrimination at school. Transgender students who are forced to endure hostile school environments are more likely to have missed school out of concern for their safety, hold lower GPAs and are less likely to pursue post-secondary education. Black transgender youth often face even greater hostility and poor outcomes.

Transgender students need affirming policies rather than rules that treat them inhumanely. We urge the General Assembly to encourage school districts to adopt such policies rather than undermining full participation by transgender students.

The Pennsylvania Interscholastic Athletic Association constitution and bylaws identify sportsmanship as a "core principle in intercollegiate athletics"⁵ and describe sportsmanship as "... a thing of the spirit. It is timeless and endless, and we should strive to make it universal to all races, creeds, and walks of life."⁶ Transgender students, like all other students, want to challenge themselves and do what they love. To prohibit them from doing so denies them benefits of participation in athletic competition enjoyed by other students and undermines the principles of sportsmanship that athletic activity seeks to instill in young people.

We urge you to oppose this legislation and instead support transgender students' right to full participation in school.

⁴ See, e.g., *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017) (school board resolution limiting transgender students' access to bathrooms was found likely to succeed on Equal Protection claim); *A.H. by Handling v. Minersville Area Sch. Dist.*, 290 F.Supp.3d 321 (M.D. Pa. 2017) (transgender student prohibited from using girls bathroom stated a claim for violation of Title IX and Equal Protection Clause).

⁵ <http://www.piaa.org/assets/web/documents/Handbook%20-%20Section%20I%20-%20Constitution%20and%20By-laws.pdf> p 12

⁶ <https://www.piaa.org/schools/sportsmanship/default.aspx>