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To: Members of the Senate Education Committee
From: Education Law Center
Re: HB 972 – Discrimination against transgender students in athletics
Date: May 23, 2022

The Education Law Center opposes HB 972 and once again urges a no vote on this harmful and discriminatory legislation.

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. A study of LGBTQ youth in Pennsylvania found the more than half - fifty six percent - reported verbal harassment on the basis of their gender expression, 20 percent reported physical harassment and 10 percent reported physical assault.[1]

Utah Governor Spencer Cox vetoed similar legislation, writing "I just want these kids to live." There is considerable evidence that transgender youth are at much greater risk of suicide. A 2020 study found 86% of transgender youth have considered suicide and 56% have attempted suicide.[2] It is the job of adults in schools and in society to protect children, not to make them the targets of hatred and ridicule.

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. The Pennsylvania Human Relations Commission recognizes discrimination based on gender identity/expression or sexual orientation as sex discrimination.[3]

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[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] Journal of Interpersonal Violence, April 2020. Accessed at: https://pubmed.ncbi.nlm.nih.gov/32345113/

[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.

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] Pennsylvania Interscholastic Athletic Association bylaws and constitution 2017-18. Accessed at: 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