

EQUITY IN SCHOOL SPORTS FOR TRANSGENDER, NONBINARY, AND INTERSEX STUDENTS

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Playing sports provides many direct and indirect benefits to young people, and these benefits must be equitably offered to all students in public schools, including transgender, nonbinary, and intersex students.¹ But in Pennsylvania, these students are instead being targeted through proposed statewide legislation, and multiple school districts are considering or implementing policies that prevent students from participating in a school sports team that aligns with their gender identity.

The foundational premise of sports ban policies – that trans girls are not “real” girls and trans boys are not “real” boys – is based on discriminatory stereotypes prohibited by Title IX and the Pennsylvania Human Relations Act (PHRA) and antithetical to the mission of public schools to provide safe environments and equitable opportunities to all students. These policies harm transgender, nonbinary, and intersex students – and other students who do not conform to sex stereotypes as well. Significantly, these policies are likely to disproportionately harm Black girls and other girls of color, who are also subjected to racist and sexist stereotypes associating “femininity” with whiteness.

THE BENEFITS OF SCHOOL ATHLETICS MUST BE AVAILABLE TO ALL STUDENTS

Playing sports is associated with higher grades and standardized test scores, as well as higher rates of school completion.² Athletics teaches students about teamwork, helps build leadership skills, and confers psychological benefits, such as feelings of well-being, a sense of belonging among peers, and connectedness to the school community.³ All students deserve equal access to these benefits. Preventing transgender, intersex,⁴ and nonbinary students from playing school sports based solely on those characteristics is a form of sex discrimination that exacerbates the poor educational and mental health outcomes for which these students are already at risk due to the significant rates of in-school and out-of-school victimization they face.⁵ Research shows that when transgender and nonbinary students are allowed to play sports, they tend to receive higher grades⁶ and experience increased feelings of belonging, higher self-esteem, and lower levels of depression.⁷ These benefits are significant and in many cases are lifesaving.

TITLE IX AND THE PA HUMAN RELATIONS ACT REQUIRE EQUITABLE ACCESS TO SPORTS FOR TRANSGENDER, NONBINARY, AND INTERSEX STUDENTS

Students have the right to participate in school sports activities consistent with their gender identity; to deny students this right is discrimination on the basis of sex and gender identity under Title IX⁸ and the PHRA.⁹ However, in recent years, anti-LGBTQ activists across the country,

including in Pennsylvania, have introduced dozens of bills or school policies to prohibit students from participating in school sports on the teams that align with their gender identity.¹⁰ These discriminatory policies have been challenged in court as violating Title IX with mixed results in different states.¹¹

In August 2023, a new state regulation was adopted under the PHRA which more explicitly addresses discrimination on the basis of gender identity. The PHRC has recognized that prohibitions against sex-based discrimination are “comprehensive.”¹² Students are protected against discrimination on the basis of sex, including “sex assigned at birth, gender identity or expression, affectional or sexual orientation, and differences in sex development.”¹³ PHRA’s existing guidance expansively protects gender identity which is one’s “innermost concept of self as male, female, a blend of both or neither.”¹⁴ Gender expression is also broadly defined as the external “appearance of one’s gender identify, usually expressed through behavior, clothing, haircut or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.”¹⁵ All gender identities and expressions, including those held by transgender students, are protected by the PHRA. This protection is also inclusive of the ways students’ understanding of these identities evolves over time.

While the PHRA regulation is clear that sex discrimination includes discrimination on the basis of gender identity and transgender status, because the regulation became effective in August 2023, there are not yet court cases or agency resolutions explaining how the new regulation will be applied to discrimination on the basis of gender identity in school sports. To learn more about this law and how to file a complaint with the PHRC, see ELC’s [Rights of LBGTQ+ and Nonbinary Students](#) and [How to File a Complaint to the Pennsylvania Human Relations Commission](#).

WHAT IS HAPPENING WITH SPORTS POLICIES IN PENNSYLVANIA PUBLIC SCHOOLS?

Transgender, nonbinary, and intersex students in Pennsylvania are being targeted through proposed statewide legislation, and multiple school districts are considering or implementing policies that prevent students from participating in a school sports team that aligns with their gender identity (as well as other discriminatory policies relating to bathroom and locker room access and refusal to use transgender students’ name and pronouns). See ELC’s webpages [Advocating for Inclusive Schools and Honest Education](#) and [Supporting & Affirming Gay, Transgender, and Non-Binary Students](#), which includes ELC’s open letters to school boards advocating against these policies, including our letter to [Manheim Township School District](#) warning that a trans-exclusion sports policy would create a hostile environment for these students at school.

The Pennsylvania legislature has also considered multiple bills, including HB 972 and SB 1191, that would single out transgender athletes for discrimination by denying them the ability to play on teams that align with their gender identity.¹⁶ We expect similar bills to be introduced again in the 2023-24 session.

In addition, a growing number of school districts across Pennsylvania are taking up policies excluding transgender youth from school sports. In July 2022, the Hempfield School District approved a categorical ban on transgender students participating in sports aligned with their gender identity, over vigorous parent and community opposition.¹⁷ Manheim Township School

District also proposed a policy prohibiting transgender students from participating in sports aligned with their gender identity and only tabled the action because of the promise of proposed Title IX regulations on the topic.¹⁸

In December 2022, Red Lion Area School District approved a “Title IX Emergency Directive” that states students can only participate on sports teams aligned with their “gender assigned at birth” (and discriminates on the basis of bathroom use as well).¹⁹ A Red Lion board member’s discriminatory purpose was clear when commenting that the policy would affect six current students and “If we nip it in the bud now, it doesn’t have to get more than six.”²⁰ Red Lion school board recently returned to the issue and adopted a policy providing for sex-separated athletic teams “based on reproductive biology and genetic make-up” to be established by requiring a student to present their birth certificate on request.²¹

In January 2023, Penncrest School District approved a policy change that categorically prohibits any person born as a “biological male” from participating in a girls’ athletic program, but does not prevent any person who is “biologically born female” or who identifies as female as their gender identity from playing boys sports.²² Comments from Penncrest school board president reflected an intent to discriminate based on the “look” of students and to require a student to present their birth certificate,²³ which is not permitted under state school enrollment law.²⁴

Many districts, like Conestoga Valley School District,²⁵ rely on a 2014 policy from the Pennsylvania Interscholastic Athletic Association which states only that “where a student’s gender is questioned or uncertain,” the principal has the deciding vote on whether the student can play sports and with whom.²⁶ Such an undefined and subjective policy directive leaves students open to a wide variety of discrimination based on the personal viewpoints of their school administrators. The Pennsylvania Department of Education has failed to provide specific guidance to school districts on the rights of transgender students to participate in school sports or other access issues.

As a student at Manheim Township School District testified to her school board, these policies are not only about sports but whether a student’s identity will be honored, affirmed, and welcomed:

“These kids’ lives are in your hands, my life is in your hands. ...You might think that this is just about sports but it’s not. ... We’re watching and we’re listening and we’re taking your decision to heart. You are setting a precedent for how you treat your students. And right now, I’m ashamed to be one of your students. Think about us kids and our lives.”²⁷

THERE IS NO EVIDENCE THAT THE PARTICIPATION OF TRANS STUDENTS HARMS ANYONE

Anti-trans sports bans and restrictions do nothing to “protect girls rights” or address the actual, ongoing gender inequities in athletics.²⁸ Indeed, they only heighten the risk of sex discrimination for all girls who play sports. There is no evidence that permitting transgender and intersex students to play on sports teams aligned with their gender identity harms anyone. A recent analysis of Centers for Disease Control and Prevention 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.²⁹ In fact, early evidence from California and Connecticut suggests that trans-inclusive policies are correlated with increased participation of girls in school sports.³⁰ In

contrast, where states enacted trans-exclusionary policies, girls' overall participation in high school sports declined.³¹ Moreover, anti-trans sports bans and restrictions only codify sexist stereotypes of how girl athletes *should* look or play, which promotes body policing of any student who deviates from this ideal of femininity.

WHAT IS THE PROPOSED TITLE IX RULE FOR ATHLETICS?

In April 2023, the U.S. Department of Education proposed a new rule affirming that Title IX requires that transgender, nonbinary, and intersex students be permitted to play school sports free from discrimination.³²

The proposed rule makes clear that a categorical ban on trans students participating in sports consistent with their gender identity would not be permitted under Title IX.³³ A school would only be permitted to limit a student's eligibility to participate consistent with their gender identity in rare circumstances where they satisfy a test for "each sport, level of competition, and grade or education level," requiring that any restriction must be justified on the grounds that it is "substantially related to achievement of an important educational objective,"³⁴ and must "minimize harm" to the transgender, nonbinary, and intersex students who face additional barriers to participation (and potentially exclusion).³⁵

The department described 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 would be in reality "a pretext for an impermissible interest in singling out transgender students for disapproval or harm."³⁶ The proposed rule also would require 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.³⁷

WHEN WILL THE TITLE IX RULES BE FINAL?

The comment period for the proposed athletics rule closed in May 2023 with over 150,000 comments submitted. The Department of Education is currently reviewing those comments and the Biden administration announced that the proposed athletics regulation will be published in October 2023 (along with the broader Title IX rules proposed in July 2022).³⁸ You can review the proposed rule athletics [here](#), view submitted comments [here](#), and find the department's fact sheet about the proposed athletics rule [here](#).

IS MY SCHOOL DISTRICT'S POLICY LEGAL?

Each policy must be analyzed individually, but the proposed Title IX rule is very clear that any categorical ban for trans students' participation aligned with their gender identity across all levels and types of sports would violate Title IX. Any policy would also have to satisfy the tests for its substantial relation to an important educational objective and its minimizing of harm to any student, as well as prove the school is not relying on transphobic stereotypes. Under the proposed

rule, elementary schools, middle schools, and in most cases high schools would be effectively prohibited from adopting rules that prevent trans students from participating in school sports consistent with their gender identity.

WHAT SHOULD I DO IF I AM CONCERNED ABOUT MY SCHOOL DISTRICT'S POLICY?

If your school limits the way transgender, nonbinary, or intersex students can play sports, contact the Education Law Center and/or ACLU-PA. For more information about sex discrimination against LGBTQ+ students in schools and how to file an agency complaint, see our recorded [webinar](#) and related [slides](#). Learn more about efforts to challenge these policies on ELC's webpage: [Advocating for Inclusive Schools and Honest Education](#).

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice — visit www.elc-pa.org/contact or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) — or contact another attorney of your choice.

¹ **Transgender** refers to many different kinds of people who do not identify with their expected gender role or whose gender identity does not match some or all of their biological indicators of sex other than their gender identity. A student who identifies as transgender may identify as a male, female, nonbinary, genderqueer, or some other term. **Nonbinary** is an umbrella term for people who identify as a gender that is neither entirely man nor entirely woman, or do not identify with any gender. Some people may use the term “gender fluid” or “genderqueer.” **Intersex** is an umbrella term used to refer to people who are born with or naturally develop variations in sex characteristics, such as genitals, chromosomes, hormones, and/or internal organs that may be perceived as not fitting binary definitions of male or female.

² Nat'l Coalition for Women and Girls in Education, *Title IX at 45: Advancing Opportunity through Equity in Education* 41 (2017), <https://www.ncwge.org/TitleIX45/Title%20IX%20at%2045-Advancing%20Opportunity%20through%20Equity%20in%20Education.pdf>.

³ See, e.g., *id.* at 42; Stacy M. Warner et al., *Examining Sense of Community in Sport: Developing the Multidimensional 'SCS' Scale*, 27 J. OF SPORT MANAGEMENT 349, 349-50 (2013); R. Bailey, *Physical education and sport in schools: A Review of benefits and outcomes*, 76 J. OF SCHOOL HEALTH 397-401 (2006); M. R. Eime et al., *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*, 10 INT'L J. OF BEHAVIORAL NUTRITION & PHYSICAL ACTIVITY 98 (2013).

⁴ Because of the absence of inclusive data, less is known about intersex students' experiences with school sports. However, recent reporting from the Washington Post indicates that intersex students often avoid or are discouraged from participating in sports for fear of scrutiny. See 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/>.

⁵ In a national survey of LGBTQ+ students, an alarming number of students reported being harassed because of their LGBTQ+ status, with an overwhelming majority of all students (76.1%) reporting experiencing verbal harassment on this basis, and over one-third of students (31.2%) reporting physical harassment on this basis. This hostility in turn impacts students' academic outcomes: many students reported not having plans to finish school, with 51.5% of students reporting hostile school climate (e.g., harassment and transphobic policies) as the reason they did not plan to graduate. See GLSEN, *The 2021 National School Climate Survey: The Experiences of LGBTQ+ Youth in Our Nation's Schools* 19, 34 (2022), <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf>.

⁶ GLSEN, *The Experiences of LGBT Students in School Athletics*, (2013) <https://www.glsen.org/sites/default/files/2020-06/The%20Experiences%20of%20LGBT%20Students%20in%20Athletics.pdf>; The Trevor Project, *The Well-Being of LGBTQ Youth Athletes* (Aug. 2020), <https://www.thetrevorproject.org/wp-content/uploads/2020/08/LGBTQ-Youth-Sports-and-Well-Being-Research-Brief.pdf>.

⁷ Russell B. Toomey & Stephen T. Russell, *An initial investigation of sexual minority youth involvement in school-based extracurricular activities*, 23 J. OF RESEARCH ON ADOLESCENCE 304, <https://doi.org/10.1111%2Fj.1532-7795.2012.00830.x>; GLSEN, *LGBTQ Students and School Sports Participation* (2021), <https://www.glsen.org/sites/default/files/2022-02/LGBTQ-Students-and-School-Sports-Participation-Research-Brief.pdf>.

⁸ See *Soule by Stanescu v. Conn. Ass'n of Schs.*, No. 3:20-cv-00201, 2021 WL 1617206 at *10 (D. Conn. Apr. 25, 2021) (“Courts across the country have consistently held that Title IX requires schools to treat transgender students consistent with their gender identity. Every Court of Appeals to consider the issue has so held.”), *aff'd*, 57 F.4th 43, 56 (2d Cir. 2022) (“Although these cases from our sister circuits do not address the exact issue of participation of transgender athletes on gender specific sports teams, such authority nonetheless establishes that discrimination based on transgender status is generally prohibited under federal law. ...”).

⁹ See Protected Classes Under the PHRA and PFOA, 16 Pa. Code § 41.201-41.207 (effective Aug. 16, 2023), <https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol53/53-24/788.html> (final regulations defining terms related to sex, sexual orientation, and gender identity used in the PHRA and PFOA).

¹⁰ See Legislation Affecting LGBTQ Rights Across the Country, ACLU, <https://www.aclu.org/legislation-affecting-lgbtq-rights-across-country>; Bans on Transgender Youth Participation in Sports, Movement Advancement Project, https://www.lgbtmap.org/equality-maps/youth/sports_participation_bans. Several school districts in Pennsylvania have passed or attempted to pass transphobic policies to prevent transgender students from equitable participation in school sports. See ELC’s open letters to the boards of the [Hempfield School District](#), [Central Bucks School District](#), and [Manheim Township School District](#) advocating against these policies. Learn more on our webpage, [Advocating for Inclusive Schools and Honest Education](#) and [Supporting & Affirming Gay, Transgender, and Non-Binary Students](#).

¹¹ See, e.g., *Hecox v. Little*, No. 20-35813, 2023 WL 5283127, at *21 (9th Cir. Aug. 17, 2023) (Idaho statute which categorically banned transgender women and girls from participating in student athletics and subjected all female athletes to intrusive sex verification process “likely” violated Equal Protection Clause and Title IX and hence enforcement of the Act was properly enjoined); *W. Va. v. B. P. J., by Jackson*, --- U.S. ---, 143 S. Ct. 889, --- L.Ed.2d --- (2023) (denying application to vacate injunction where Fourth Circuit stayed order that would have prohibited a 12-year-old transgender girl from participating in school athletics); *Doe v. Horne*, No. CV-23-00185-TUC-JGZ, 2023 WL 4661831, at *1 (D. Ariz. July 20, 2023) (granting a preliminary injunction against Arizona’s transgender sports ban under the Equal Protection Clause and Title IX); *A.M. v. Indianapolis Pub. Sch.*, 617 F.Supp. 3d 950, 966 (S.D. Ind. 2022) (“The singling out of transgender females is unequivocally discrimination on the basis of sex, regardless of the policy argument as to why that choice was made.”); *Soule by Stanescu v. Connecticut Association of Schools, Inc.*, No. 3:20-cv-00201, 2021 WL 1617206 at *10 (D. Conn. Apr. 25, 2021) (upholding school policy that allowed transgender students to participate in sex-segregated sports consistent with their gender identity); see also *Human Rights Campaign Files Lawsuit Against Florida’s Transgender Sports Ban & Announces Future Litigation in Arkansas, Mississippi and Tennessee*, Jun. 30, 2021, <https://www.hrc.org/press-releases/human-rights-campaign-files-lawsuit-against-floridas-transgender-sports-ban-announces-future-litigation-in-arkansas-mississippi-and-tennessee>.

¹² Protected Classes Under the PHRA and PFOA, Regulation #52-13, at 2 (adopted Dec. 8, 2022) (to be codified at 16 Pa. Code ch. 41.201-41.207), <http://www.irrc.state.pa.us/regulations/RegSrchrslts.cfm?ID=3350>.

¹³ *Id.*

¹⁴ Pennsylvania Human Relations Commission, *Guidance on Discrimination on the Basis of Sex Under the Pennsylvania Human Relations Act*, 3 (Mar. 3, 2021), <https://www.phrc.pa.gov/AboutUs/Documents/APPROVED%20Sex%20Discrimination%20Guidance%20PHRA.pdf>.

¹⁵ *Id.*

¹⁶ HB 972 was approved by the General Assembly in June 2022 and was vetoed by Gov. Wolf on July 8, 2022. See Gov. Tom Wolf vetoes transgender legislation, Jul. 8, 2022, <https://www.wgal.com/article/gov-wolf-vetoes-transgender-legislation/40561710>.

¹⁷ See Hempfield school board passes long-debated athletics policy on transgender athletes, Jul. 12, 2022, https://lancasteronline.com/news/local/hempfield-school-board-passes-long-debated-athletics-policy-on-transgender-athletes/article_68857a92-024b-11ed-90d5-8b332381df5e.html.

¹⁸ See Manheim Township School District tables discussion, research on transgender athlete participation, Oct. 13, 2022, https://lancasteronline.com/news/local/manheim-township-school-district-tables-discussion-research-on-transgender-athlete-participation/article_185bc520-4b71-11ed-808f-27d27ce6ca8c.html

¹⁹ See Red Lion Area School District Oks directive that students use facilities that correlate with birth gender, Dec. 8, 2022, https://lancasteronline.com/news/regional/red-lion-area-school-district-oks-directive-that-students-use-facilities-that-correlate-with-birth/article_e6b5d6e6-7726-11ed-b70a-3b58f6a8ae58.html

²⁰ *Id.*

²¹ Red Lion Area School District, Proposed Policy 123.3, Sex Based Distinctions in Athletics (May 9, 2023), <https://4.files.edl.io/4cbf/05/10/23/174044-ce1eda9f-1e0a-46be-842c-97a567b82aae.pdf>

²² Penncrest School District, Policy 123 Interscholastic Athletics (Jan. 12, 2023), <http://go.boarddocs.com/pa/pncr/Board.nsf/goto?open&id=CLQHA94784F9>.

²³ See Penncrest board enacts book ban with one policy, targets transgender athletes with another, Jan. 14, 2023, <https://www.goerie.com/story/news/education/2023/01/14/penncrest-school-board-pa-book-ban-and-policy-targeting-transgender-student-athletes/69805245007/>

²⁴ See Pa. Dep’t of Education, Student Enrollment FAQ, <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/EnrollmentStudentsFAQ.aspx> (“For example, a school district can never demand only one kind of document, for example a birth certificate, to prove age.”)

²⁵ Conestoga Valley School District, Policy 123 Interscholastic Athletics (May 20, 2019), <http://go.boarddocs.com/pa/conestoga/Board.nsf/goto?open&id=BAU8DL6E7329>; Conestoga Valley athletics policy will not include specific language regarding transgender athletes, defers to PIAA, Mar. 16, 2023, https://lancasteronline.com/news/regional/conestoga-valley-athletics-policy-will-not-include-specific-language-regarding-transgender-athletes-defers-to-piaa/article_79bd4654-c367-11ed-843f-c39ab0d984bc.html.

²⁶ Pennsylvania Interscholastic Athletic Assoc., Inc., News Release June 20, 2014: Article XVI Seasons and Out-of-Seasons Rules and Regulations, <http://district5.piaa.org/news/mixed%20gender%20press%20release%20-%20announcement%206-20-14.pdf>

²⁷ Manheim Township School District tables discussion, research on transgender athlete participation, Oct. 13, 2022, https://lancasteronline.com/news/local/manheim-township-school-district-tables-discussion-research-on-transgender-athlete-participation/article_185bc520-4b71-11ed-808f-27d27ce6ca8c.html

²⁸ Women and girls still lack significant opportunities to play sports as compared to men and boys, with Black and Brown women and girls being disproportionately denied opportunities to play; schools still prioritize funding and resourcing men’s and boys’ teams while giving women’s and girls’ teams second-class treatment; and sexual harassment and abuse of student athletes still persists. Women’s Sports Foundation, *Chasing Equity: The Triumphs, Challenges, and Opportunities in Sports for Girls and Women* (2020), https://www.womenssportsfoundation.org/articles_and_report/chasing-equity-the-triumphs-challenges-and-opportunities-in-sports-for-girls-and-women; Nat’l Women’s Law Center, *Finishing Last: Girls of Color and School Sports Opportunities* 1 (2015), <https://nwlc.org/resources/finishing-last>; Dean Golembeski, *Gender Equality Remains Elusive in College Sports*, *Best Colleges* (Nov. 10, 2021), <https://www.bestcolleges.com/news/2021/07/01/gender-equality-remains-elusive-in-college-sports/>.

²⁹ 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 (2022). Navigator: Trans and Nonbinary Athletic Inclusion Policies. <https://maps.glsen.org/trans-and-nonbinary-athletic-inclusion-policies/>.

³⁰ Goldberg, “Fair Play,” 14-16 (Feb. 8, 2021).

³¹ *Id.* at 14-15.

³² U.S. Dep’t of Educ., *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 (Apr. 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>

³³ 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 22873.

³⁴ 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 22891.

³⁵ *Id.* at 22891.

³⁶ *Id.* at 22872.

³⁷ *Id.* at 22891.

³⁸ U.S. Dep’t of Educ., Timing Update on Title IX Rulemaking (May 26, 2023), <https://blog.ed.gov/2023/05/a-timing-update-on-title-ix-rulemaking/>.