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To: Members of the Senate Education Committee
From: Education Law Center PA and Undersigned Organizations
Date: March 25, 2025
Re: **Opposition to SB-9 Discriminatory Sports Bills – Let All Kids Play**

We, the undersigned organizations in Pennsylvania that educate, promote and defend the civil rights of young people, write to urge you to oppose [SB 9](#). This bill would violate federal and state law, drawing legal challenges and expenses, and create a hostile school environment for transgender and other LGBTQ, nonbinary and intersex students. Discriminating against transgender students does nothing to create more “fairness” – we demand policymakers let all kids play.

As an initial matter, the Trump administration’s February 5, 2025 Executive Order (EO) cannot be relied upon for legal support for SB-9. The EO does not have the force of law and cannot supersede state or federal law.¹ The EO is being directly challenged as unconstitutional in a lawsuit brought by students and families in New Hampshire.² A federal district court judge in Philadelphia noted in court on March 4, 2025 that the “executive order specifically says it does not change the law” and rejected a cisgender student athlete plaintiff’s request for a broad ban on transgender students playing sports.³

Policies and laws prohibiting or restricting the right of students to participate in school sports based on their gender identity have been successfully challenged in multiple appellate courts as violations of Title IX and the Equal Protection Clause.⁴ In addition, the Commonwealth’s own anti-discrimination statute, the Pennsylvania Human Relations Act (PHRA), prohibits discrimination in schools on the basis of sex, which includes sex assigned at birth, gender identity or expression, affectional or sexual orientation, and differences in sex development.⁵ Finally, denying transgender students access to athletic opportunities based on their gender identity would run afoul of the Equal Rights Amendment’s command that benefits and burdens not be conferred on the basis of sex under the Pennsylvania Constitution.⁶

The educational benefits of playing sports are promised to all students under state and federal law. Playing sports is associated with higher grades and standardized test scores, as well as higher rates of school completion.⁷ It teaches students about teamwork, helps build their leadership skills, and confers psychological benefits, such as feelings of well-being, a sense of belonging among peers, and connectedness to the school community.⁸ All students deserve equal access to these benefits. Preventing transgender, intersex,⁹ and nonbinary students from playing school sports based solely on the fact that they are transgender or nonbinary is a form of sex discrimination that exacerbates the poor educational and mental health outcomes for which they are already at risk due to the significant rates of in-school and out-of-school victimization they face.¹⁰ But when transgender and nonbinary students are allowed to play sports, they tend to receive higher grades¹¹ and experience increased feelings of belonging, higher

self-esteem, and lower levels of depression.¹² These benefits are significant and could even be lifesaving for transgender and nonbinary students.¹³

Anti-trans sports bans and restrictions do nothing to “protect girls rights” or address the actual, ongoing gender inequities in athletics¹⁴ - 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. An 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.¹⁵ In fact, evidence from California and Connecticut suggests that trans-inclusive policies are correlated with increased participation of girls in school sports.¹⁶ In contrast, where states enacted trans-exclusionary policies, girls’ overall participation in high school sports declined.¹⁷ Moreover, anti-trans sports bans and restrictions such as the one proposed here only codify sexist stereotypes of how girl athletes *should* look or play, which promotes body policing of any student that deviates from this ideal of femininity. Students, families and civil rights advocates do not consent to school administrators’ or policymakers’ invasive questions and investigations of girls’ bodies and privacy that would be required to police the mandates of SB-9.

Finally, anti-trans sports bans ignore the reality that there are (and have always been) wide variations in physical characteristics among students who play sports. This is especially true during formative school-age years as young people are rapidly growing and their bodies are undergoing tremendous changes at varying rates of speed and in different school years. Like all other youth, trans youth are short and tall, athletic and non-athletic, fast and slow. Prohibiting their participation does not level the playing field but only unlawfully discriminates against students based on their sex in violation of state and federal law.

For all these reasons, we urge the Senate Education Committee Members to oppose SB-9 and its discrimination against transgender students. Let all kids play.

For questions, please contact Education Law Center PA senior attorney Kristina Moon, kmoon@elc-pa.org

Education Law Center-Pennsylvania

American Association of University Women PA

Centre LGBT+

Eastern PA Trans Equity Project

Education Voters of Pennsylvania

Hanover Area Diversity Alliance

LGBT Equality Alliance of Chester County

NAACP Bucks County Branch 2253

PA Coalition for Trans Youth

Pennsylvania Youth Congress
Planned Parenthood Pennsylvania Advocates
Public Education Advocates of Lancaster (PEAL)
Public Interest Law Center
TAKE
The PairUp Society
Triversity Pride Center
UDTJ

¹ See, e.g., *Local 1498, Am. Fed'n Gov't Emps. v. Am. Fed'n Gov't Emps.*, 522 F.2d 486, 491 (3d Cir. 1975) (holding that an executive order “cannot attain the status as a ‘law of the United States’” if it regulates “solely as a product of executive authority and not as a consequence of congressional law making”).

² See, *Students and families move to challenge Trump executive order banning transgender sports participation* (Feb. 12, 2025), <https://www.aclu-nh.org/en/press-releases/students-and-families-move-challenge-trump-executive-order-banning-transgender-sports>

³ See, *A federal judge rejected a Quakertown student’s motion to bar transgender athletes from girls’ sports* (Mar. 4, 2025), <https://www.inquirer.com/education/trans-athlete-quakertown-colonial-plymouth-whitemarsh-20250304.html>

⁴ See e.g., *B.P.J. ex rel. Jackson v. W. Va. State Bd. of Educ.*, 98 F.4th 542 (4th Cir. 2024) (holding that a law banning transgender girls and women from participating in female sports violates Title IX as to plaintiff because it discriminated against her on the basis of her gender identity); *Doe v. Horne*, 115 F.4th 1083 (9th Cir. 2024) (upholding a preliminary injunction of a law banning plaintiffs, two transgender girls, from participating in female sports since it violates equal protection as it discriminates based on their transgender status, which is subject to heightened scrutiny); *Hecox v. Little*, 104 F.4th 1061 (9th Cir. 2024) (upholding a preliminary injunction that banned transgender women and girls from female sports because it discriminates on the basis of sex and was directed at excluding women and girls rather than promoting sex equality); see also *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018) (ruling that the government has a compelling interest in protecting transgender students from discrimination and that “barring transgender students from restrooms that align with their gender identity would pose a potential Title IX violation”).

⁵ Protected Classes Under the PHRA and PFEOA, 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 PFEOA); Pennsylvania Human Relations Commission, *Guidance on Discrimination on the Basis of Sex under the Pennsylvania Human Relations Act 2-3*

(Mar. 3, 2021), <https://www.phrc.pa.gov/AboutUs/Documents/APPROVED%20Sex%20Discrimination%20Guidance%20PHRA.pdf> (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).

⁶ See *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Human Svs.*, 309 A.3d 808, 868-69, 869 n. 51 (Pa. 2024) (explaining that “the clear text of the Equal Rights Amendment is unequivocal and prohibits denial of rights, regardless of whether biology is used as a pretext”).

⁷ 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>.

⁸ 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).

⁹ 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/>.

¹⁰ 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>.

¹¹ 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>.

¹² 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>.

¹³ 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* (2022), <https://www.thetrevorproject.org/survey-2022/>.

¹⁴ 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/>.

¹⁵ 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/>.

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

¹⁷ *Id.* at 14-15.