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May 15, 2023

*Submitted via [www.regulations.gov](http://www.regulations.gov)*

Alejandro Reyes  
U.S. Department of Education  
400 Maryland Ave. SW  
PCP-6125  
Washington, DC 20202

**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**

Dear Mr. Reyes,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 230 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 51 undersigned organizations, we write in response to the Department of Education's notice of proposed rulemaking published in the Federal Register on April 13, 2023 to amend the regulations implementing Title IX of the Education Amendments of 1972 (Title IX) clarifying students' rights to participate in athletics consistent with their gender identity.

We, the civil and human rights community, support the full inclusion and protection of all youth. We are fortunate that transgender, nonbinary, and intersex<sup>1</sup> people are present in our community, and we fully embrace them as members of our community.<sup>2</sup> We reject the bigoted, ignorant, mean-spirited, and discriminatory policies currently being considered by far too many legislators that seek to exclude transgender people and make these members of our communities invisible. Targeting and excluding transgender students from participation in school programming, including athletics programs, alongside their cisgender<sup>3</sup> peers is

<sup>1</sup> "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.

<sup>2</sup> In September 2022, The Leadership Conference on Civil and Human Rights, joined by 43 national civil and human rights organizations, called on the Biden administration and the U.S. Department of Education to ensure educational environments free from discrimination on the basis of sex, including sexual orientation, gender identity, transgender status, sex stereotypes, sex characteristics, or pregnancy and related conditions. <https://civilrights.org/resource/civil-rights-community-comment-urging-strong-title-ix-rule/>

<sup>3</sup> Transgender people are people whose gender identity is different from the gender they were thought to be at birth. Cisgender people are people whose gender identity is the same as the gender assigned at birth. For more information see: <https://nbjc.org/wp-content/uploads/2020/11/LGBTQCulturalCompetencyTerminologyWorkbook-10-10-11.pdf>.

**President and CEO**

Maya Wiley

harmful to all students and undermines the learning environment for everyone.<sup>4</sup> If schools mark some students effectively as outcasts, they foster an environment where no student is included and safe. A record number of sports bans targeting transgender students have been proposed in states, and federal legislation in the House of Representative seeks to exclude transgender, nonbinary, and intersex students from the protections of Title IX in school sports.<sup>5</sup> Between 2019 and 2021, the percentage of transgender youth reporting that they had been barred from participating in school sports consistent with their gender identity more than doubled.<sup>6</sup> These proposals seek to punish and harm a population of young people already marginalized by stigma, bullying, and harassment.<sup>7</sup> Furthermore, exclusionary restrictions on participation consistent with gender identity distract from actually existing gender disparities impacting all women and girls' opportunities to benefit from school sports participation.<sup>8</sup> We firmly believe that an attack on transgender, nonbinary, and intersex youth is an attack on civil rights.

Given these attacks, the department must be clear in the final rule, in all public communication, and at every possible opportunity that — under Title IX — transgender, nonbinary, and intersex students are presumed to be included in all school programs and activities consistent with their gender identity. The department must make sure that all who are responsible for complying with the regulation understand that any reliance on broad generalizations or stereotypes, or any categorical ban, violates Title IX. While it is always important that implementing regulations clarify a law's application, that clarity is even more important when there is an active effort to contort and weaponize nondiscrimination protections to harm and exclude. Transgender, nonbinary, and intersex students are deserving of full-throated, vocal, and

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<https://transequality.org/issues/resources/frequently-asked-questions-about-transgender-people> and <https://www.glsen.org/sites/default/files/2020-04/GLSEN%20Terms%20and%20Concepts%20Thematic.pdf>.

<sup>4</sup> For example, 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. 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.google.com/url?q=https://www.sltrib.com/news/education/2022/08/18/utah-parents-complained-high/&sa=D&source=docs&ust=1682970502723887&usq=AOvVawlKRkpanZrTE2tnZX-YoMR>

<sup>5</sup> In April 2023, The Leadership Conference on Civil and Human Rights, joined by 187 civil and human rights organizations, sent a letter to Congress strongly opposing H.R. 734, the so-called Protection of Women and Girls in Sports Act of 2023, and calling for inclusion and nondiscrimination for all students. <https://civilrights.org/resource/oppose-h-r-734-to-protect-civil-rights/>

<sup>6</sup> 51.5 percent of transgender boys reported being prevented from playing on a sports team consistent with their gender identity in 2021, compared to 15.8 percent in 2019. 45.9 percent of transgender girls reported being prevented from playing on a sports team consistent with their gender identity in 2021, compared to 21.0 percent in 2019. 37.1 percent of trans nonbinary students and 53.2 percent 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 percent of trans students who identified as neither male or female in 2019. 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>; 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> National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 4, 11 (2017) [USTS Report], available at <http://www.ustransurvey.org/reports>; GLSEN, *Improving School Climate for Transgender and Nonbinary Youth* (Research Brief), (New York: GLSEN, 2021), <https://www.glsen.org/research/improving-school-climate-transgender-and-nonbinary-youth>.

<sup>8</sup> Compared to men and boys, women and girls have fewer opportunities to play; worse facilities, uniforms, and equipment; more inexperienced coaches; and less support and publicity from their schools. 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>

unambiguous support from our president, our secretary of education, and the department's Office for Civil Rights.

Ensuring that all our students — including transgender, nonbinary, and intersex students — are safe and welcomed in schools is incredibly important to our organizations, our partners, and the communities we represent. If you have any questions, please reach out to Steven Almazán, k12 education senior program manager at The Leadership Conference on Civil and Human Rights, at [almazan@civilrights.org](mailto:almazan@civilrights.org).

Sincerely,

**National Organizations:**

The Leadership Conference on Civil and Human Rights  
The Leadership Conference Education Fund  
American Association of University Women  
American Atheists  
American Humanist Association  
Asian Americans Advancing Justice | AAJC  
Autistic Self Advocacy Network  
Center for American Progress  
Children's Defense Fund  
Family Equality  
Girls Inc.  
GLSEN  
Human Rights Campaign  
Human Rights First  
IDRA  
Japanese American Citizens League  
MALDEF (Mexican American Legal Defense and Educational Fund)  
MomsRising  
National Association of Social Workers  
National Council of Jewish Women  
National Disability Rights Network (NDRN)  
National Education Association  
National Urban League  
National Women's Law Center  
PFLAG National  
Safe Schools Action Network  
Southeast Asia Resource Action Center  
The Advocacy Institute  
The Education Trust  
The Sikh Coalition  
Tyler Clementi Foundation

Union for Reform Judaism

**State & Local Organizations:**

API Rainbow Parents of PFLAG NYC  
Education Law Center - Pennsylvania  
Erasing Essex's Borders  
Fannie Lou Hamer Center For Change  
FL National Organization for Women  
Garden State Equality  
Greater Orlando National Organization for Women  
Hillsborough Democratic Organization  
Hyacinth AIDS Foundation  
Maryland Center for Developmental Disabilities  
Michigan Alliance for Special Education  
New Jersey Public Education Coalition  
New Jersey Safe Schools Coalition  
NJ LGBTQ Democrats  
Out Montclair  
Somerset County Democratic LGBT Caucus  
Somerset County LGBTQ+ Advisory Board  
South Orange Country Day School  
Trans Affirming Alliance  
Wall Township Democrats