

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

SELINA SOULE, <i>et al.</i>,	:	Docket No. 3:20-cv-00201-RNC
Plaintiffs,	:	
	:	
v.	:	
	:	
CONNECTICUT ASSOCIATION OF	:	
SCHOOLS, INC., <i>et al.</i>,	:	
Defendants	:	April 20, 2020

MOTION TO JOIN
ADDITIONAL PARTIES TO THE ACTION

Through their attorneys, the Danbury Board of Education, the Bloomfield Board of Education, the Cromwell Board of Education, the Glastonbury Board of Education, the Canton Board of Education, and the Connecticut Association of Schools/Connecticut Interscholastic Athletic Conference move pursuant to Fed. R. Civ. P. 19 and 20 to join the United States Department of Education and Secretary Betsy DeVos, in her official capacity, as parties to this lawsuit. Wherefore, the Defendants request that this motion be granted, together with such further and additional relief the Court deems necessary.

The Defendants,

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For the Canton Board of Education and the Glastonbury Board of Education

CERTIFICATION OF SERVICE

This is to certify that on April 20, 2020, a copy of the foregoing Motion and Memorandum of Law were filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System. In addition, a copy of this Motion, Memorandum of Law, and the Complaint in this matter will be:

A. Delivered to:

John H. Durham
United States Attorney for the District of Connecticut
United States Attorney's Office
157 Church Street
New Haven, CT 06510

B. Sent by certified mail to the civil-process clerk at the:

United States Attorney's Office
157 Church Street
New Haven, CT 06510

C. Sent by registered or certified mail to:

William P. Barr
Attorney General of the United States
Office of the Attorney General
441 4th St NW #1100
Washington, D.C. 20001

D. Sent by registered or certified mail to:

Betsy DeVos
Secretary of Education
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

/s/ Peter J. Murphy

Peter J. Murphy

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MEMORANDUM OF LAW
IN SUPPORT OF DEFENDANTS’ MOTION
TO JOIN THE DEPARTMENT OF EDUCATION AS A PARTY TO THE ACTION

In 2016, the U.S. Department of Justice (“DOJ”) and the U.S. Department of Education (“DOE”) (collectively “the Departments”) issued a joint “Dear Colleague Letter on Transgender Students” stating that the “Departments treat a student’s gender identity as the student’s sex for purposes of Title IX and its implementing regulations.” That letter further stated that, when a school provides sex-segregated activities and facilities, “transgender students must be allowed to participate in such activities . . . consistent with their gender identity.” At the same time, the Departments issued a document with “examples of policies and emerging practices for supporting transgender students.” In the section addressing athletics, the Departments cited examples from New York, Rhode Island, and California that allowed students who are transgender to participate in athletics consistent with their gender identity.¹

¹ Both of these documents remain available on the DOE’s website. See: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf>; and <https://www2.ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf>

In February 2017, the Departments withdrew and rescinded that 2016 guidance, but they did not replace it with anything different. In the absence of any guidance, the Departments stated that “there must be due regard for the primary role of the States and local school districts in establishing educational policy.” This position was repeated again in a March 2020 report by DOE Office for Civil Rights (“OCR”).² In Connecticut, Section 10-15c of the Connecticut General Statutes protects the fundamental rights of transgender students and ensures that such students have equal access to educational programming and activities, free of discrimination. Just like in the New York, Rhode Island, and California policies cited in the DOE’s May 2016 document, the transgender participation policy adopted by the Connecticut Association of Schools (“CAS”)/Connecticut Interscholastic Athletic Conference (“CIAC”) provides that students who are transgender participate in athletics consistent with their gender identity.³

Despite the position expressed in February 2017 and March 2020 about “due regard for the primary role of States and local school districts,” and despite the lack of any subsequently-issued guidance from the DOE on this subject, on March 24, 2020, the DOJ filed a Statement of Interest in this case. [Ecf. 75] In that Statement, the DOJ suggests that “the Court should not read Title IX to compel schools to require students to participate on sex-specific teams solely on the basis of their gender identity.” The Statement fails to mention any of the prior guidance issued by the Departments. Moreover, the Statement fails to mention the DOE at all.

² See https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2017-18.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=, pp. 11 & 19.

³ The CIAC is a division of the Connecticut Association of Schools, Inc. See www.cas.casciac.org

The DOE is the federal agency charged with interpreting and enforcing Title IX of the Education Amendments of 1972 (“Title IX”) on behalf of the United States.⁴ Individuals who believe their Title IX rights have been violated may therefore file a complaint with the DOE’s Office for Civil Rights.⁵ In the Complaint, Plaintiffs acknowledge that they filed a complaint in 2019 with OCR, and that OCR is continuing with that proceeding. See Complaint ¶¶ 116-124.⁶ Plaintiffs’ complaint also is listed as an open proceeding on the DOE’s website.⁷

It is a well-established concept that courts can and should join all absent persons to pending litigation who are necessary to avoid duplicative litigation, inconsistent judicial determinations, or other practical impairment of their legal interests all current parties to a litigation. The DOJ’s recently-filed Statement of Interest states that the United States government has an interest in the subject matter of this litigation. That interest is located in the DOE, which interprets and enforces Title IX, and which is continuing its proceedings on

⁴See, e.g., <https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/sex-issue.html> (“The Office for Civil Rights (OCR) enforces Title IX of the Education Amendments of 1972, which prohibits discrimination based on sex in education programs and activities that receive federal financial assistance.”).

⁵ See <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

⁶ On April 17, 2020, Plaintiffs filed an Amended Complaint. [Ecf. 89]. Plaintiffs’ filing was not in compliance with Fed. R. Civ. P. 15 because Plaintiffs did not receive Defendants’ consent or permission from the Court to file an amended complaint. In fact, Plaintiffs did not even mention their intent to file the Amended Complaint in a telephone conference the day before with both the Defendants and the Court. At this time, the Defendants are assessing their possible responses to the purported Amended Complaint. Therefore, the citations in the text above are to the original, operative Complaint. [Ecf. 1]

⁷ See <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/open-investigations/tix.html?page=8&offset=140>

Plaintiffs' OCR complaint.⁸ The DOE, however, is not a party to this lawsuit. As set forth more specifically below, the OCR complaint involves the same factual and legal claims as this lawsuit, and seeks the same relief. At this point, therefore, the Danbury Board of Education, the Bloomfield Board of Education, the Cromwell Board of Education, the Glastonbury Board of Education, and the Canton Board of Education (collectively "the Board Defendants"), and CAS are involved in legal proceedings in two different venues on the same exact subject matter, but the DOE is involved only in one of those proceedings. The Defendants are therefore facing the possibility of inconsistent rulings concerning the CIAC's transgender participation policy. For these reasons, the Defendants submit that the DOE, and Secretary of the Department of Education, Betsy DeVos, in her official capacity, are necessary parties to this action.

Accordingly, the Defendants now move pursuant to Rules 19 and 20 of the Federal Rules of Civil Procedure to join DOE, its Office for Civil Rights, and Secretary DeVos, in her official capacity (collectively "DOE"), as parties to this action.⁹

⁸ As noted in the text above, individuals who believe their Title IX rights have been violated can file a complaint with OCR. According to OCR's case processing manual, the DOE is the agency that then investigates that complaint and the DOJ only becomes involved if OCR completes its investigation and then OCR refers the case to the DOJ for court enforcement. See <https://www2.ed.gov/about/offices/list/ocr/complaints-how.html> When the DOE or Secretary DeVos is sued in Court, the DOJ will also represent the DOE. *See, e.g., Parents for Privacy v. Dallas Sch. Dist. No. 2*, 326 F. Supp. 3d 1075, 1091 (D. Or. 2018). The DOE, therefore, the proper party to be asserting and defending the interest of the United States in this litigation.

⁹ To the extent the Court determines that the Department of Education and Secretary DeVos are necessary parties, but that they cannot be joined as parties, the Defendants request that the Court dismiss this action pursuant to Fed. R. Civ. P. 12(b)(7) and Fed. R. Civ. P. 19(b). *See, e.g., McCarthy v. Higgins*, 2000 WL 1134479, at *3 (S.D.N.Y. Aug. 10, 2000) ("The inability to join an indispensable party mandates that the Court grant defendants' motion to dismiss.").

I. BACKGROUND

The plaintiffs in this action are three (3) female high school athletes who attend Glastonbury High School, Canton High School, and Danbury High School. See Complaint ¶ 10-13. In their complaint and accompanying motion for preliminary injunction, Plaintiffs seek to prevent two (2) of their female competitors from participating in interscholastic outdoor and indoor track events on the basis of their sex assigned at birth. More specifically, Plaintiffs allege that Andraya Yearwood, from Cromwell High School, and T.M., from Bloomfield High School, are transgender girls who participate in girls track events pursuant to the CIAC’s transgender participation policy. Id. ¶ 77-78. The policy allows student athletes, male or female, to participate in interscholastic athletics based on the gender identification of that student in current school records and daily life activities in the school and community at the time that sports eligibility is determined. Id. ¶ 71.

A. State of the Law

In 2011, the Connecticut General Assembly passed a comprehensive transgender rights bill that specifically prohibits discrimination based on gender identity and expression in education, employment, public accommodation, and housing. *See* Public Act 11-55. In the educational context, this Public Act modified Section 10-15c of the Connecticut General Statutes, and protects the fundamental rights of transgender students and ensures that such students have equal access to educational programming and activities, free of discrimination.

In an opinion letter dated January 7, 2015, OCR interpreted how Title IX of the Education Amendments of 1972 (“Title IX”) regulations should apply to transgender individuals (the “2015 Letter”). A true and accurate copy of the January 7, 2015 letter is attached as Exhibit

A. In particular, the 2015 Letter explained that “The Department’s Title IX regulations permit schools to provide sex-segregated athletic teams . . . [and when a school elects to separate or treat students differently on the basis of sex in those situations . . . a school generally must treat transgender students consistent with their gender identity.” *See* Ex. A, pg. 2.

On May 13, 2016, the DOJ and the DOE issued a joint “Dear Colleague Letter on Transgender Students” summarizing public schools’ obligations regarding transgender students under Title IX and explaining how those departments evaluate a school’s compliance with those obligations (the “2016 Letter”). A true and accurate copy of the 2016 Letter is attached as Exhibit B. The 2016 Letter included notice that Title IX protects students from discrimination in school on the basis of gender identity, including in regard to names and pronouns, restrooms, and athletics. *See* Ex. B. The guidance made clear that Title IX allows students to participate in sex-segregated activities and access sex-segregated facilities consistent with their gender identity. *Id.*

On February 22, 2017, however, the DOE and DOJ issued another Dear Colleague Letter that withdrew the May 2016 guidance (the “2017 Letter”). A true and accurate copy of the 2017 Letter is attached as Exhibit C. The 2017 letter withdrew the guidance provided previously in the 2015 Letter and the 2016 Letter, but did not replace it with any contrary guidance. As one court aptly stated: “[T]he 2017 [Letter] did not propound any ‘new’ or different interpretation of Title IX or the Regulation, nor did the 2017 [Letter] affirmatively contradict the 2015 and 2016 Guidance documents. It instead appears to have generated an interpretive vacuum pending further consideration by those federal agencies of the legal issues involved in such matters.” *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 298 (W.D. Pa. 2017). Although it created an “interpretive vacuum” in regard to federal law, the 2017 Letter was unequivocal in stating that “the Departments believe that, in this context, there must be due regard for the

primary role of the *States and local school districts* in establishing educational policy.” See Ex. C (emphasis added). As noted previously, this has been repeated by OCR as recently as March 2020.

Accordingly, on February 23, 2017, then-Governor Dannel P. Malloy and Connecticut Commissioner of Education Dianna R. Wentzell jointly issued a memorandum to Connecticut superintendents of schools reaffirming Connecticut’s unwavering commitment to provide every student in Connecticut with access to a high quality education in a safe, supportive, inclusive and welcoming environment. The same day, Governor Malloy signed an executive order ensuring that the rights of transgender students receiving an education continue uninterrupted. A true and accurate copy of the executive order signed by Governor Malloy is attached as Exhibit D. Additional guidance was published by the Connecticut State Department of Education in September 2017, which made clear that both federal and state laws protect transgender and gender non-conforming students from discrimination. See Exhibit E. As previously noted, Connecticut Public Act 11-55 specifically addressed antidiscrimination on the basis of gender identity and expression. Hence, Connecticut law requires that transgender students be permitted to participate in sex-segregated activities consistent with their gender identity.

B. Plaintiffs’ OCR Complaint

On or about June 17, 2019, Plaintiffs in this action submitted a complaint with OCR alleging discrimination under Title IX (the “OCR Complaint”). A true and accurate copy of the OCR Complaint is attached as Exhibit F. Many, if not most, of the allegations in the OCR Complaint mirror the allegations in the Complaint filed in this action. Compare Exhibit F with the Complaint, ECF no. 1. In the OCR Complaint, Plaintiffs requested OCR to investigate the

alleged violations of Title IX described in the OCR Complaint. They also sought an order from OCR requiring CIAC to, among other things:

- (1) revise its rules to exclude individuals who are in all physiological and hormonal respects males from participating in girls' or women's athletic competitions;
- (2) issue revised records of all girls' athletic competitions from 2017 to the present in which any biological male participated who would have been disqualified by application of (1) above, removing such individuals from any list of winners or qualifiers for participation in any further competition;
- (3) issue a press release naming and giving proper credit – including championship credit as appropriate – to every girl who would have been identified as a champion or as qualifying for participation in a higher-level competition but for the participation in any meet of any biological male who would have been disqualified by application of (1) above; and
- (4) issue a declaration that Title IX neither permits nor requires CIAC's Policy that allows biological males to compete in high school women's athletic events.¹⁰

See OCR Complaint at p. 25. In the Complaint, Plaintiffs seek relief that essentially mirrors the relief they seek in the OCR Complaint, namely:

- (1) A declaration that Defendants have violated Title IX by failing to provide competitive opportunities that effectively accommodate the abilities of girls;
- (2) A declaration that Defendants have violated Title IX by failing to provide equal treatment, benefits, and opportunities for girls in in athletic competition;
- (3) An injunction prohibiting all Defendants, in interscholastic athletic competitions sponsored, organized, or participated in by the Defendants or any of them, from permitting males—individuals with an XY genotype—from participating in events that are designated for girls, women, or females;
- (4) An injunction requiring all Defendants to correct any and all records, public or non-public, to remove male athletes from any record or recognition purporting to record times, victories, or qualifications for elite competitions designated for girls or women, and conversely to correctly give credit and/or titles to female

¹⁰ This language is taken directly from Plaintiffs' OCR complaint. As noted in prior submissions to this Court, Defendants find Plaintiffs repeated references to Ms. Yearwood and T.M. as "male" to be inappropriate and offensive.

athletes who would have received such credit and/or titles but for the participation of males in such competitions;

(5) An injunction requiring all Defendants to correct any and all records, public or non-public, to remove times achieved by male athletes from any records purporting to record times achieved by girls or women;

(6) An award of nominal and compensatory damages and other monetary relief as permitted by law; and

(7) An award of Plaintiffs' reasonable attorneys' fees and expenses, as authorized by 42 U.S.C. § 1988.

Compare OCR Complaint at p. 25 with the Complaint at pp. 49-50.

After Plaintiffs filed the OCR Complaint in June 2019, OCR opened an investigation of Plaintiffs' allegations. On February 12, 2020, Plaintiffs commenced this action, seeking the same relief as requested previously in the OCR complaint. In that situation, OCR's Case Processing Manual states that "OCR **will dismiss**...the complaint in its entirety when...[t]he same or a similar allegation based on the same operative facts has been filed...by the complainant... against the same recipient with...federal court."¹¹ Similarly, OCR's website advises complainants that, "if you proceed with your claim in a court, **OCR will not continue to pursue your OCR complaint.**" (emphasis added).¹² Despite the plain language of its own case processing manual and the DOE's website, OCR has informed counsel for the Defendants that it will be continuing its proceeding despite the fact that the Plaintiffs have filed this lawsuit.¹³

¹¹ The CPM is available at: <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

¹² See <https://www2.ed.gov/about/offices/list/ocr/qa-complaints.html>

¹³ The undersigned counsel have personal knowledge of the factual statements made above through telephone conference calls with representatives of OCR and are reporting the same as an offer of proof and as officers of the Court. Counsel can provide documents or correspondence that have not yet been made public by OCR in support of such statements if requested by the Court.

II. ARGUMENT

A. Pursuant To Fed.R.Civ.P 19(a), The Court Must Join “Required Parties” To The Action.

Rule 19 of the Federal Rules of Civil Procedure addresses when a court must order the joinder of persons or entities who are not yet a party to an action. Fed. R. Civ. P. 19(a) provides, in pertinent part, as follows:

- (1) *Required Party.* A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction ***must be joined*** as a party if:
 - (A) in that person’s absence, the court cannot accord complete relief among existing parties; or
 - (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may:
 - (i) as a practical matter impair or impede the person’s ability to protect the interest; or
 - (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.
- (2) *Joinder by Court Order.* **If a person has not been joined as required, the court must order that the person be made a party.** A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

Fed.R.Civ.P. 19(a) (emphasis added). Under Rule 19, parties should be joined when their absence will either materially reduce the likelihood that the court can provide justice for those already parties or be detrimental to the non-parties themselves. *See, e.g., Hammond v. Clayton*, 83 F.3d 191, 195 (7th Cir. 1996) (“Rule 19 is designed to protect the interests of absent persons, as well as those already before the court, from duplicative litigation, inconsistent judicial determinations, or other practical impairment of their legal interests.”).

When assessing a motion to join a party under Rule 19, “the court must [first] determine whether an absent party belongs in the suit, *i.e.*, whether the party qualifies as a ‘[required] party’ under Rule 19(a).” *Viacom Int’l, Inc. v. Kearney*, 212 F.3d 721, 724 (2d Cir. 2000). Second, if a party qualifies as a [“required”] party, the Court must determine if it is feasible to join that party. *Id.* A court considering such joinder should take into account all relevant facts, and its analysis should “emphasize pragmatic considerations rather than rigid formalism.” *Gentry v. Smith*, 487 F.2d 571, 579 (5th Cir. 1973); *see also Marvel Characters, Inc. v. Kirby*, 726 F.3d 119, 133 (2d Cir. 2013). Ultimately, “[t]here is no precise formula for determining whether a particular nonparty should be joined The determination is heavily influenced by the facts and circumstances of each case.” *Equal Employment Opportunity Comm’n v. Peabody W. Coal Co.* (“EEOC”), 610 F.3d 1070, 1081 (9th Cir. 2010) (internal quotations omitted).

The pragmatic considerations that the Court should consider include: (1) whether judgment rendered in a party’s absence might prejudice that party or other parties to the action, (2) the extent to which prejudice may be alleviated, (3) whether judgment in the party’s absence would be adequate, and (4) whether a plaintiff would have adequate remedy if the court dismissed the suit. *See Marvel Characters*, 726 F.3d at 133. The Court should also be mindful of the policy considerations of Rule 19, which favor “avoidance of unnecessary or multiple litigation,” provision of “complete relief to the parties, and “protection of the rights and interests of any absent parties.” *Yonofsky v. Wernick*, 362 F.Supp. 1005, 1022–23 (S.D.N.Y. 1973); *see also* Rule 19 Advisory Committee’s Notes to 1966 amendments (“Whenever feasible, the persons materially interested in the subject of an action . . . should be joined as parties so that they may be heard and a complete disposition made.”)

B. The Department of Education Is A “Required Party” That The Court Must Join To The Action Pursuant to Rule 19(a)(1)(B).

1. The Department of Education is subject to service of process and its joinder would not deprive the Court of subject matter jurisdiction.

The Department of Education, acting through its Office of Civil Rights, is a federal agency responsible for ensuring equal access to education through the enforcement of civil rights. See <https://www2.ed.gov/about/offices/list/ocr/index.html>. As a federal agency, it is subject to service of process pursuant to Rule 4(i)(2) of the Federal Rules of Civil Procedure. See Fed.R.Civ.P. 4(i)(2). Secretary DeVos also is subject to service under Fed.R.Civ.P 4(i). Moreover, according to the Complaint, this is an action pursuant to Title IX, 20 U.S.C. § 1681, *et seq.*, and its interpreting regulations, which allegedly raises federal questions and seeks redress for deprivation of rights protected by federal law. See Compl. ¶ 6. The alleged basis for subject matter jurisdiction is federal question jurisdiction under 28 U.S.C. § 1331, and jurisdiction under 28 U.S.C. § 1343(a) for claims seeking vindication of civil rights protected by federal law. *Id.* at ¶ 7. Accordingly, joining the DOE and Secretary DeVos as parties to the action would not deprive the Court of subject matter jurisdiction.

2. Proceeding without the Department of Education would impair its interests and leave the existing parties at risk of inconsistent obligations.

Because the DOE and Secretary DeVos are subject to service of process and their joinder would not deprive the Court of subject matter jurisdiction, the Court must join them as parties under Rule 19(a)(1)(B) if it finds that “[DOE] claims an interest relating to the subject of the action and is so situated that disposing of the action in the [absence of DOE] may: (i) as a practical matter impair or impede [DOE’s] ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent

obligations because of the interest.” *See* Fed.R.Civ.P. 19(a)(1)(B). As set forth below, both of those elements are met in this case, and therefore joinder is appropriate.

- a) The Department of Education has an interest in this action that would be impaired if it were not joined.

As established previously in this Memorandum, it is undisputed that: (1) the DOE, through its Office for Civil Rights, is the federal agency charged with interpreting and enforcing Title IX and therefore has an interest in the interpretation of Title IX, (2) Plaintiffs filed a complaint with OCR alleging violations of Title IX in regard to CIAC’s transgender policy, and (3) that OCR proceeding is ongoing. The DOE clearly has an interest in the subject matter of this litigation.

It also is undisputed that the DOE’s interest in the subject matter of this litigation would be impaired if it is not joined as a party. The claims asserted by the Plaintiff in this action will require the Court to interpret Title IX as it applies the participation of students who are transgender on sex-segregated athletic teams, which apparently is an issue of first impression. When making this evaluation, the Court will be required to evaluate the DOE’s inconsistent actions concerning Title IX in the 2015 Letter, the 2016 Letter, in the 2017 Letter, and the DOE documents still available on the DOE website. *See, e.g.*, Exhibits A, B, & C. The Court also will need to evaluate the interests of the United States and how they intersect with the interests and laws of Connecticut. Given the “interpretive vacuum” left by the Departments’ action in February 2017; *Evancho*, *supra*, 237 F. Supp. 3d at 298; the Court’s analysis in this case will impact or modify the DOE’s position on Title IX and its application to sex-segregated activities. Courts have concluded that “[a] public agency has an interest in a lawsuit that could result in the invalidation or modification of one of its . . . rules [or] regulations” *EEOC*, 610 F.3d at 1082 (finding that the Secretary of the Department of Interior had interest in claim that sought to

enjoin a lease term that the Secretary had approved and overseen). For this reason, the DOE regularly is made a party to actions addressing the interpretation of Title IX and policies affecting transgender students. *See Parents for Privacy v. Dallas Sch. Dist. No. 2*, 326 F. Supp. 3d 1075, 1091 (D. Or. 2018), *aff'd sub nom. Parents for Privacy v. Barr*, 949 F.3d 1210 (9th Cir. 2020) (challenging the rights of transgendered students under Title IX to use restrooms, locker rooms, and showers that match their gender identity rather than their biological sex assigned at birth and naming the DOE as a defendant in order to enjoin the DOE from “enforcing Title IX in a manner that requires [a school district] to give any students the right of entry to, and use of, the private facilities (including locker rooms, showers and restrooms) designated for students of the opposite sex.”). As such, the first element of the Rule 19(a) analysis is satisfied.

- b) Absent joinder of OCR, the parties could be subject to inconsistent obligations.

Once it is established that a party has an interest in the lawsuit, a court must next determine whether disposing of the lawsuit in the absence of the DOE would “(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.” Fed.R.Civ.P. 19(a)(1)(B).

In *California Dump Truck Owners Ass’n v. Nichols*, the United States District Court for the Eastern District of California granted a motion to join the United States Environmental Protection Agency (“EPA”) as a required party to the lawsuit. *See* 924 F. Supp. 2d 1126 (E.D. Cal. 2012), *aff'd*, 778 F.3d 1119 (9th Cir. 2015), *withdrawn from bound volume, and aff'd*, 784 F.3d 500 (9th Cir. 2015). The plaintiffs filed suit to enjoin enforcement of California’s “Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In–Use Heavy–Duty Diesel–Fueled Vehicles,” Cal.Code Regs. tit. 13, § 2025 (“Regulation”), because federal law allegedly preempted the state regulation. *Id.* at 1131.

The parties filed cross-motions for summary judgment and after the court took the motions under submission, the EPA issued a decision approving California's State Implementation Plan, which incorporated the Regulation. *Id.* The court then ordered supplemental briefing on the impact of the EPA's decision on the merits of the action and whether the EPA is a necessary and indispensable party that must be joined. *Id.*

In reaching the decision that the EPA was a required party that must be joined under Fed. R. Civ. P. 19(a), the court noted that a public agency has an interest in a lawsuit that could result in the invalidation or modification of one of its rules regulations (citing the *EEOC* decision), and further noted that, "the EPA has a strong interest 'in defending and enforcing air pollution control laws it approved and which are federal law.'" *Nichols*, 924 F. Supp. 2d at 1148. Because of the EPA's strong interest in interpreting and enforcing federal regulations, the court concluded that a decision invalidating the Regulation on preemption grounds would "necessarily upset the EPA's final decision approving the Regulation as part of California's SIP and would create practical problems with SIP's enforceability." *Id.* Additionally, the court reasoned that because the EPA had concluded there were no obstacles to the Regulations' enforceability under either state or federal law, a contrary decision by the court would create doubts as to the appropriateness of the EPA's determination. *Id.* More specifically, the Court noted that "the relief that Plaintiff seeks will still depend on independent decisions by the EPA, which is not a party to this litigation, and which retains 'broad and legitimate discretion' to demand CDTOA' members to comply with the Regulation's requirements." *Id.* 1147. Thus, the Court determined that the EPA was a required party that had to be joined to the action under Fed. R. Civ. P. 19(a).

The reasoning in *Nichols* is just as applicable to this case. Just like with the EPA in *Nichols*, the Court should find that the DOE has a strong interest in interpreting and enforcing

Title IX as it applies to sex-segregated activities and the CIAC's transgender participation policy. Just like in *Nichols*, the parties' rights are subject to ongoing interpretation by the DOE, through the pending proceedings before its Office for Civil Rights, and there is a very real risk that the parties could be subject to inconsistent obligations if the Court does not join the DOE and Secretary DeVos as parties to this lawsuit. For example, if OCR finds in the Plaintiffs' favor in the OCR proceeding, but the Court finds in favor of the Defendants in this action, or *vice versa*, the parties would be subject to inconsistent obligations. Because of that, the Court should find that the DOE and Secretary DeVos are a required parties under Fed. R. Civ. P. 19(a)(1)(B).

C. The Court May Also Join the DOE Under Fed.R.Civ.P. 20.

Even if the Court were to determine that the DOE and Secretary DeVos are not a "required party," such that their joinder is mandated by Rule 19(a), the Court has the discretion to join the DOE and Secretary DeVos as parties under Rule 20(a). Rule 20(a) states that numerous plaintiffs may join together in one action if: (1) they assert a right to relief jointly or severally; or (2) if their claims arise out of the same transaction or occurrence, or same series of transactions and occurrences, and there is a common question of law or fact. Fed. R. Civ. P. 20(a). Similarly, a plaintiff may join several defendants together if they assert a right to relief jointly or severally, or if the claims against defendants arose out of the same transaction or occurrence and there are common questions of law or fact. *Id.*

Again, given DOE and Secretary DeVos' strong interest in interpreting and enforcing Title IX, and given the DOE's refusal to dismiss the OCR complaint following the filing of this lawsuit, the very real risk that the parties could be subject to inconsistent obligations if the Court did not join DOE and Secretary DeVos as a parties. Moreover, there are common, identical questions of law and fact from OCR's proceeding and this lawsuit. Therefore, the Court should

exercise its discretion under Fed.R.Civ.P. 20 and join DOE and Secretary DeVos as parties to the action.

III. CONCLUSION

For the reasons set forth above, the Court should grant the motion and join the DOE and Secretary DeVos as parties to this lawsuit, together with such further and additional relief this Court deems necessary.

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CERTIFICATION OF SERVICE

This is to certify that on April 20, 2020, a copy of the foregoing Motion and Memorandum of Law were filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System. In addition, a copy of this Motion, Memorandum of Law, and the Complaint in this matter will be:

A. Delivered to:

John H. Durham
United States Attorney for the District of Connecticut
United States Attorney's Office
157 Church Street
New Haven, CT 06510

B. Sent by certified mail to the civil-process clerk at the:

United States Attorney's Office
157 Church Street
New Haven, CT 06510

C. Sent by registered or certified mail to:

William P. Barr
Attorney General of the United States
Office of the Attorney General
441 4th St NW #1100
Washington, D.C. 20001

D. Sent by registered or certified mail to:

Betsy DeVos
Secretary of Education
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

/s/ Peter J. Murphy

Peter J. Murphy



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

January 7, 2015

Emily T. Prince, Esq.
emily@emily-esque.com

Dear Ms. Prince:

I write in response to your letter, sent via email to the U.S. Department of Education (the Department) on December 14, 2014, regarding transgender students' access to facilities such as restrooms. In your letter, you mentioned statements in recent guidance documents issued by the Department concerning the application of Title IX of the Education Amendments of 1972 (Title IX) to gender identity discrimination. In addition, you identified a particular school district's policy about access to restrooms and asked about the existence and distribution of any guidance by the Department about policies or practices regarding transgender students' access to restrooms. Your letter has been referred to the Department's Office for Civil Rights (OCR), and I am happy to respond.

As you know, OCR's mission includes enforcing Title IX, which prohibits recipients of Federal financial assistance from discriminating on the basis of sex, including gender identity and failure to conform to stereotypical notions of masculinity or femininity.¹ OCR enforces and interprets Title IX consistent with case law,² and with the adjudications and guidance documents of other Federal agencies.³

¹ See OCR's April 2014 Questions and Answers on Title IX and Sexual Violence at B-2, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

² See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (holding that Title VII of the Civil Rights Act of 1964's (Title VII) prohibition on sex discrimination bars discrimination based on gender stereotyping, that is "insisting that [individuals] matched the stereotype associated with their group"); *Barnes v. City of Cincinnati*, 401 F.3d 729, 736-39 (6th Cir. 2005) (holding that demotion of transgender police officer because he did not "conform to sex stereotypes concerning how a man should look and behave" stated a claim of sex discrimination under Title VII); *Smith v. City of Salem*, 378 F.3d 566, 574-75 (6th Cir. 2004) ("[D]iscrimination against a plaintiff who is a transsexual – and therefore fails to act and/or identify with his or her gender – is no different from the discrimination directed against Ann Hopkins in *Price Waterhouse*, who, in sex-stereotypical terms, did not act like a woman."); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000) (applying *Price Waterhouse* to conclude, under the Equal Credit Opportunity Act, that plaintiff states a claim for sex discrimination if bank's refusal to provide a loan application was because plaintiff's "traditionally feminine attire.... did not accord with his male gender"); *Schwenk v. Hartford*, 204 F.3d 1187, 1201-02 (9th Cir. 2000) (holding that discrimination against transgender females – i.e., "as anatomical males whose outward behavior and inward identity [do] not meet social definitions of masculinity" – is actionable discrimination "because of sex" under the Gender Motivated Violence Act").

³ See, e.g., U.S. Dept. of Justice, Memorandum from the Attorney General regarding the Treatment of

The Department's Title IX regulations permit schools to provide sex-segregated restrooms, locker rooms, shower facilities, housing, athletic teams, and single-sex classes under certain circumstances. When a school elects to separate or treat students differently on the basis of sex in those situations, a school generally must treat transgender students consistent with their gender identity.⁴ OCR also encourages schools to offer the use of gender-neutral, individual-user facilities to any student who does not want to use shared sex-segregated facilities.

OCR refrains from offering opinions about specific facts, circumstances, or compliance with federal civil rights laws without first conducting an investigation, and does not release information about its pending investigations. Nevertheless, it may be useful to be aware that in response to OCR's recent investigations of two complaints of gender identity discrimination, recipients have agreed to revise policies to make clear that transgender students should be treated consistent with their gender identity for purposes of restroom access. For examples of how OCR enforces Title IX in this area, please review the following resolutions of OCR investigations involving transgender students: Arcadia Unified School District;⁵ and Downey Unified School District.⁶

OCR is committed to helping all students thrive at school and ensuring that schools take action to prevent and respond promptly and effectively to all forms of discrimination, including gender-identity discrimination. OCR staff is also available to

Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964 (Dec. 15, 2014) (stating that the protection of Title VII extends to claims of discrimination based on an individual's gender identity, including transgender status), http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf; see also *Macy v. Holder*, Appeal No. 012012082 (U.S. Equal Emp't Opportunity Comm'n Apr. 20, 2012) (holding that gender identity and transgender status did not need to be specifically addressed in Title VII in order to be prohibited bases of discrimination, as they are simply part of the protected category of "sex"), <http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt>; U.S. Dept. of Health & Human Services, Office for Civil Rights, *Letter to Maya Rupert, Esq.*, Transaction No. 12-0008000 (July 12, 2012) (stating that Section 1557 of the Affordable Care Act, which incorporates Title IX's prohibition on sex discrimination, "extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity"), <http://www.scribd.com/doc/101981113/Response-on-LGBT-People-in-Sec-1557-in-the-Affordable-Care-Act-from-the-U-S-Dept-of-Health-and-Human-Services>; U.S. Dep't of Labor, Office of Federal Contract Compliance Programs, *Gender Identity and Sex Discrimination*, Directive 2014-02 (Aug. 14, 2014) (directing that for purposes of Executive Order 11246, which prohibits employment discrimination on the basis of sex by federal contractors and subcontractors, "discrimination based on gender identity or transgender status ... is discrimination based on sex"), http://www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html.

⁴ See, e.g., OCR's December 2014 Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities, at Q. 31, <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>.

⁵ OCR Case No. 09-12-1020 (July 24, 2013), <http://www.justice.gov/crt/about/edu/documents/arcadialetter.pdf> (resolution letter); and <http://www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf> (resolution agreement).

⁶ OCR Case No. 09-12-1095 (October 14, 2014), <http://www2.ed.gov/documents/press-releases/downey-school-district-letter.pdf> (resolution letter); and <http://www2.ed.gov/documents/press-releases/downey-school-district-agreement.pdf> (resolution agreement).

offer schools technical assistance on how to comply with Title IX and ensure all students, including transgender students, have equal access to safe learning environments.

If you have questions, want additional information or technical assistance, or believe that a school is engaging in discrimination based on gender identity or another basis protected by the laws enforced by OCR, you may visit OCR's website at www.ed.gov/ocr or contact OCR at (800) 421-3481 (TDD: 800-877-8339) or at ocr@ed.gov. You may also fill out a complaint form online at www.ed.gov/ocr/complaintintro.html.

I hope that this information is helpful and thank you for contacting the Department.

Sincerely,



James A. Ferg-Cadima
Acting Deputy Assistant Secretary for Policy
Office for Civil Rights

Archived Information



U.S. Department of Justice
Civil Rights Division

U.S. Department of Education
Office for Civil Rights



Dear Colleague Letter on Transgender Students Notice of Language Assistance

If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: Ed.Language.Assistance@ed.gov.

Aviso a personas con dominio limitado del idioma inglés: Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: Ed.Language.Assistance@ed.gov.

給英語能力有限人士的通知: 如果您不懂英語, 或者使用英語有困難, 您可以要求獲得向大眾提供的語言協助服務, 幫助您理解教育部資訊。這些語言協助服務均可免費提供。如果您需要有關口譯或筆譯服務的詳細資訊, 請致電 1-800-USA-LEARN (1-800-872-5327) (聽語障人士專線: 1-800-877-8339), 或電郵: Ed.Language.Assistance@ed.gov。

Thông báo dành cho những người có khả năng Anh ngữ hạn chế: Nếu quý vị gặp khó khăn trong việc hiểu Anh ngữ thì quý vị có thể yêu cầu các dịch vụ hỗ trợ ngôn ngữ cho các tin tức của Bộ dành cho công chúng. Các dịch vụ hỗ trợ ngôn ngữ này đều miễn phí. Nếu quý vị muốn biết thêm chi tiết về các dịch vụ phiên dịch hay thông dịch, xin vui lòng gọi số 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), hoặc email: Ed.Language.Assistance@ed.gov.

영어 미숙자를 위한 공고: 영어를 이해하는 데 어려움이 있으신 경우, 교육부 정보 센터에 일반인 대상 언어 지원 서비스를 요청하실 수 있습니다. 이러한 언어 지원 서비스는 무료로 제공됩니다. 통역이나 번역 서비스에 대해 자세한 정보가 필요하신 경우, 전화번호 1-800-USA-LEARN (1-800-872-5327) 또는 청각 장애인용 전화번호 1-800-877-8339 또는 이메일주소 Ed.Language.Assistance@ed.gov 으로 연락하시기 바랍니다.

Paunawa sa mga Taong Limitado ang Kaalaman sa English: Kung nahhirapan kayong makaintindi ng English, maaari kayong humingi ng tulong ukol dito sa inpormasyon ng Kagawaran mula sa nagbibigay ng serbisyo na pagtulong kaugnay ng wika. Ang serbisyo na pagtulong kaugnay ng wika ay libre. Kung kailangan ninyo ng dagdag na inpormasyon tungkol sa mga serbisyo kaugnay ng pagpapaliwanag o pagsasalin, mangyari lamang tumawag sa 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o mag-email sa: Ed.Language.Assistance@ed.gov.

Уведомление для лиц с ограниченным знанием английского языка: Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: Ed.Language.Assistance@ed.gov.



U.S. Department of Justice
Civil Rights Division



U.S. Department of Education
Office for Civil Rights

May 13, 2016

Dear Colleague:

Schools across the country strive to create and sustain inclusive, supportive, safe, and nondiscriminatory communities for all students. In recent years, we have received an increasing number of questions from parents, teachers, principals, and school superintendents about civil rights protections for transgender students. Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations prohibit sex discrimination in educational programs and activities operated by recipients of Federal financial assistance.¹ This prohibition encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status. This letter summarizes a school's Title IX obligations regarding transgender students and explains how the U.S. Department of Education (ED) and the U.S. Department of Justice (DOJ) evaluate a school's compliance with these obligations.

ED and DOJ (the Departments) have determined that this letter is *significant guidance*.² This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how the Departments evaluate whether covered entities are complying with their legal obligations. If you have questions or are interested in commenting on this guidance, please contact ED at ocr@ed.gov or 800-421-3481 (TDD 800-877-8339); or DOJ at education@usdoj.gov or 877-292-3804 (TTY: 800-514-0383).

Accompanying this letter is a separate document from ED's Office of Elementary and Secondary Education, *Examples of Policies and Emerging Practices for Supporting Transgender Students*. The examples in that document are taken from policies that school districts, state education agencies, and high school athletics associations around the country have adopted to help ensure that transgender students enjoy a supportive and nondiscriminatory school environment. Schools are encouraged to consult that document for practical ways to meet Title IX's requirements.³

Terminology

- Gender identity* refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth.
- Sex assigned at birth* refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.
- Transgender* describes those individuals whose gender identity is different from the sex they were assigned at birth. A *transgender male* is someone who identifies as male but was assigned the sex of female at birth; a *transgender female* is someone who identifies as female but was assigned the sex of male at birth.

- *Gender transition* refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

Compliance with Title IX

As a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations.⁴ The Departments treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations. This means that a school must not treat a transgender student differently from the way it treats other students of the same gender identity. The Departments' interpretation is consistent with courts' and other agencies' interpretations of Federal laws prohibiting sex discrimination.⁵

The Departments interpret Title IX to require that when a student or the student's parent or guardian, as appropriate, notifies the school administration that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student's gender identity. Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.⁶ Because transgender students often are unable to obtain identification documents that reflect their gender identity (*e.g.*, due to restrictions imposed by state or local law in their place of birth or residence),⁷ requiring students to produce such identification documents in order to treat them consistent with their gender identity may violate Title IX when doing so has the practical effect of limiting or denying students equal access to an educational program or activity.

A school's Title IX obligation to ensure nondiscrimination on the basis of sex requires schools to provide transgender students equal access to educational programs and activities even in circumstances in which other students, parents, or community members raise objections or concerns. As is consistently recognized in civil rights cases, the desire to accommodate others' discomfort cannot justify a policy that singles out and disadvantages a particular class of students.⁸

1. Safe and Nondiscriminatory Environment

Schools have a responsibility to provide a safe and nondiscriminatory environment for all students, including transgender students. Harassment that targets a student based on gender identity, transgender status, or gender transition is harassment based on sex, and the Departments enforce Title IX accordingly.⁹ If sex-based harassment creates a hostile environment, the school must take prompt and effective steps to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. A school's failure to treat students consistent with their gender identity may create or contribute to a hostile environment in violation of Title IX. For a more detailed discussion of Title IX

requirements related to sex-based harassment, see guidance documents from ED's Office for Civil Rights (OCR) that are specific to this topic.¹⁰

2. Identification Documents, Names, and Pronouns

Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex. The Departments have resolved Title IX investigations with agreements committing that school staff and contractors will use pronouns and names consistent with a transgender student's gender identity.¹¹

3. Sex-Segregated Activities and Facilities

Title IX's implementing regulations permit a school to provide sex-segregated restrooms, locker rooms, shower facilities, housing, and athletic teams, as well as single-sex classes under certain circumstances.¹² When a school provides sex-segregated activities and facilities, transgender students must be allowed to participate in such activities and access such facilities consistent with their gender identity.¹³

- Restrooms and Locker Rooms.** A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity.¹⁴ A school may not require transgender students to use facilities inconsistent with their gender identity or to use individual-user facilities when other students are not required to do so. A school may, however, make individual-user options available to all students who voluntarily seek additional privacy.¹⁵
- Athletics.** Title IX regulations permit a school to operate or sponsor sex-segregated athletics teams when selection for such teams is based upon competitive skill or when the activity involved is a contact sport.¹⁶ A school may not, however, adopt or adhere to requirements that rely on overly broad generalizations or stereotypes about the differences between transgender students and other students of the same sex (*i.e.*, the same gender identity) or others' discomfort with transgender students.¹⁷ Title IX does not prohibit age-appropriate, tailored requirements based on sound, current, and research-based medical knowledge about the impact of the students' participation on the competitive fairness or physical safety of the sport.¹⁸
- Single-Sex Classes.** Although separating students by sex in classes and activities is generally prohibited, nonvocational elementary and secondary schools may offer nonvocational single-sex classes and extracurricular activities under certain circumstances.¹⁹ When offering such classes and activities, a school must allow transgender students to participate consistent with their gender identity.
- Single-Sex Schools.** Title IX does not apply to the admissions policies of certain educational institutions, including nonvocational elementary and secondary schools, and private undergraduate colleges.²⁰ Those schools are therefore permitted under Title IX to set their own

sex-based admissions policies. Nothing in Title IX prohibits a private undergraduate women's college from admitting transgender women if it so chooses.

- **Social Fraternities and Sororities.** Title IX does not apply to the membership practices of social fraternities and sororities.²¹ Those organizations are therefore permitted under Title IX to set their own policies regarding the sex, including gender identity, of their members. Nothing in Title IX prohibits a fraternity from admitting transgender men or a sorority from admitting transgender women if it so chooses.
- **Housing and Overnight Accommodations.** Title IX allows a school to provide separate housing on the basis of sex.²² But a school must allow transgender students to access housing consistent with their gender identity and may not require transgender students to stay in single-occupancy accommodations or to disclose personal information when not required of other students. Nothing in Title IX prohibits a school from honoring a student's voluntary request for single-occupancy accommodations if it so chooses.²³
- **Other Sex-Specific Activities and Rules.** Unless expressly authorized by Title IX or its implementing regulations, a school may not segregate or otherwise distinguish students on the basis of their sex, including gender identity, in any school activities or the application of any school rule. Likewise, a school may not discipline students or exclude them from participating in activities for appearing or behaving in a manner that is consistent with their gender identity or that does not conform to stereotypical notions of masculinity or femininity (*e.g.*, in yearbook photographs, at school dances, or at graduation ceremonies).²⁴

4. Privacy and Education Records

Protecting transgender students' privacy is critical to ensuring they are treated consistent with their gender identity. The Departments may find a Title IX violation when a school limits students' educational rights or opportunities by failing to take reasonable steps to protect students' privacy related to their transgender status, including their birth name or sex assigned at birth.²⁵ Nonconsensual disclosure of personally identifiable information (PII), such as a student's birth name or sex assigned at birth, could be harmful to or invade the privacy of transgender students and may also violate the Family Educational Rights and Privacy Act (FERPA).²⁶ A school may maintain records with this information, but such records should be kept confidential.

- **Disclosure of Personally Identifiable Information from Education Records.** FERPA generally prevents the nonconsensual disclosure of PII from a student's education records; one exception is that records may be disclosed to individual school personnel who have been determined to have a legitimate educational interest in the information.²⁷ Even when a student has disclosed the student's transgender status to some members of the school community, schools may not rely on this FERPA exception to disclose PII from education records to other school personnel who do not have a legitimate educational interest in the information. Inappropriately disclosing (or requiring students or their parents to disclose) PII from education records to the school community may

violate FERPA and interfere with transgender students' right under Title IX to be treated consistent with their gender identity.

- **Disclosure of Directory Information.** Under FERPA's implementing regulations, a school may disclose appropriately designated directory information from a student's education record if disclosure would not generally be considered harmful or an invasion of privacy.²⁸ Directory information may include a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance.²⁹ School officials may not designate students' sex, including transgender status, as directory information because doing so could be harmful or an invasion of privacy.³⁰ A school also must allow eligible students (*i.e.*, students who have reached 18 years of age or are attending a postsecondary institution) or parents, as appropriate, a reasonable amount of time to request that the school not disclose a student's directory information.³¹
- **Amendment or Correction of Education Records.** A school may receive requests to correct a student's education records to make them consistent with the student's gender identity. Updating a transgender student's education records to reflect the student's gender identity and new name will help protect privacy and ensure personnel consistently use appropriate names and pronouns.
 - Under FERPA, a school must consider the request of an eligible student or parent to amend information in the student's education records that is inaccurate, misleading, or in violation of the student's privacy rights.³² If the school does not amend the record, it must inform the requestor of its decision and of the right to a hearing. If, after the hearing, the school does not amend the record, it must inform the requestor of the right to insert a statement in the record with the requestor's comments on the contested information, a statement that the requestor disagrees with the hearing decision, or both. That statement must be disclosed whenever the record to which the statement relates is disclosed.³³
 - Under Title IX, a school must respond to a request to amend information related to a student's transgender status consistent with its general practices for amending other students' records.³⁴ If a student or parent complains about the school's handling of such a request, the school must promptly and equitably resolve the complaint under the school's Title IX grievance procedures.³⁵

* * *

We appreciate the work that many schools, state agencies, and other organizations have undertaken to make educational programs and activities welcoming, safe, and inclusive for all students.

Sincerely,

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education

/s/

Vanita Gupta
Principal Deputy Assistant Attorney General for Civil Rights
U.S. Department of Justice

¹ 20 U.S.C. §§ 1681–1688; 34 C.F.R. Pt. 106; 28 C.F.R. Pt. 54. In this letter, the term *schools* refers to recipients of Federal financial assistance at all educational levels, including school districts, colleges, and universities. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that compliance would not be consistent with the religious tenets of such organization. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a).

² Office of Management and Budget, Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf.

³ ED, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (May 13, 2016), www.ed.gov/oese/oshs/emergingpractices.pdf. OCR also posts many of its resolution agreements in cases involving transgender students online at www.ed.gov/ocr/lgbt.html. While these agreements address fact-specific cases, and therefore do not state general policy, they identify examples of ways OCR and recipients have resolved some issues addressed in this guidance.

⁴ 34 C.F.R. §§ 106.4, 106.31(a). For simplicity, this letter cites only to ED’s Title IX regulations. DOJ has also promulgated Title IX regulations. See 28 C.F.R. Pt. 54. For purposes of how the Title IX regulations at issue in this guidance apply to transgender individuals, DOJ interprets its regulations similarly to ED. State and local rules cannot limit or override the requirements of Federal laws. See 34 C.F.R. § 106.6(b).

⁵ See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Oncale v. Sundowner Offshore Servs. Inc.*, 523 U.S. 75, 79 (1998); *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-2056, 2016 WL 1567467, at *8 (4th Cir. Apr. 19, 2016); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 572-75 (6th Cir. 2004); *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215–16 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187, 1201–02 (9th Cir. 2000); *Schroer v. Billington*, 577 F. Supp. 2d 293, 306-08 (D.D.C. 2008); *Macy v. Dep’t of Justice*, Appeal No. 012012082 (U.S. Equal Emp’t Opportunity Comm’n Apr. 20, 2012). See also U.S. Dep’t of Labor (USDOL), Training and Employment Guidance Letter No. 37-14, *Update on Complying with Nondiscrimination Requirements: Discrimination Based on Gender Identity, Gender Expression and Sex Stereotyping are Prohibited Forms of Sex Discrimination in the Workforce Development System* (2015), wdr.doleta.gov/directives/attach/TEGL/TEGL_37-14.pdf; USDOL, Job Corps, Directive: Job Corps Program Instruction Notice No. 14-31, *Ensuring Equal Access for Transgender Applicants and Students to the Job Corps Program* (May 1, 2015), https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi_14_31.pdf; DOJ, Memorandum from the Attorney General, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964* (2014), www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf; USDOL, Office of Federal Contract Compliance Programs, Directive 2014-02, *Gender Identity and Sex Discrimination* (2014), www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html.

⁶ See *Lusardi v. Dep’t of the Army*, Appeal No. 0120133395 at 9 (U.S. Equal Emp’t Opportunity Comm’n Apr. 1, 2015) (“An agency may not condition access to facilities—or to other terms, conditions, or privileges of employment—on the completion of certain medical steps that the agency itself has unilaterally determined will somehow prove the bona fides of the individual’s gender identity.”).

⁷ See *G.G.*, 2016 WL 1567467, at *1 n.1 (noting that medical authorities “do not permit sex reassignment surgery for persons who are under the legal age of majority”).

⁸ 34 C.F.R. § 106.31(b)(4); see *G.G.*, 2016 WL 1567467, at *8 & n.10 (affirming that individuals have legitimate and important privacy interests and noting that these interests do not inherently conflict with nondiscrimination principles); *Cruzan v. Special Sch. Dist. No. 1*, 294 F.3d 981, 984 (8th Cir. 2002) (rejecting claim that allowing a transgender woman “merely [to be] present in the women’s faculty restroom” created a hostile environment); *Glenn*, 663 F.3d at 1321 (defendant’s proffered justification that “other women might object to [the plaintiff]’s restroom use” was “wholly irrelevant”). See also *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (“Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.”); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985) (recognizing that “mere negative attitudes, or fear . . . are not permissible bases for” government action).

⁹ See, e.g., Resolution Agreement, *In re Downey Unified Sch. Dist., CA*, OCR Case No. 09-12-1095, (Oct. 8, 2014), www.ed.gov/documents/press-releases/downey-school-district-agreement.pdf (agreement to address harassment of transgender student, including allegations that peers continued to call her by her former name, shared pictures of her prior to her transition, and frequently asked questions about her anatomy and sexuality); Consent Decree, *Doe v. Anoka-Hennepin Sch. Dist. No. 11, MN* (D. Minn. Mar. 1, 2012), www.ed.gov/ocr/docs/investigations/05115901-d.pdf (consent decree to address sex-based harassment, including based on nonconformity with gender stereotypes); Resolution Agreement, *In re Tehachapi Unified Sch. Dist., CA*, OCR Case No. 09-11-1031 (June 30, 2011), www.ed.gov/ocr/docs/investigations/09111031-b.pdf (agreement to address sexual and gender-based harassment, including harassment based on nonconformity with gender stereotypes). See also *Lusardi*, Appeal No. 0120133395, at *15 (“Persistent failure to use the employee’s correct name and pronoun may constitute unlawful, sex-based harassment if such conduct is either severe or pervasive enough to create a hostile work environment”).

¹⁰ See, e.g., OCR, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (2001), www.ed.gov/ocr/docs/shguide.pdf; OCR, *Dear Colleague Letter: Harassment and Bullying* (Oct. 26, 2010), www.ed.gov/ocr/letters/colleague-201010.pdf; OCR, *Dear Colleague Letter: Sexual Violence* (Apr. 4, 2011), www.ed.gov/ocr/letters/colleague-201104.pdf; OCR, *Questions and Answers on Title IX and Sexual Violence* (Apr. 29, 2014), www.ed.gov/ocr/docs/qa-201404-title-ix.pdf.

¹¹ See, e.g., Resolution Agreement, *In re Cent. Piedmont Cmty. Coll., NC*, OCR Case No. 11-14-2265 (Aug. 13, 2015), www.ed.gov/ocr/docs/investigations/more/11142265-b.pdf (agreement to use a transgender student’s preferred name and gender and change the student’s official record to reflect a name change).

¹² 34 C.F.R. §§ 106.32, 106.33, 106.34, 106.41(b).

¹³ See 34 C.F.R. § 106.31.

¹⁴ 34 C.F.R. § 106.33.

¹⁵ See, e.g., Resolution Agreement, *In re Township High Sch. Dist. 211, IL*, OCR Case No. 05-14-1055 (Dec. 2, 2015), www.ed.gov/ocr/docs/investigations/more/05141055-b.pdf (agreement to provide any student who requests additional privacy “access to a reasonable alternative, such as assignment of a student locker in near proximity to the office of a teacher or coach; use of another private area (such as a restroom stall) within the public area; use of a nearby private area (such as a single-use facility); or a separate schedule of use.”).

¹⁶ 34 C.F.R. § 106.41(b). Nothing in Title IX prohibits schools from offering coeducational athletic opportunities.

¹⁷ 34 C.F.R. § 106.6(b), (c). An interscholastic athletic association is subject to Title IX if (1) the association receives Federal financial assistance or (2) its members are recipients of Federal financial assistance and have ceded controlling authority over portions of their athletic program to the association. Where an athletic association is covered by Title IX, a school’s obligations regarding transgender athletes apply with equal force to the association.

¹⁸ The National Collegiate Athletic Association (NCAA), for example, reported that in developing its policy for participation by transgender students in college athletics, it consulted with medical experts, athletics officials, affected students, and a consensus report entitled *On the Team: Equal Opportunity for Transgender Student Athletes* (2010) by Dr. Pat Griffin & Helen J. Carroll (*On the Team*), [https://www.ncaa.org/sites/default/files/NCLR_TransStudentAthlete%2B\(2\).pdf](https://www.ncaa.org/sites/default/files/NCLR_TransStudentAthlete%2B(2).pdf). See NCAA Office of Inclusion, *NCAA Inclusion of Transgender Student-Athletes 2*, 30-31 (2011), https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf (citing *On the Team*). The *On the Team* report noted that policies that may be appropriate at the college level may “be unfair and too complicated for [the high school] level of competition.” *On the Team* at 26. After engaging in similar processes, some state interscholastic athletics associations have adopted policies for participation by transgender students in high school athletics that they determined were age-appropriate.

¹⁹ 34 C.F.R. § 106.34(a), (b). Schools may also separate students by sex in physical education classes during participation in contact sports. *Id.* § 106.34(a)(1).

²⁰ 20 U.S.C. § 1681(a)(1); 34 C.F.R. § 106.15(d); 34 C.F.R. § 106.34(c) (a recipient may offer a single-sex public nonvocational elementary and secondary school so long as it provides students of the excluded sex a “substantially

equal single-sex school or coeducational school”).

²¹ 20 U.S.C. § 1681(a)(6)(A); 34 C.F.R. § 106.14(a).

²² 20 U.S.C. § 1686; 34 C.F.R. § 106.32.

²³ See, e.g., Resolution Agreement, *In re Arcadia Unified Sch. Dist., CA*, OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70, (July 24, 2013), www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf (agreement to provide access to single-sex overnight events consistent with students’ gender identity, but allowing students to request access to private facilities).

²⁴ See 34 C.F.R. §§ 106.31(a), 106.31(b)(4). See also, *In re Downey Unified Sch. Dist., CA*, *supra* n. 9; *In re Cent. Piedmont Cmty. Coll., NC*, *supra* n. 11.

²⁵ 34 C.F.R. § 106.31(b)(7).

²⁶ 20 U.S.C. § 1232g; 34 C.F.R. Part 99. FERPA is administered by ED’s Family Policy Compliance Office (FPCO). Additional information about FERPA and FPCO is available at www.ed.gov/fpc.

²⁷ 20 U.S.C. § 1232g(b)(1)(A); 34 C.F.R. § 99.31(a)(1).

²⁸ 34 C.F.R. §§ 99.3, 99.31(a)(11), 99.37.

²⁹ 20 U.S.C. § 1232g(a)(5)(A); 34 C.F.R. § 99.3.

³⁰ Letter from FPCO to Institutions of Postsecondary Education 3 (Sept. 2009), www.ed.gov/policy/gen/guid/fpc/doc/censuslettertohighered091609.pdf.

³¹ 20 U.S.C. § 1232g(a)(5)(B); 34 C.F.R. §§ 99.3, 99.37(a)(3).

³² 34 C.F.R. § 99.20.

³³ 34 C.F.R. §§ 99.20-99.22.

³⁴ See 34 C.F.R. § 106.31(b)(4).

³⁵ 34 C.F.R. § 106.8(b).



U.S. Department of Justice
Civil Rights Division



U.S. Department of Education
Office for Civil Rights

Dear Colleague Letter
Notice of Language Assistance

If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: Ed.Language.Assistance@ed.gov.

Aviso a personas con dominio limitado del idioma inglés: Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: Ed.Language.Assistance@ed.gov.

給英語能力有限人士的通知: 如果您不懂英語, 或者使用英語有困難, 您可以要求獲得向大眾提供的語言協助服務, 幫助您理解教育部資訊。這些語言協助服務均可免費提供。如果您需要有關口譯或筆譯服務的詳細資訊, 請致電 1-800-USA-LEARN (1-800-872-5327) (聽語障人士專線: 1-800-877-8339), 或電郵: Ed.Language.Assistance@ed.gov。

Thông báo dành cho những người có khả năng Anh ngữ hạn chế: Nếu quý vị gặp khó khăn trong việc hiểu Anh ngữ thì quý vị có thể yêu cầu các dịch vụ hỗ trợ ngôn ngữ cho các tin tức của Bộ dành cho công chúng. Các dịch vụ hỗ trợ ngôn ngữ này đều miễn phí. Nếu quý vị muốn biết thêm chi tiết về các dịch vụ phiên dịch hay thông dịch, xin vui lòng gọi số 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), hoặc email: Ed.Language.Assistance@ed.gov.

영어 미숙자를 위한 공고: 영어를 이해하는 데 어려움이 있으신 경우, 교육부 정보 센터에 일반인 대상 언어 지원 서비스를 요청하실 수 있습니다. 이러한 언어 지원 서비스는 무료로 제공됩니다. 통역이나 번역 서비스에 대해 자세한 정보가 필요하신 경우, 전화번호 1-800-USA-LEARN (1-800-872-5327) 또는 청각 장애인용 전화번호 1-800-877-8339 또는 이메일 주소 Ed.Language.Assistance@ed.gov 으로 연락하시기 바랍니다.

Paunawa sa mga Taong Limitado ang Kaalaman sa English: Kung nahihirapan kayong makaintindi ng English, maaari kayong humingi ng tulong ukol dito sa inpormasyon ng Kagawaran mula sa nagbibigay ng serbisyo na pagtulong kaugnay ng wika. Ang serbisyo na pagtulong kaugnay ng wika ay libre. Kung kailangan ninyo ng dagdag na impormasyon tungkol sa mga serbisyo kaugnay ng pagpapaliwanag o pagsasalin, mangyari lamang tumawag sa 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o mag-email sa: Ed.Language.Assistance@ed.gov.

Уведомление для лиц с ограниченным знанием английского языка: Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: Ed.Language.Assistance@ed.gov.



U.S. Department of Justice
Civil Rights Division



U.S. Department of Education
Office for Civil Rights

February 22, 2017

Dear Colleague:

The purpose of this guidance is to inform you that the Department of Justice and the Department of Education are withdrawing the statements of policy and guidance reflected in:

- Letter to Emily Prince from James A. Ferg-Cadima, Acting Deputy Assistant Secretary for Policy, Office for Civil Rights at the Department of Education dated January 7, 2015; and
- Dear Colleague Letter on Transgender Students jointly issued by the Civil Rights Division of the Department of Justice and the Department of Education dated May 13, 2016.

These guidance documents take the position that the prohibitions on discrimination “on the basis of sex” in Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and its implementing regulations, see, e.g., 34 C.F.R. § 106.33, require access to sex-segregated facilities based on gender identity. These guidance documents do not, however, contain extensive legal analysis or explain how the position is consistent with the express language of Title IX, nor did they undergo any formal public process.

This interpretation has given rise to significant litigation regarding school restrooms and locker rooms. The U.S. Court of Appeals for the Fourth Circuit concluded that the term “sex” in the regulations is ambiguous and deferred to what the court characterized as the “novel” interpretation advanced in the guidance. By contrast, a federal district court in Texas held that the term “sex” unambiguously refers to biological sex and that, in any event, the guidance was “legislative and substantive” and thus formal rulemaking should have occurred prior to the adoption of any such policy. In August of 2016, the Texas court preliminarily enjoined enforcement of the interpretation, and that nationwide injunction has not been overturned.

In addition, the Departments believe that, in this context, there must be due regard for the primary role of the States and local school districts in establishing educational policy.

In these circumstances, the Department of Education and the Department of Justice have decided to withdraw and rescind the above-referenced guidance documents in order to further and more completely consider the legal issues involved. The Departments thus will not rely on the views expressed within them.

Dear Colleague Letter

Page 2 of 2

Please note that this withdrawal of these guidance documents does not leave students without protections from discrimination, bullying, or harassment. All schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment. The Department of Education Office for Civil Rights will continue its duty under law to hear all claims of discrimination and will explore every appropriate opportunity to protect all students and to encourage civility in our classrooms. The Department of Education and the Department of Justice are committed to the application of Title IX and other federal laws to ensure such protection.

This guidance does not add requirements to applicable law. If you have questions or are interested in commenting on this letter, please contact the Department of Education at ocr@ed.gov or 800-421-3481 (TDD: 800-877-8339); or the Department of Justice at education@usdoj.gov or 877-292-3804 (TTY: 800-514-0383).

Sincerely,

/s/

Sandra Battle
Acting Assistant Secretary for Civil Rights
U.S. Department of Education

/s/

T.E. Wheeler, II
Acting Assistant Attorney General for Civil Rights
U.S. Department of Justice

CONNECTICUT
SECRETARY OF THE STATE
CAPITOL OFFICE

2017 FEB 23 P 3:12 2017 FEB 23

STATE OF CONNECTICUT

BY HIS EXCELLENCY

DANNEL P. MALLOY

EXECUTIVE ORDER NO. 56

WHEREAS, the protection of citizens from discrimination is an essential role of government;

WHEREAS, Connecticut has become a national leader in protecting civil rights by enacting numerous laws that protect against discrimination on the basis of sex, sexual orientation, gender identity, or gender expression;

WHEREAS, the Connecticut State Department of Education has previously issued guidance to school districts to ensure that our schools provide safe, supportive and non-discriminatory learning environments for all students;

WHEREAS, such previous state guidance was issued partially on the basis of federal guidance, interpreting federal law, that has since been withdrawn;

WHEREAS, Connecticut law mandates that public schools be open to all children, and that such children have an equal opportunity to participate in school activities without regard to their gender identity or expression;

WHEREAS, a school's failure to accommodate a student's asserted gender identity or expression is subject to enforcement action by the Commission on Human Rights and Opportunities;

WHEREAS, Connecticut law provides greater protections for transgender people than federal law, making clear that no person shall be discriminated against because of their gender identity or expression;

WHEREAS, state law prohibits discrimination on the basis of gender identity or expression in all areas, including employment, public accommodations, housing, credit, and education;

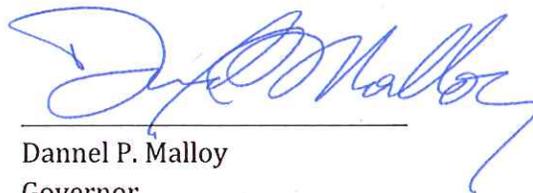
WHEREAS, it is the policy of the State of Connecticut and my administration to promote fairness and equality and to combat discrimination at all levels and to respect diversity within our State;

NOW, THEREFORE, I, DANNEL P. MALLOY, Governor of the State of Connecticut, by virtue of the power and authority vested in me by the Constitution and by the Statutes of the State of Connecticut do hereby **ORDER AND DIRECT**:

1. Bathrooms and locker rooms in public schools and institutions of higher education shall be considered places of public accommodation; therefore, discrimination based on sex, including gender identity or expression, in such places is prohibited by Connecticut law; and
2. The State Department of Education, in consultation with the Commission on Human Rights and Opportunities, shall develop and present to the State Board of Education guidance to school districts consistent with Connecticut law on policies that allow student's access to school facilities in a manner consistent with a student's gender identity or expression; and
3. The Board of Regents and the University of Connecticut, in consultation with the Commission on Human Rights and Opportunities, shall develop and present to the respective Boards of Trustees policies consistent with Connecticut law that allow student's access to school facilities in a manner consistent with a student's gender identity or expression.

This Order shall take effect immediately.

Dated at Hartford, Connecticut this 23rd day of February, 2017.


Dannel P. Malloy
Governor

By His Excellency's Order


Denise W. Merrill
Secretary of the State



Guidance on Civil Rights Protections
and Supports for Transgender Students
Frequently Asked Questions

CONNECTICUT STATE
DEPARTMENT OF EDUCATIO

CONNECTICUT STATE DEPARTMENT OF EDUCATION

September 2017

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Introduction to Resources

On February 23, 2017, Governor Dannel P. Malloy and Commissioner Dianna R. Wentzell jointly issued a memorandum to Connecticut Superintendents of Schools reaffirming the State of Connecticut’s unwavering commitment to provide every student in Connecticut with access to a high quality education in a safe, supportive, inclusive and welcoming environment. On the same day, the Governor issued Executive Order No. 56, directing the State Department of Education (“SDE”), in consultation with the Connecticut Commission on Human Rights and Opportunities (“CHRO”), to develop guidance for Connecticut school districts on the rights, responsibilities and best educational practices for transgender students. The guidance document, accompanying these Frequently Asked Questions (“FAQ”), is designed to assist schools and districts in implementing civil rights protections for transgender students under state and federal laws and to foster an educational environment that is safe and inclusive. We encourage districts to develop and implement professional development programming for school staff using the guidance and the following FAQs to best meet the needs of transgender students and ensure consistent execution of federal and state protections.

While school boards, as a general rule, have protective anti-discrimination policies to advance the safety and well-being of the student population, school districts are faced with more difficult conversations about how to implement those policies on a day-to-day basis. How do schools allow equal access, but respect privacy for transgender and other students? How does a school district apply its dress code for transgender students? And how do schools regulate student use of single-sex restrooms and locker rooms? School boards and school staff must answer these increasingly common questions through policy and daily on-the-ground decisions.

There are no quick and easy answers to these and other questions that school staff encounter in today’s society. These FAQs are intended to assist school districts’ efforts to engage in these important conversations and to make balanced choices, while navigating a sometimes confusing legal landscape. The primary goal of these FAQs is to support district leaders in identifying issues, understanding existing legal frameworks, and, where appropriate, offering recommendations to help schools ensure that all students, regardless of gender identity, are safe and learning at school.

While SDE’s guidance document covers a range of educational topics relevant to transgender students and educators, the FAQs are provided to afford easy access to direction and information on various situations that affect the rights and well-being of transgender students on a daily basis. By providing ready access to understandable information, the FAQs are intended to promote the goals of improving the educational integration of transgender and gender non-conforming students, maintaining the privacy of all students, and supporting positive communication between educators, students, and parents to further the successful educational development and well-being of every student. Neither the guidance document nor these FAQs are intended as one-size-fits-all legal advice. The issues that arise often must be resolved in the context of local communities, and school district leaders should consult their legal counsel regarding how the applicable laws and regulations may affect the policy decisions they are making for their schools.

Legal Responsibilities and Civil Rights Protections

Under state and federal laws, students are entitled to equal access to educational programming and activities free of discrimination. Connecticut was among the first states to recognize and affirm nondiscrimination protections based on gender identity and expression. SDE's guidance document, together with this FAQ, is designed to assist school districts with understanding and implementing their legal responsibilities to transgender students. Although the FAQ and guidance document are intended as helpful resources, school district leaders should rely on school district counsel to respond to the often-uncertain legal issues that may arise regarding this evolving area of law.

1. What civil rights protections are afforded to transgender and gender non-conforming students in Connecticut public schools?

Connecticut public schools must provide students with an equal opportunity to participate in school activities, programs and courses of study without discrimination on account of gender identity or expression. This obligation applies irrespective of concerns or objections raised by other students, parents, staff, or other community members. The questions and answers that follow provide more specific details concerning civil rights protections afforded to transgender and gender non-conforming students in the public school environment.

2. Are there laws protecting students against discrimination based on gender identity or expression?

There are both federal and state laws that protect transgender and gender non-conforming students from discrimination. On the federal side, Title IX of the Education Amendments Act of 1972 prohibits discrimination in schools on the basis of sex, which has been interpreted by courts to include gender identity discrimination. On the state side, Public Act 11-55 specifically addressed antidiscrimination on the basis of gender identity and expression. Thus, since 2011, Connecticut's antidiscrimination statutes, enforced by the CHRO, prohibit discrimination based on gender identity or expression in employment, public accommodations, housing, credit, and education. Section 10-15c of the Connecticut General Statutes ("C.G.S.") requires public schools to provide students with an equal opportunity to participate in school activities, programs and courses of study free of discrimination on account of gender identity or expression (as well as several other protected categories). Please refer to the guidance document and legal counsel for further information about state and federal antidiscrimination laws.

3. What is the federal transgender guidance under Title IX and what happens now that the guidance was withdrawn?

In May 2016, the U.S. Departments of Justice and Education ("DOJ/DOE") issued nationwide guidance to school districts to communicate DOJ/DOE's official position with regard to future enforcement of Title IX by the federal government. That position included notice that Title IX protected students from discrimination in school on the basis of gender identity, including in regard to names and pronouns, restrooms, and dress codes.

In February 2017, the Trump Administration rescinded the May 2016 DOJ/DOE guidance. This action did not change federal law — that can be done only by Congress or the courts. Rather, it changed how Title IX would be interpreted by DOJ/DOE, leaving questions about if and how DOJ/DOE would enforce Title IX in cases of gender identity discrimination. At all times, students and parents/guardians have the right to enforce Title IX directly by filing a lawsuit in court and/or seeking enforcement by appropriate state authorities. Moreover, students and parents/guardians also have the right to enforce the protections against gender identity discrimination established by Connecticut law.

4. Where can a student or parent/guardian go to complain about unlawful discrimination in school?

CSDE encourages students and parents/guardians to report discriminatory treatment to appropriate school and district officials because the school district not only has the responsibility to address and remedy any issues but also is normally in the best position to take timely corrective action. Parents/guardians and students also may file discrimination complaints with state or federal courts, the CHRO or the Office of Civil Rights (“OCR”) of the DOE for alleged violations of antidiscrimination statutes, including claims based on gender identity or expression.

Because of uncertainty concerning how OCR will handle complaints of gender identity discrimination during the Trump administration, CSDE recommends that students, parents and guardians file complaints with OCR *and* CHRO if they are unable to resolve issues directly with the school district. In addition, while CSDE lacks the type of direct enforcement authority that CHRO has, CSDE nevertheless can play an important role in assisting families seeking to resolve discrimination concerns with a school district, and assisting districts in implementing their legal responsibilities in this area.

Contact information:

Commission on Human Rights
and Opportunities
CAPITOL REGION OFFICE
450 Columbus Boulevard, Suite 2
Hartford, CT 06103-1835
Phone: 860-566-7710
Fax: 860-566-1997
TDD: 860-566-7710
<http://www.ct.gov/chro/site/default.asp>

Office for Civil Rights
U.S. Department of Education
5 Post Office Square, 8th Floor
Boston, MA 02109-3921
Phone: 617-289-0111
Fax: 617-289-0150
Email: OCR.Boston@ed.gov
<https://www2.ed.gov/about/offices/list/ocr/index.html>

United States District Court
Abraham Ribicoff Federal Building
United States District Court
450 Main Street
Hartford, CT 06103
Phone: 860-240-3200
<http://www.ctd.uscourts.gov/>

Connecticut Superior Court
To find appropriate court location, visit
http://www.jud.ct.gov/directory/court_directions.htm#JD
or call 860-548-2700

Dr. Adrian R. Wood
State Title IX Coordinator
CT State Department of Education
Turnaround Office
450 Columbus Boulevard, Suite 602
Hartford, CT 06103-1841
Phone: 860-713-6795
Email: adrian.wood@ct.gov

Organizations providing legal aid, resources or other support to victims of discrimination:

Greater Hartford Legal Aid
 999 Asylum Avenue, 3rd Floor
 Hartford, CT 06105-2465
 Phone: 860-541-5000
 Fax: 860-541-5050
 Email: ghla@ghla.org
<https://www.ghla.org>

True Colors, Inc.
 30 Arbor Street, Suite 201A
 Hartford, CT 06106
 Phone: 860-232-0050
 Fax: 860-232-0049
<https://www.ourtruecolors.org>

New Haven Legal Assistance Association, Inc.
 426 State Street
 New Haven, CT 06510-2018
 Phone: 203-946-4811
 Fax: 203-498-9271
<https://nhlegal.org>

Connecticut Legal Services
 62 Washington Street
 Middletown, CT 06457
 Phone: 860-344-0447
 Fax: 860-346-2938
<https://ctlegal.org>

5. What if the family of another student raises religious freedom as an objection to school policies to protect transgender students?

In the public school setting, all students are entitled to equal treatment. Protecting one student's civil right to equal treatment does not violate the religious freedoms of other students. In explaining this to families who raise objections, school officials may find it helpful to note that all students will be afforded privacy.

6. Do transgender students need to provide documentation of their gender identity?

No. Students are not required to produce documents that reflect their gender identity in order to have the right to be treated consistent with their gender identity. Under the relevant laws, schools are expected to treat students consistent with the student's stated gender identity even if the education records or identification documents indicate a different sex. Similarly, the school's obligation to treat a student consistent with the student's gender identity or expression does not require notice from the parent or guardian.

If a school determines that it is necessary to confirm a student's stated gender identity, it should do so in accordance with the law. Governing law provides that transgender students have a variety of different ways of establishing their gender identity, including, but not limited to: (1) medical history, (2) care or treatment of the gender-related identity, (3) consistent and uniform assertion of such an identity, or (4) any other evidence that the identity is sincerely held, part of the student's core identity, or that the student is not asserting such an identity for an improper purpose. This is not an exhaustive list and schools should consult district officials and counsel for further guidance.

7. Is consistent expression of a particular gender identity required to establish gender-identity?

No. Consistency and uniform assertion of a gender identity is one way for an individual to indicate their gender identity, but it is not a requirement that an individual consistently and uniformly assert or express themselves as male or female. Some students may not identify as the same gender all the time but consistently assert their identity as gender fluid. Students who identify as gender fluid may express their gender in ways which conform with more than one gender, even from one day to the next.

8. What pronouns should school districts and staff use with transgender and gender non-conforming students?

Students have the right to be addressed by a name and pronoun that the student prefers and corresponds to their gender identity even if education records or identification documents indicate a different name or sex. Using the student's chosen name and pronoun is important not only for legal compliance but also for ensuring the student's dignity and well-being. If school staff are unsure what name and pronoun to use, privately asking students what their preferred gender pronouns and names are in an age-appropriate manner is the best place to start. It is important to remember that some students may not identify as male or female but, instead, consider themselves non-binary (i.e., otherwise not conforming to gender binary references to the two categories of male and female). Using these terms may be unfamiliar at first and it may take time for school staff to become accustomed to new terminology on gender identity, but, as with any new term or usage, these terms will become familiar with practice, appropriate training and support.

9. What should schools/districts do to ensure equal treatment of transgender students if they have rules or policies concerning clothing, dress codes and graduation attire?

Under applicable law, transgender and gender non-conforming students have the right to dress in accordance with their gender identity and wear clothing appropriate for students with the same gender identity. Thus, if a school maintains a particular dress code or uniform policy, the law requires the school to allow transgender students to dress in accordance with the code or policy consistent with their gender identity or expression. This requirement also applies to graduation attire and requires schools to allow transgender students to wear the graduation attire consistent with their gender identity or expression.

Single-Sex Facilities and Activities

As a general rule, schools may not separate or otherwise distinguish students on the basis of their sex, including gender identity or expression, in any school activities or the application of any school rule. State and federal laws, however, do permit school districts to provide single-sex restrooms, locker rooms, shower facilities, and athletic/physical education activities. School districts have certain obligations in protecting the rights of their transgender students with respect to single-sex facilities and activities. The following FAQs address these issues.

1. What restrooms should students use?

Most schools divide restrooms by sex. Under federal and state laws, CSDE policies and procedures, and Executive Order No. 56, schools are required to provide access to the restroom that corresponds to a student's gender identity at school, even when this differs from their sex assigned at birth. For example, a student whose sex assigned at birth is female but who identifies as male has a right under the law to use the restroom designated for male students if the student wishes, and it would be a violation of law to require this student to use the restroom designated for female students or an individual restroom. In communicating with students, families and staff about this requirement, schools may find it helpful to note that a private restroom option will be made available to any student.

2. How can schools ensure privacy for all students?

Some students may seek greater privacy than may be available in a multi-stall restroom. To meet this need, a private restroom option should be made available to any student seeking additional privacy. In practice, this means selecting a reasonable alternative restroom or restrooms, such as a single stall "unisex" restroom or the health office restroom, and designating such restroom(s) as private options available for all students.

3. May a school designate certain restrooms or individual-user facilities for use by transgender students?

No. As noted above, schools may maintain separate restroom facilities for male and female students provided they allow students to access them based on their gender identity and not based solely on students' sex assigned at birth. In addition to providing a private option as discussed above, schools may, but are not required to, make separate gender-neutral restrooms available to all students. Students may then choose to use such facilities or single-sex facilities consistent with their gender identity, or students may choose the private option available to all students.

4. What locker rooms should students use?

Like access to single-sex restroom facilities, students should have access to the locker room that corresponds to their gender identity asserted at school. A private option should be made available to any student interested in additional privacy. In locker rooms, additional privacy may be accomplished through use of a reasonable alternative changing area such as a private area (e.g., a nearby restroom stall with a door, an area separated by a curtain, a vacant office in the locker room, or a nearby health office restroom), or with a separate changing schedule (e.g., giving a student the option of using the locker room that corresponds to their gender identity before or after other students). If a transgender student seeks an alternative arrangement, such arrangement should be provided in a way that protects the student's ability to keep the individual's transgender status confidential. In no case shall a transgender student be required to use a locker room that conflicts with the student's gender identity.

5. Where should private or gender-neutral restrooms/locker room facilities be located?

In providing private and gender-neutral options as alternatives to standard restrooms or locker rooms, schools should, to the extent feasible, select an alternative facility that is as close as possible to the facilities other students are using. These facilities should not be located in another building.

6. What if parents, students or staff raise objections to a school's policy regarding restroom or locker room facilities?

A school's obligation to provide transgender and gender non-conforming students with equal access to educational programs, activities and facilities, including restrooms and locker rooms, applies irrespective of concerns or objections raised by other students, parents, staff or community members. A desire to accommodate others' discomfort is not a permissible basis for failing to treat students consistent with their gender identity or expression.

While the objections of others cannot serve as the basis for failing to provide access to facilities consistent with the student's gender identity, as noted above, appropriate accommodations must be provided for any student seeking additional privacy. Schools may find it helpful to note the availability of the private option in addressing objections from students, parents/guardians or staff.

7. What physical education activities should students participate in?

Transgender and gender non-conforming students must be allowed to participate in physical education (and intramural sports, if the school provides any) in a manner consistent with their gender identity at school. While schools may separate intramural sports activities and gym classes for male and female students, transgender students must be allowed to participate in gym class and on intramural sports teams consistent with their gender identity and not based solely on their sex assigned at birth.

8. Do the same policies apply to Interscholastic Competitive Sports Teams?

For issues concerning participation in interscholastic competitive sports, schools and districts should consult their counsel and the Connecticut Interscholastic Athletic Association ("CIAC").

Student Data and Records

Transgender students may seek to change gender and name information on their student records to reflect their gender identity and chosen name, regardless of whether they have completed a legal name change. Transgender students are entitled to equal treatment and, thus, schools should treat requests to change student records based on transgender status no differently than they would treat any other request for a change to student records. Updating a transgender student's education records to reflect the student's gender identity and chosen name protects the student's privacy and ensures that school staff consistently use appropriate names and pronouns.

1. What name and gender should be reported to the Public School Information System (PSIS)?

If a transgender student requests a change to educational records to reflect the student's stated gender identity and chosen name, schools should correct student education records to accurately reflect the student's chosen name and gender identity, regardless of whether the student has completed a legal name change. Similarly, gender and name information reported in PSIS should reflect a student's stated gender identity and chosen name.

2. What if a student identifies as neither male nor female? In that case, what should be reported to the PSIS?

Students who do not identify exclusively as male or female should be reported as *Non-Binary* in PSIS.

3. What procedure must the district follow to make changes to a student's educational records?

Districts must treat requests from transgender and gender non-conforming students to change their educational records in the same manner as any other records change request. This process should not require unique hurdles for students and their families.

4. What steps should a school or school district take to protect a transgender or gender non-conforming student's right to privacy?

To prevent accidental disclosure of a student's transgender status, schools should keep records that reflect a transgender student's birth name and assigned sex (e.g., copy of the birth certificate) apart from the student's cumulative school records in a separate file. Schools should also implement similar safeguards to protect against disclosure of information contained in electronic records.

In instances where a student is using a chosen name, the student's birth name and gender information is considered private information and may not be disclosed except as permitted by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g ("FERPA"). Inappropriately disclosing personally identifiable information from education records to the school community may violate FERPA and interfere with transgender students' rights under antidiscrimination laws.

5. What role does FERPA play when students or parents/guardians request to change educational records without a legal change in name?

Under FERPA, school districts are free to change educational records based on the request of a minor student or a parent/guardian. Moreover, where a change of records is requested in order to conform a student's records to the student's gender identity, the change may be required under separate federal and state laws protecting against gender identity discrimination. These laws are independent of FERPA and may require changing student records even where FERPA does not clearly provide a mechanism for doing so.

In addition, FERPA provides students who are 18 and older and parents/guardians with a legal right to request an amendment to a student's education record to correct inaccurate or misleading information, which can include correcting name or gender identity information. For further information on the interplay between FERPA and school districts' obligations under antidiscrimination laws, districts should consult with their legal counsel and review CSDE's guidance document.

6. What if a student's parents do not consent to a school changing educational records or using the student's stated gender identity or chosen name?

There may be instances where a parent or guardian of a student who is under 18 disagrees with the student regarding the name, gender marker and pronoun to be used at school and in the student's education records. Current law does not provide a clear rule for school districts to follow as to whether a school should change a minor student's educational record at the student's request if the parents object. However, declining to use a student's chosen name, gender marker and pronoun simply because a parent/guardian objects would raise serious concerns under existing law and could cause severe psychological/emotional harm to the student. In such instances, districts should refer to their legal counsel for guidance concerning their obligations under the law and focus on appropriately ensuring the well-being of the student in light of the dispute, including by referral to appropriate counseling and support services for the student and family.

It is recommended that schools use a transgender student's chosen name, gender marker and pronoun at school to ensure the well-being of the student and protect the student's right to equal treatment, pending further guidance from district counsel and/or appropriate counseling staff or providers.

Understanding Gender Identity

There are a number of developing terms used to describe transgender characteristics and experiences, which may differ based on region, age, culture, or other factors. While many of these terms are not defined by law, several common definitions have been used by the courts, the U.S. Department of Education, and a number of groups with educational equity expertise. Any definitions provided in these materials are included to facilitate safe and nondiscriminatory learning environments and are not provided for the purpose of labeling any students.

1. What is gender identity and gender expression?

Gender identity refers to a person's innate, deeply-felt psychological identification as a man, woman or some other gender. Gender expression describes the ways in which individuals communicate their gender to others. People express and interpret gender through hairstyles, clothing, physical expression and mannerism, physical alterations of their body or by choosing a name that reflects their gender identity.

2. What is gender non-conforming?

Gender non-conforming is a broad term referring to people who do not behave in a way that conforms to the traditional expectations of their gender, or whose gender expression does not fit neatly into a category.

3. How is sexual orientation different from gender identity?

Sexual orientation describes a person's enduring physical, romantic, and/or emotional attraction to another person (for example: straight, gay, lesbian, bisexual), while gender identity describes a person's, internal, personal sense of being a man or a woman, or someone outside of the gender binary.

4. What name and pronoun should schools use?

Respect the name a transgender person is currently using. Sharing a transgender person's birth name and/or photos of a transgender person before their transition is an invasion of privacy, unless they have given you permission to do so. Transgender people must be identified by the pronouns associated with their chosen gender. For example, such pronouns may include him, her, they, them, thee, she or he, among others. Not sure what name and pronoun to use? It is appropriate to respectfully ask a person what name and pronoun should be used.

5. What does it mean to be "genderqueer"?

Genderqueer is an umbrella term for gender identities other than man and woman. People who identify as "genderqueer" may see themselves as being both male and female, neither male nor female or as falling completely outside these categories.

6. Is being transgender a mental disorder?

No. Transgender identity is not a mental illness that can be cured with treatment. Some transgender people often do experience a persistent and authentic disconnect between the sex assigned to them at birth and their internal sense of who they are. This disconnect is referred to by medical professionals as "gender dysphoria" because it can cause undue pain and distress in the lives of transgender people.

7. How does someone know that they are transgender?

People can realize that they are transgender at any age. Some people can trace their awareness back to their earlier memories. Others may need more time to realize that they are transgender. Some people may spend years feeling like they do not fit in without really understanding why. For many transgender people, recognizing who they are and deciding to start gender transition can take a lot of reflection. Transgender people risk social stigma, discrimination, and harassment. Parents, friends, coworkers, classmates, and neighbors may be accepting, but they also might not be, and many transgender people fear that they will not be accepted by their loved ones and others in their lives.

8. What is the difference between being transgender and being gender non-conforming?

Being gender non-conforming means not conforming to gender stereotypes. For example, someone's clothes, hairstyle, speech patterns, or hobbies might be considered more "feminine" or "masculine" than what is stereotypically associated with their gender. Gender non-conforming people may or may not identify as transgender.

9. What does it mean to have a gender that is not male or female?

Most transgender people identify as men or women. But some people have gender identities that do not neatly fit into the categories of man or woman or male or female. For example, some people have a gender that blends elements of being a man or a woman, or a gender that is different than either male or female. Some people do not identify with any gender. Some people's gender fluctuates over time. People whose gender is not male or female may use many different terms to describe themselves. One term that some people use is non-binary, which is used because gender binary refers to the two categories of male and female. Another term that people use is genderqueer. It is important to remember that if someone is transgender, it does not necessarily mean that they have a "third gender." Most transgender people do have a gender identity that is either male or female, and they should be treated like any other man or woman.

10. What does "gender transition" mean?

Transitioning is the time period during which a person begins to live according to their gender identity, rather than the gender they were thought to be at birth. While not all transgender people transition, a great many do at some point in their lives. Gender transition looks different for every person. Possible steps in a gender transition may or may not include changing clothing, appearance, name, or the pronoun people use. Some people are able to change their identification documents, like their driver's license or passport, to reflect their gender. And some people undergo hormone therapy, gender alignment surgery or other medical procedures to change their physical characteristics and make their body better reflect the gender they know themselves to be.

11. What is gender dysphoria?

For some transgender people, the difference between the gender they are thought to be at birth and the gender they know themselves to be can lead to serious emotional distress that affects their health and everyday lives if not addressed. Gender dysphoria is the medical diagnosis for someone who experiences this distress. Not all transgender people have gender dysphoria. On its own, being transgender is not considered a medical condition. Many transgender people do not experience serious anxiety or stress associated with the difference between their gender identity and their gender of birth, and so may not have gender dysphoria. Gender dysphoria can often be relieved by expressing one's gender in a way that the person is comfortable with.

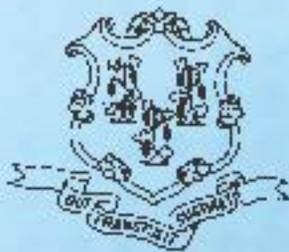
12. Have transgender people always existed?

Transgender persons have been documented in many indigenous, Western, and Eastern cultures and societies from ancient times until the present day. However, the meaning of gender nonconformity may vary from culture to culture.

13. What is the difference between a transgender person and a transsexual person?

The term transgender is often used to refer to anyone who differs from the very strict gender norms of our binary gender system, either intentionally or unintentionally. Those who transgress gender norms often suffer repercussions, in the form of discrimination or even violence. A more narrow and specific definition of transgender would be a person whose gender identity is not in alignment with his or her physical body, either all or part of the time.

The term transsexual is generally used to refer to a person who has undergone medical treatments, such as hormones and/or surgery, to align the physical body to match his, her or their gender identity. The term can also be used to refer to a person who has not undergone any physical gender change but dresses, behaves and identifies as a gender other than the sex assigned at birth.





June 17, 2019

U.S. Department of Education
Office for Civil Rights
8th Floor
5 Post Office Square
Boston, MA 02109-3921
OCR.Boston@ed.gov

Sent via U.S. Mail and Email

**Re: Title IX Discrimination Complaint on Behalf of Minor Children
Selina Soule, [Second Complainant], and Alanna Smith**

To whom it may concern,

We submit this Complaint on behalf of minor Selina Soule, on behalf of minor [Second Complainant], and on behalf of minor Alanna Smith. Because the Complainants are minors, and because they fear retaliation, we respectfully request that the OCR treat their identities as confidential to the extent consistent with conducting a thorough investigation of the allegations contained in this Complaint and in the attached Exhibit A, “Discrimination Complaint Form.”

Overview

1. The Complainants are three high school girls who compete at elite levels of girls’ track in Connecticut. Like large numbers of girls around the nation, each Complainant has trained much of her life—striving to shave mere fractions of seconds off her race times—in order to experience the personal satisfaction of victory, gain opportunities to participate in state and regional meets, gain access to opportunities to be recruited and offered athletic scholarships by colleges, and more.

2. Unfortunately for Complainants and other girls in Connecticut, those dreams and goals—those opportunities for participation, recruitment, and scholarships—are now being directly and negatively impacted by a new policy that is permitting boys¹ who are male in every biological and physiological respect—

¹ Because Title IX focuses on equal opportunities between the sexes, because this Complaint is precisely concerned with effects of *biological* differences between males and females, because the term “boys” is commonly understood to refer to young males, and to avoid otherwise inevitable confusion, we refer in this complaint

including unaltered male hormone levels and musculature—to compete in girls’ athletic competitions if they claim a female gender identity.

3. This discriminatory policy is now regularly resulting in boys *displacing* girls in competitive track events in Connecticut—excluding specific and identifiable girls including Complainants from honors, opportunities to compete at higher levels, and public recognition critical to college recruiting and scholarship opportunities that should go to those girls.

4. As a result, in scholastic track competition in Connecticut, more boys than girls are experiencing victory and gaining the advantages that follow even though postseason competition is nominally designed to ensure that equal numbers of boys and girls advance to higher levels of competition. This discrimination must end: “Treating girls differently regarding a matter so fundamental to the experience of sports—the chance to be champions—is inconsistent with Title IX’s mandate of equal opportunity for both sexes.” *McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 295 (2d Cir. 2004).

5. The Department of Education should make clear that this result, and thus this policy, is neither required nor allowed by Title IX, and should impose a remedy that protects the rights of Complainants and all similarly situated girls.

I. Title IX and Its Application to Athletics

A. The Goals and Success of Title IX

6. In 1972, Congress enacted Title IX, 20 U.S.C. § 1681, which forbids education programs or activities receiving federal financial assistance from discriminating against persons based on their sex. It provides:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.... 20 U.S.C. § 1681(a).

7. Title IX was designed to eliminate significant “discrimination against women in education.” *Neal v. Bd. of Trs. of Cal. State Univs.*, 198 F.3d 763, 766 (9th Cir. 1999). According to its primary sponsor, Title IX promises women “an equal

to athletes who are biologically male as “boys,” and to athletes who are biologically female as “girls.” We do not question any gender identity claimed by any students, and use the names preferred by each student rather than legal names.

chance to attend the schools of their choice, to develop the skills they want, and to apply those skills with the knowledge that they will have a fair chance to secure the jobs of their choice with equal pay for work.” 118 Cong. Rec. 5808 (1972).²

8. Many have argued that the competitive drive and spirit taught by athletics is one of those “skills” that carry over and contribute to lifetime success in the workplace.³ Certainly, the Department has made clear that Title IX applies in full force to athletic programs sponsored by recipients of federal financial assistance:

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis. 34 C.F.R. § 106.41(a).

9. Before the enactment of Title IX in 1972, schools often emphasized boys’ athletic programs “to the exclusion of girls’ athletic programs,” *Williams v. Sch. Dist. of Bethlehem*, 998 F.2d 168, 175 (3rd Cir. 1993), and vastly fewer girls participated in competitive interscholastic athletics than did boys. The Department (and Congress) “well understood” that “[m]ale athletes had been given an enormous head start in the race against their female counterparts for athletic resources.” *Neal*, 198 F.3d at 767. So they enacted Title IX and its regulations to “prompt [high schools and] universities to level the proverbial playing field.” *Id.*

10. The law has achieved striking success. “For example, between 1972 and 2011, girls’ participation in high school athletics increased from approximately 250,000 to 3.25 million students.” U.S. Dept. of Educ., OCR, *Protecting Civil Rights, Advancing Equity* 33 (2015), <https://bit.ly/2VF516Q>. Courts have equally recognized the impact of Title IX. Following the United States’ famed 1999 Women’s World Cup win, the Ninth Circuit wrote that:

“The victory sparked a national celebration and a realization by many that women’s sports could be just as

² See *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 526-27 (1982) (stating that these “remarks ... are an authoritative guide to the statute’s construction....”).

³ See, e.g., *Sport is a Critical Lever in Advancing Women at All Levels, According to New EY/ESPNW Report*, Ernst & Young (Oct. 14, 2015), <https://go.ey.com/2xpLSrk> (discussing report that shows “how sport primes women for leadership while boosting career opportunities and earning power”).

exciting, competitive, and lucrative as men’s sports. And the victorious athletes understood as well as anyone the connection between a 27-year-old statute [Title IX] and tangible progress in women’s athletics.” *Neal*, 198 F.3d at 773.⁴

B. Title IX and Sex-Based Physical Differences in Athletics

11. Title IX does not require that recipients blind themselves to students’ sex when developing their athletic programs. To the contrary, the Department has recognized that separate sex-specific teams may in fact further, not hinder, efforts to promote sex equality:

[A] recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill.... 34 C.F.R. § 106.41(b).⁵

12. That regulation makes sense. As courts have recognized, boys and girls have different athletic capabilities due to physiological distinctions. *See, e.g., Kleczek v. Rhode Island Interscholastic League, Inc.*, 612 A.2d 734, 738 (R.I. 1992) (“Because of innate physiological differences, boys and girls are not similarly situated as they enter athletic competition.”); *Petrie v. Ill. High Sch. Ass’n*, 394 N.E.2d 855, 861 (Ill. App. Ct. 1979) (noting that “high school boys [generally possess physiological advantages over] their girl counterparts” and that those advantages give them an unfair lead over girls in some sports like “high school track”).⁶

13. The basic physiological differences between males and females after puberty are recognized and respected by the different standards set for boys and girls in track and field events that use equipment. For example, the standard weight used in high school shot put is 4 kilograms for girls, and 5.44 kilograms (36%

⁴ *See* Scott M. Reid, *Title IX Scores Big for U.S. Soccer, Orange County Reg.*, July 6, 1999, at D1 (quoting U.S. World Cup team member Brandi Chastain’s statement that “all of this is because of Title IX”); Patrick Hruby, *On Top of the World Scurry Saves Day, Chastain Wins It for U.S.*, *Wash. Times*, July 11, 1999, at A1 (quoting defender Kate Sobrero’s statement that “we’re all Title IX babies, and this shows it’s working”).

⁵ “Recipients” include direct and indirect beneficiaries of federal funding. 34 C.F.R. § 106.2(i).

⁶ *See also* Jared A. Fiore, *Playing Between the Lines: The Legality of Male Athletes in Interscholastic Field Hockey*, 10 *Willamette Sports L. J.* 1 (2013); Raymond Grant, *ERA v. Title IX: Should Male-Student Athletes be Allowed to Compete on Female Athletic Teams?*, 47 *Suffolk U. L. Rev.* 845 (2014).

heavier) for boys. The hurdle height used for the high school girls' 100 meter hurdle event is 33 cm, whereas the standard height used for boys' high school 110 meter hurdle is 39 cm (9% higher).

14. In track and field events that do not use equipment, the basic physiological differences between males and females after puberty are readily apparent from the record books. No one doubts that top male and female high school athletes are equally committed to excelling in their sport, and train equally hard. Yet boys consistently run faster times than girls in the same events.

15. As Duke Law professor and All-American track athlete Doriane Coleman, tennis champion Martina Navratilova, and Olympic track gold medalist Sanya Richards-Ross recently wrote:

“The evidence is unequivocal that starting in puberty, in every sport except sailing, shooting and riding, there will always be significant numbers of boys and men who would beat the best girls and women in head-to-head competition. Claims to the contrary are simply a denial of science.”

“Team USA sprinter Allyson Felix has the most World Championship medals in history, male or female, and is tied with Usain Bolt for the most World Championship golds. Her lifetime best in the 400 meters is 49.26 seconds. In 2018 alone, 275 high school boys ran faster on 783 occasions. The sex differential is even more pronounced in sports and events involving jumping. Team USA's Vashti Cunningham has the American record for high school girls in the high jump at 6 feet, 4½ inches. Last year just in California, 50 high school boys jumped higher. The sex differential isn't the result of boys and men having a male gender identity, more resources, better training or superior discipline. It's because they have androgenized bodies.”⁷

16. As Professor Coleman further explained in testimony before the House Judiciary Committee on April 2, 2019, in track events even the world's best women's Olympic athletes “would lose to literally thousands of boys and men, including to thousands who would be considered second tier in the men's category.

⁷ Doriane Coleman, Martina Navratilova, et al., *Pass the Equality Act, But Don't Abandon Title IX*, Washington Post (Apr. 29, 2019), <https://wapo.st/2VKINN1>.

And because it only takes three male-bodied athletes to preclude the best females from the medal stand, and eight to exclude them from the track, it doesn't matter if only a handful turn out to be gender nonconforming.”⁸

17. This stark competitive advantage is equally clear at the high school level. To illustrate, the charts below show the best boys' and girls' times in the nation across five different high school track events during the 2019 season:

Table 1: Best High School Outdoor 100m Times in 2019⁹

<i>Boy</i>	<i>Time</i>	<i>Girl</i>	<i>Time</i>
Matthew Boling	9.98s	Briana Williams	11.02s
Micah Williams	10.21s	Tamari Davis	11.27s
Langston Jackson	10.23s	Arria Minor	11.31s
Joseph Fahnbulleh	10.23s	Taylor Gilling	11.32s
Kenan Christon	10.26s	Tianna Randle	11.32s
Ryan Martin	10.26s	De'anna Nowling	11.40s
Lance Broome	10.27s	Jasmine Riley	11.42s
Tyler Owens	10.29s	Kenondra Davis	11.45s
Marquez Beason	10.30s	Jazmine Hobson	11.48s
Jose Garcia	10.30s	Semira Killebrew	11.50s

Table 2: Best High School Outdoor 200m Times in 2019¹⁰

<i>Boy</i>	<i>Time</i>	<i>Girl</i>	<i>Time</i>
Kennedy Lightner	20.48s	Briana Williams	22.88s
Cameron Miller	20.52s	Tamari Davis	23.06s
Kenan Christon	20.55s	Kayla Davis	23.08s
Matthew Boling	20.58s	Taylor Gilling	23.10s
Kennedy Harrison	20.60s	Arria Minor	23.10s
Devon Achane	20.69s	Aaliyah Pyatt	23.11s
Lance Broome	20.69s	Rosaline Effiong	23.16s
Daniel Garland	20.73s	Dynasty McClennon	23.28s
Langston Jackson	20.73s	Jayla Hollis	23.36s
Garrett Shedrick	20.74s	Kenondra Davis	23.38s

⁸ <https://bit.ly/2YIXGQD>.

⁹ Results listed in this table are publicly available online at AthleticNET, <https://bit.ly/30uZwXl> (boys), and at AthleticNET, <https://bit.ly/30udh8k> (girls). These results were last updated June 17, 2019.

¹⁰ *Id.* These results were last updated June 17, 2019.

Table 3: Best High School Outdoor 400m Times in 2019¹¹

<i>Boy</i>	<i>Time</i>	<i>Girl</i>	<i>Time</i>
Justin Robinson	44.84s	Jan'Taijah Ford	51.57s
Jayon Woodard	46.26s	Britton Wilson	52.06s
Alex Collier	46.33s	Aaliyah Butler	52.25s
Jonah Vigil	46.43s	Talitha Diggs	52.82s
Zachary Larrier	46.49s	Alysia Johnson	53.18s
Omajuwa Etiwe	46.51s	Dynasty McClennon	53.25s
Sean Burrell	46.52s	Kimberly Harris	53.28s
Edward Richardson	46.55s	Ramiah Elliott	53.30s
Chris Dupree	46.57s	Meghan Hunter	53.35s
Emmanuel Bynum	46.60s	Bria Barnes	53.39s

Table 4: Best High School Indoor 60m Times in 2019¹²

<i>Boy</i>	<i>Time</i>	<i>Girl</i>	<i>Time</i>
Micah Williams	6.60s	Tamari Davis	7.27s
Lance Lang	6.62s	Briana Williams	7.28s
Marcellus Moore	6.65s	Thelma Davies	7.30s
Mario Heslop	6.70s	Moforehan Abinusawa	7.32s
Langston Jackson	6.74s	Semira Killebrew	7.34s
Javonte Harding	6.74s	Alexa Rossum	7.40s
LaCarr Trent	6.79s	Aliya Wilson	7.42s
Justin Robinson	6.79s	Kaila Jackson	7.44s
Bryan Santos	6.79s	Aja Davis	7.44s
Tre Tucker	6.80s	Arria Minor	7.44s

¹¹ *Id.* These results were last updated June 17, 2019.

¹² Results listed in this table are publicly available online at AthleticNET, <https://bit.ly/2WLBR1K> (boys), and at AthleticNET, <https://bit.ly/2Ifj5eV> (girls). These results were last updated June 17, 2019.

Table 5: Best High School Indoor 800m Times in 2019¹³

<i>Boy</i>	<i>Time</i>	<i>Girl</i>	<i>Time</i>
Alfred Chawonza	110.57s	Athing Mu	123.98s
Malcolm Going	110.85s	Roisin Willis	125.70s
Miller Anderson	111.54s	Michaela Rose	126.93s
Luis Peralta	112.21s	Victoria Vanriele	127.24s
Jake Renfree	112.33s	Maggie Hock	127.68s
Liam Rivard	112.42s	Lily Flynn	128.15s
Conor Murphy	113.25s	Victoria Starcher	128.32s
Miguel Parrilla	113.41s	Aleeya Hutchins	128.52s
Darius Kipyego	113.43s	Sarah Trainor	128.60s
Theo Woods	113.53s	Makayla Paige	128.97s

18. Because of the basic physiological differences and resulting strongly statistically significant differences in athletic capability and performance between boys and girls after puberty, no one could credibly claim that a school satisfies its obligation to provide equal opportunities for girls for participation in athletics by providing, e.g., only co-ed track or wrestling teams and competitions, with sex-blind try-outs and qualification based strictly upon performance.¹⁴

19. Yet to an extent that has now proven material to Complainants and numerous other girls, and as detailed below, that is what a new policy recently adopted by the Connecticut Interscholastic Athletic Conference (“CIAC”) effectively does. This policy, and others like it, discriminate against girls and threaten to reverse the gains for girls and women that Title IX has achieved since 1972.

¹³ Results listed in this table are publicly available online at AthleticNET, <https://bit.ly/2IJ0nLT> (boys), and at AthleticNET, <https://bit.ly/2WDNY0J> (girls). These results were last updated June 17, 2019.

¹⁴ *See Williams*, 988 F.2d at 175 (criticizing a scheme that in effect only afforded girls the opportunity to compete against boys); 44 Fed. Reg. at 71,415 (stating that the Department compares the “kinds of benefits, opportunities, and treatment afforded” boys and girls when it investigates Title IX violations).

II. The Connecticut Interscholastic Athletic Conference And Its Discriminatory Policy

A. The Connecticut Interscholastic Athletic Conference

20. The CIAC belongs to the Connecticut Association of Schools, a private, non-profit corporation.¹⁵ As the state's only interscholastic athletic organization, CIAC "directs and controls" all high school athletics for boys and girls in Connecticut.¹⁶

21. CIAC membership is open to any public or private school in Connecticut.¹⁷ Because it is the state's only interscholastic athletic association, "[v]irtually all public and parochial high schools in Connecticut are dues-paying members."¹⁸ CIAC now boasts over 180 member-schools.¹⁹ Each of those member-schools pays annual dues and helps govern the organization.²⁰ Glastonbury High School, which Selina attends, as well as the high schools attended by [Second Complainant] and Alanna,²¹ receive federal funds covered by Title IX and are dues-paying members of CIAC.

22. CIAC falls under Title IX's requirements because it indirectly receives federal funding from its public member-schools, *see* 34 C.F.R. § 106.2(i),²² and is considered a state actor, *see Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 303-305 (2001).

23. CIAC rightly deems athletics an "integral" part of the state's "total educational program."²³ CIAC declares that it seeks to offer athletic experiences that satisfy the highest "expectations for fairness, equity, and sportsmanship for all

¹⁵ CIAC Handbook 2018 - 2019, 31, <https://bit.ly/30icAiC>.

¹⁶ *Id.*

¹⁷ *Id.* at 32.

¹⁸ About CIAC, <https://bit.ly/2VrJTRA> (click "About" tab).

¹⁹ CIAC Handbook, at 32.

²⁰ *Id.* at 32, 44.

²¹ The high schools attended by [Second Complainant] and Alanna Smith are not named separately as defendants in this complaint.

²² *Cf.* In re: Kentucky High School Athletic Association, Voluntary Resolution Agreement, OCR Docket Number 03121217 (Dec. 20, 2013), <https://bit.ly/2LwgLDR> (resolving OCR complaint against an interscholastic athletic association).

²³ CIAC Handbook, at 33.

student-athletes and coaches”²⁴ in order to maximize high school students’ “academic, social, emotional, and physical development.”²⁵

24. CIAC coordinates and governs competition in 27 sports across three seasons each year.²⁶ CIAC designates some sports only for boys (e.g. football and baseball), different sports only for girls (e.g. volleyball and softball), and other sports for both boys and girls (e.g. swimming and track). For the latter sports, though, CIAC has historically separated teams and competitions at the high school level by sex, or at least prohibited boys from competing in the girls’ events.²⁷ The high school athletic events recognized by CIAC are as follows:

Table 6

Boys’ Sports		
<i>Fall</i>	<i>Winter</i>	<i>Spring</i>
Cross Country Football Soccer	Basketball Ice Hockey Indoor Track Swimming Wrestling	Baseball Golf Lacrosse Outdoor Track Tennis Volleyball

Table 7

Girls’ Sports		
<i>Fall</i>	<i>Winter</i>	<i>Spring</i>
Cross Country Field Hockey Soccer Swimming Volleyball	Basketball Gymnastics Indoor Track	Golf Lacrosse Softball Outdoor Track Tennis

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

B. CIAC Adopts a New Policy Allowing Boys to Compete in Girls' Events.

25. At some time before 2017, CIAC adopted a policy (“the CIAC Policy” or “the Policy”) pursuant to which CIAC and member-schools began allowing boys who claim a transgender identity to compete in girls’ athletic events. The CIAC Policy determines—and requires member-schools to determine—eligibility to compete in sex-specific athletic competitions solely based on “the gender identification of that student in current school records and daily life activities in the school.”²⁸

26. In stark contrast to, e.g., the NCAA rules (which require that males seeking to compete in female athletic competitions be on testosterone-suppressing hormones for at least a full year prior to the competition),²⁹ the CIAC Policy does not require that males take testosterone-suppressing hormones *at all* in order to compete in girls’ athletic events.³⁰ To be clear, the CIAC permits males with all the hormonal and physiological advantages that come with male puberty and male levels of testosterone to enter and win in girls’ athletic competitions of all sorts, without any exceptions.

27. The Policy states that “the CIAC shall expect that, as a general matter, after the issue of gender identity has been addressed by the student and the school district, the determination shall remain consistent for the remainder of the student’s high school sports eligibility.”³¹ In other words, a male who has competed in boys’ high school athletic events shall not thereafter compete in girls’ high school athletic events. However, as detailed later in this Complaint, CIAC and its member-schools have not abided by this provision, but have instead permitted male students to switch, from one season to the next, from competing in boys’ events to competing (and winning) in girls’ events.

28. The CIAC Handbook asserts that any other policy would be “contrary to applicable state and federal law.” This is not correct. As noted above, Title IX aims to counteract historic inequality of opportunity suffered by women based on their sex, and requires “equal opportunities based on *sex*”—not on subjective psychological states of mind. *See* Dear Colleague letter from Dept. of Educ., dated Jan. 16, 1996 (emphasis added).³² And even if state law demanded that CIAC adopt

²⁸ *Id.* at 54.

²⁹ NCAA Inclusion of Transgender Student-Athletes 13, <https://bit.ly/2JmbtJp>.

³⁰ CIAC Handbook, at 54.

³¹ *Id.*

³² <https://bit.ly/2WRMW22>.

this policy (it does not), a recipient’s “obligation to comply with [Title IX regulations] is not obviated by any State or local law....” 34 C.F.R. § 106.6(b).

III. CIAC’s Policy Has Resulted in Unequal Opportunities for Girls in Track and Field Competitions in Connecticut.

29. As a result of CIAC’s policy, two biological males, Terry Miller and Andraya Yearwood, were permitted to compete in girls’ athletic competitions beginning in the 2017 track season. Between them, they have taken 15 women’s state championship titles (titles held in 2016 by ten different Connecticut girls) and have taken more than 40 opportunities to participate in higher level competitions from female track athletes in the 2017, 2018, and 2019 seasons alone. In this section, we detail this adverse impact on girls and young women.

30. To understand how opportunities to participate in higher levels of athletic competition are determined for student athletes, it is necessary to understand how CIAC has organized interscholastic track and field competition in Connecticut. First, all member schools are organized into 11 conferences. Based on performance within those conferences, students may qualify to advance to and participate in state “Class” championships, with schools grouped by size (S, M, L, and LL). Thus, for example, a student might win the “Class M Women’s Outdoor Track 100m” State championship. Next, the top-performing students within each State Class championship qualify to participate in the State Open championships, in which the top athletes in the state compete against each other regardless of the size of the school that they attend. And finally, the top performers in the State Open championships qualify to participate in the New England Championship.

31. All names, times, and other information provided in this section are taken from public sources, including Connecticut high school track records available on AthleticNET, at the web addresses indicated. The records of male athletes competing in women’s events are indicated with gray shading.

32. In 2017, Andraya’s *freshman* season, Andraya won CIAC’s Class M state championship in both the women’s outdoor 100m and 200m events:

Table 8: 2017 CIAC Class M Women's Outdoor Track 100m Results (May 30, 2017)³³

<i>Place</i>	<i>Grade</i>	<i>Sex</i>	<i>Name</i>	<i>Time</i>	<i>High School</i>
1*	9	M	Andraya Yearwood	12.66s	Cromwell
2*	11	F	Kate Hall	12.83s	Stonington
3*	11	F	Erika Michie	12.93s	Woodland
4*	10	F	Raianna Grant	13.17s	Waterbury Career Academy
5*	9	F	Se-raya Steward	13.18s	Kaynor Tech
6	12	F	Jon-yea McCooty	13.30s	Northwest Catholic
7	12	F	Libby Spitzchuh	13.35s	Valley Regional

* Qualified for the State Open

Table 9: 2017 CIAC Class M Women's Outdoor Track 200m Results (May 30, 2017)³⁴

<i>Place</i>	<i>Grade</i>	<i>Sex</i>	<i>Name</i>	<i>Time</i>	<i>High School</i>
1*	9	M	Andraya Yearwood	26.08s	Cromwell
2*	11	F	Erika Michie	26.38s	Woodland
3*	11	F	Kate Hall	26.65s	Stonington
4*	11	F	Zora LaBonte	26.80s	Waterford
5*	11	F	Victoria Bower	27.05s	Rocky Hill
6	10	F	Raianna Grant	27.26s	Waterbury Career Academy
7	10	F	Sheena Wolliston	27.30s	Northwest Catholic

* Qualified for the State Open.

33. But for CIAC's policy that allows biological males to compete in girls-only events, Kate Hall and Erika Michie would each have won first place in the Class M championship in one of these events in 2017. In 2016, two different girls did win these titles.

34. Because only the top five finishers in each event qualified to participate in the State Open championship, CIAC's decision to permit Andraya Yearwood to compete in these girls' events deprived Jon-yea McCooty and Raianna Grant of the opportunities that they had rightfully earned to compete in the State Open championship.

³³ AthleticNET, <https://bit.ly/2Edvb5R>.

³⁴ *Id.*

35. When one girl was asked about her loss, she said, “I can’t really say what I want to say, but there’s not much I can do about it.”³⁵ Complainants believe that it is starkly contrary to the terms, spirit, and goals of Title IX to tolerate a policy which first deprives a girl of an opportunity to participate in elite competition which she has rightfully earned, and then additionally intimidates her into silence about the injustice she has suffered. Nevertheless, Complainants, too, have felt both the injustice and the sense of intimidation and silencing that this girl expressed.

36. Under CIAC’s Policy, Andraya advanced to the 2017 State Open Women’s Outdoor Track competition, where—still a freshman—Andraya again deprived a girl of a statewide title and opportunity to advance to still higher levels of competition that she had rightfully earned. But for CIAC’s policy, Chelsea Mitchell would have qualified to participate in the New England Championship:

Table 10: 2017 CIAC State Open Women’s Outdoor Track 100m Results (June 5, 2017)³⁶

<i>Place</i>	<i>Grade</i>	<i>Sex</i>	<i>Name</i>	<i>Time</i>	<i>High School</i>
1*	12	F	Caroline O’Neil	12.14s	Daniel Hand
2*	12	F	Kathryn Kelly	12.36s	Lauralton Hall
3*	9	M	Andraya Yearwood	12.41s	Cromwell
4*	11	F	Tia Marie Brown	12.44s	Windsor
5*	12	F	Kiara Smith	12.59s	Jonathan Law
6*	11	F	Kate Hall	12.62s	Stonington
7	9	F	Chelsea Mitchell	12.69s	Canton
8	12	F	Tiandra Robinson	FS	Weaver

* Qualified for the New England Championship.

37. In the Winter 2017, Spring 2017, and Winter 2018 seasons, a male freshman named Terry Miller competed in *boys’* indoor or outdoor track events, and did not advance to any state class or open championships. In the Spring 2018 outdoor track season, however, Terry abruptly appeared competing in the *girls’* events. Terry’s switch to competing in the girls’ events immediately and systematically deprived girls of opportunities to advance and participate in state-level competition. According to AthleticNET records, Terry has never lost a women’s indoor 55m or 300m final.³⁷ Nor has Terry lost a women’s outdoor 100m final in

³⁵ Jeff Jacobs, *As We Rightfully Applaud Yearwood, We Must Acknowledge Many Questions Remain*, Hartford Courant (Jun. 1, 2017), <https://bit.ly/2qEfps0>.

³⁶ AthleticNET, <https://bit.ly/2EbAXoO>.

³⁷ Terry Miller, Track & Field Bio, AthleticNET, <https://bit.ly/2Q4VbFv>.

which Terry completed.³⁸ Terry has displaced a girl in every elimination track event that Terry completed.

38. At last year's State Outdoor Open, for example, Terry won the women's 100m event by a wide margin, while Andraya finished second. But for CIAC's policy, Bridget Lalonde would have won first place statewide, Chelsea Mitchell would have won second place statewide, and Tia Marie Brown and Ayesha Nelson would have gained the opportunity to compete in the New England Championship:

Table 11: 2018 CIAC State Open Championship Women's Outdoor Track 100m Results (June 4, 2018)³⁹

<i>Place</i>	<i>Grade</i>	<i>Sex</i>	<i>Name</i>	<i>Time</i>	<i>High School</i>
1*	10	M	Terry Miller	11.72s	Bulkeley
2*	10	M	Andraya Yearwood	12.29s	Cromwell
3*	11	F	Bridget Lalonde	12.36s	RHAM
4*	10	F	Chelsea Mitchell	12.39s	Canton
5*	11	F	Maya Mocarski	12.47s	Fairfield Ludlowe
6*	10	F	Selina Soule	12.67s	Glastonbury
7	12	F	Tia Marie Brown	12.71s	Windsor
8	11	F	Ayesha Nelson	12.80s	Hillhouse

* Qualified for the New England Championship.

39. The 2019 State Indoor Open saw similar results and a similar impact. Terry and Andraya finished first and second respectively in both the preliminary and final Women's 55m races, each time defeating the fastest girl by a wide margin. But for CIAC's policy, Selina Soule and Kisha Francois would have advanced to the final with an opportunity to compete for both a state title and a spot in the New England Championship; Chelsea Mitchell would have won the 2019 state championship and Kate Shaffer would have won second place; and seventh-place senior Cori Richardson would have qualified for the New England Championship:

³⁸ *Id.*

³⁹ AthleticNET, <https://bit.ly/2VonRdz>. A video of this race can be found on GameTimeCT's Twitter page at the following link: <https://bit.ly/2VGkbZn>.

Table 12: 2019 CIAC State Open Championship Women's Indoor Track 55m Preliminary Results (February 16, 2019)⁴⁰

<i>Place</i>	<i>Grade</i>	<i>Sex</i>	<i>Name</i>	<i>Time</i>	<i>High School</i>
1*	11	M	Terry Miller	7.00s	Bloomfield
2*	11	M	Andraya Yearwood	7.07s	Cromwell
3*	12	F	Cori Richardson	7.24s	Windsor
4*	11	F	Chelsea Mitchell	7.27s	Canton
5*	12	F	Kate Shaffer	7.27s	Conard
6*	12	F	Ayesha Nelson	7.29s	Hillhouse
7*	12	F	Maya Mocarski	7.34s	Fairfield Ludlowe
8	11	F	Selina Soule	7.37s	Glastonbury
9	10	F	Kisha Francois	7.41s	East Haven

* Qualified for the women's 55m final.

Table 13: 2019 CIAC State Open Championship Women's Indoor Track 55m Final Results (February 16, 2019)⁴¹

<i>Place</i>	<i>Grade</i>	<i>Sex</i>	<i>Name</i>	<i>Time</i>	<i>High School</i>
1*	11	M	Terry Miller	6.95s	Bloomfield
2*	11	M	Andraya Yearwood	7.01s	Cromwell
3*	11	F	Chelsea Mitchell	7.23s	Canton
4*	12	F	Kate Shaffer	7.24s	Conard
5*	12	F	Ayesha Nelson	7.26s	Hillhouse
6*	12	F	Maya Mocarski	7.33s	Fairfield Ludlowe
7	12	F	Cori Richardson	7.39s	Windsor

* Qualified for the New England Championship.

40. The trend continued at the 2019 State Outdoor Open as Terry easily won the Women's 200m race. But for CIAC's policy, Cori Richardson would have won the state championship, Alanna Smith would have finished runner-up, and Olivia D'Haiti would have advanced to the New England Championship:

⁴⁰ AthleticNET, <https://bit.ly/2JmZyLh>.

⁴¹ *Id.*

Table 14: 2019 CIAC State Open Championship Women's Outdoor Track 200m Final Results (June 3, 2019)⁴²

<i>Place</i>	<i>Grade</i>	<i>Sex</i>	<i>Name</i>	<i>Time</i>	<i>High School</i>
1*	11	M	Terry Miller	24.33s	Bloomfield
2*	12	F	Cori Richardson	24.75s	Windsor
3*	9	F	Alanna Smith	25.01s	Danbury
4*	11	F	Chelsea Mitchell	25.24s	Canton
5*	12	F	Nichele Smith	25.38s	East Hartford
6*	12	F	Bridget Lalonde	25.55s	RHAM
7	12	F	Olivia D'Haiti	25.63s	Kolbe-Cathedral

* Qualified for the New England Championship.

41. Considering the seven important state-level competitive events summarized in the tables above together with the parallel boys' competitions in these same seven events at these same meets, we find that the result of the CIAC Policy was that males took first place in 13 out of 14 events, while girls received only one first place recognition (Caroline O'Neil in the 200 meter State Open Women's race on June 5, 2017). Males took 23 out of 28 first and second place awards in those seven state-level competitive events. And from these competitions, boys were awarded 51 opportunities to participate in a higher-level state competition, while girls were awarded only 31 such opportunities—little more than half as many as went to boys.

42. Nor are these isolated examples. The presence of boys competing in CIAC girls' track and field events in Connecticut has now deprived many girls of opportunities to achieve public recognition, a sense of reward for hard work, opportunities to participate in higher level competition, and the visibility necessary to attract the attention of college recruiters and resulting scholarships. The impact summary below identifies over 50 separate times in competitions since 2017 that specific, identifiable girls have been denied the recognition of being named state-level first-place champions, and/or have been denied the opportunity to advance and participate in higher-level competition, in CIAC-sponsored events as a result of the unfair participation of Terry Miller and Andraya Yearwood in girls' track competitions pursuant to the CIAC Policy.

43. In sum, the real-world result of the CIAC Policy is that in Connecticut interscholastic track competitions, while highly competitive girls are experiencing

⁴² AthleticNET, <https://bit.ly/31vnCRY>.

the no doubt character-building “agony of defeat,” they are systematically being deprived of a fair and equal opportunity to experience the “thrill of victory.”

Table 15

CIAC's Policy Impact Summary					
2019 Outdoor Track Season					
<i>Athlete</i>	<i>School</i>	<i>Meet</i>	<i>Event</i>	<i>Denied State Championship</i>	<i>Denied Participation</i>
Chelsea Mitchell	Canton	Class S	100m	X	
Ashley Nicoletti	Immaculate	Class S	100m		X
Annabelle Shanks	Litchfield	Class S	100m		X
Olivia D'Haiti	Kolbe-Cathedral	Class S	100m		X
Sheena Wolliston	Northwest Catholic	Class S	100m		X
Chelsea Mitchell	Canton	Class S	200m	X	
Brianna Westberry	Capital Prep	Class S	200m		X
Shelby Dejana	Wilton	Open	100m		X
Alisia Munoz	Kolbe-Cathedral	Open	100m		X
Carly Swierbut	Newtown	Open	100m		X
Cori Richardson	Windsor	Open	200m	X	
Olivia D'Haiti	Kolbe-Cathedral	Open	200m		X
2019 Indoor Track Season					
Chelsea Mitchell	Canton	Class S	55m	X	
Sheena Wolliston	Northwest Catholic	Class S	55m		X
Audrey Strmiska	Griswold	Class S	55m		X
Jillian Mars	Bloomfield	Class S	300m	X	
Chelsea Mitchell	Canton	Open	55m	X	
Cori Richardson	Windsor	Open	55m		X
Selina Soule	Glastonbury	Open	55m		X
Jillian Mars	Bloomfield	Open	300m	X	
Shante Brown	Bloomfield	Open	300m		X
2018 Outdoor Track Season					
Nikki Xiarhos	Berlin	Class M	100m	X	
Kate Hall	Stonington	Class M	100m		X
Magnalen Camara	Amisted	Class M	100m		X
Noelle Konior	Berlin	Class M	100m		X
Nikki Xiarhos	Berlin	Class M	200m	X	
Kate Hall	Stonington	Class M	200m		X
Nyia White	Hillhouse	Class M	200m		X
Addie Hester	Northwestern	Class M	400m		X
Jada Boyd	Hillhouse	Class M	400m	X	

Zora LaBonte	Waterford	Class M	400m		X
Bridget Lalonde	RHAM	Open	100m	X	
Tia Marie Brown	Windsor	Open	100m		X
Ayesha Nelson	Hillhouse	Open	100m		X
KC Grady	Darien	Open	100m		X
Nikki Xiarhos	Berlin	Open	100m		X
Bridget Lalonde	RHAM	Open	200m	X	
Jillian Mars	Bloomfield	Open	200m		X
Dominique Valentine	Immaculate	Open	400m		X
2018 Indoor Track Season					
Patricia Jurkowski	Seymour	Class S	55m	X	
Ahyvon Evans	Grasso Tech	Class S	55m		X
Chelsea Mitchell	Canton	Class S	300m		X
Haley Bothwell	Sacred Heart	Class M	55m		X
Patricia Jurkowski	Seymour	Open	55m		X
Bridget Lalonde	RHAM	Open	55m		X
Camille McHenry	Windsor	Open	300m		X
2017 Outdoor Track Season					
Kate Hall	Stonington	Class M	100m	X	
Jon'yea McCooty	Northwest Catholic	Class M	100m		X
Carly Gable	Northwestern	Class M	100m		X
Erika Michie	Woodland	Class M	200m	X	
Raianna Grant	WCA	Class M	200m		X
Erica Marriott	North Haven	Open	100m		X

44. These charts are examples, and do not include over 40 more missed championships, recognitions, and participation opportunities for girls in Connecticut who did not advance to or receive runner-up recognition in statewide competitions as well as girls who did not win or receive runner-up recognition in conference championships.

IV. CIAC Has Exhibited Willful Indifference to the Discriminatory Effect of its Policy, and Has Engaged in Intimidation and Retaliation.

45. Title IX prohibits “[r]etaliation against a person because that person has complained of sex discrimination”—regardless of whether that individual was herself the victim of the original discrimination. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005).

46. CIAC has consistently shown indifference to even specific complaints about the discriminatory impact of its Policy on girls in Connecticut athletics. For example, [Second Complainant's Mother], mother of [Second Complainant], has contacted CIAC multiple times explaining and complaining about the discriminatory impact of the Policy, but CIAC has consistently failed to provide any substantive response, and Connecticut school officials discouraged [Second Complainant's Mother] from filing a Title IX complaint.

47. [Second Complainant's Mother] first wrote a letter to CIAC after the 2018 women's indoor track State Open, complaining about CIAC's policy. (Attached as Exhibit B.) On March 10, 2018, CIAC officials informed her in a conclusory email that they would not change their policy. On January 24, 2019, [Second Complainant's Mother] sent a second letter to CIAC requesting that it change its Policy so as to avoid denying girls fair opportunities for competition and advancement to elite competition. (Attached as Exhibit C.) In response, CIAC's executive director, Glenn Lungarini, indicated that only school or organization officials may request a rule change.

48. In February, [Second Complainant's Mother] met with Mr. Lungarini. He informed her that CIAC had no plans to change its policy that allows biological males to compete in girls-only athletic events. In early March, [Second Complainant's Mother] met with the Title IX coordinator of her daughter's school, who in turn contacted Dr. Adrian Wood, the state Title IX coordinator at the Connecticut Department of Education. Dr. Wood asserted that CIAC was just following state law and told [Second Complainant's Mother] that filing a Title IX complaint would not change anything.

49. In late March, following more races in which the participation of boys in the girls' track events deprived girls of opportunities for victories and advancement to participate in higher level competitions, [Second Complainant's Mother] again contacted Mr. Lungarini of the CIAC to complain of this discrimination against girls, and to request that CIAC find some solution. Far from responding and taking [Second Complainant's Mother]'s complaint of discrimination based on sex seriously, Mr. Lungarini told [Second Complainant's Mother] that he would no longer accept any communications from her, effectively imposing a gag order and denying her right to complain of sex-based discrimination.

50. Selina Soule's mother, Bianca Stanescu, has likewise complained multiple times to officials of CIAC and of the Glastonbury School District in which her daughter is a student that CIAC's policy is discriminatory and deprives girls of equal opportunities to participate in elite competition. Both CIAC and Glastonbury School District officials have refused to acknowledge that the Policy results in any discrimination against girls, and have refused to discuss any change or correction to that Policy.

51. On an ongoing basis, Selina fears retaliation. As she has explained, “Everyone is afraid of retaliation from the media, from the kids around their school, from other athletes, coaches, schools, administrators . . . They don’t want to drag attention to themselves, and they don’t want to be seen as a target for potential bullying and threats.”⁴³

52. Another female Connecticut high school athlete who was too afraid of retaliation to let her name be used expressed the same fear:

“There’s really nothing else you can do except get super frustrated and roll your eyes, because it’s really hard to even come out and talk in public just because . . . just immediately you’ll just be shut down.”⁴⁴

53. Unfortunately, Selina perceives that since her parents complained of sex discrimination to school officials, Selina has experienced actual retaliation, as her track coach has forced her to perform workouts that are not generally applied for short-distance sprinters, and has forbidden her from competing in *any* high school track and field event unless she completes them. The coach has never imposed that kind of condition on Selina before. Worse, a coach told Selina and her father that if a college recruiter asked him about Selina, “he would not be able to give a good report about her.”

V. Relevant Title IX Legal Standards

54. Title IX requires equal athletic opportunities for male and female athletes. To determine whether those equal opportunities exist, the Department considers multiple listed factors including “[w]hether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes” and whether equality in “Publicity” is accorded to female athletes and athletics, but the enumerated factors are not exclusive. 34 C.F.R. § 106.41(c).

55. Courts and the Department summarize 34 C.F.R. § 106.41(c) as requiring both “effective accommodation” and “equal treatment.” *Biedinger v. Quinnipiac Univ.*, 691 F.3d 85, 92 (2d Cir. 2012).

⁴³ See, e.g., Kelsey Bolar, *8th Place: A High School Girl’s Life After Transgender Students Join Her Sport*, The Daily Signal (May 6, 2019), <https://dailysign.al/2Yauemi>.

⁴⁴ *Id.*

56. The effective accommodation mandate requires that recipients offer boys and girls equal “opportunit[ies] to participate in athletics.” *Mansourian v. Regents of Univ. of Cal.*, 602 F.3d 957, 965 (9th Cir. 2010); see *Boucher v. Syracuse Univ.*, 164 F.3d 113, 115 n. 1–2 (2d Cir. 1999). A recipient may demonstrate compliance with the effective accommodation mandate by demonstrating that participation opportunities for male and female athletes are provided in numbers substantially proportionate to their respective enrollments.⁴⁵

57. The equal treatment mandate requires that recipients give boys and girls equal “athletic benefits and opportunities.” *Mansourian*, 602 F.3d at 964–65.⁴⁶ This requirement forbids “sex-based differences in the schedules, equipment, coaching, and other factors.” *Id.* at 965; see *Boucher*, 164 F.3d at 115 nn.1–2.

VI. The CIAC Policy Violates Title IX in Numerous Distinct Ways.

1. CIAC’s policy violates Title IX’s mandate that recipients offer boys and girls equal athletic participation opportunities when it allows biological males to displace girls from advancement in post-season competition, resulting in larger numbers of boys than girls having the opportunity to qualify for and participate in those competitions.⁴⁷ The Policy does not result in girls similarly displacing boys from post-season advancement opportunities in boys’ track events. So while CIAC structures post-season competition so that boys and girls nominally have equivalent post-season advancement opportunities, in fact, the opposite is true.

⁴⁵ See *Neal*, 198 F.3d at 767; 44 Fed. Reg. at 71,418 (1979). *Neal* addressed collegiate athletics. However, the Department has stated that the test set out in *Neal* also applies to high schools. Letter from Sec. of Educ. to Mr. Steven Gieseler, dated March 27, 2008, at p. 2, <https://bit.ly/31GQmYm>.

⁴⁶ A recipient may violate Title IX “solely by failing to accommodate effectively the interests and abilities of student athletes of both sexes, even if athletic benefits are provided on an equal basis, and vice versa.” *Id.* at 965 (quoting *Kelley v. Bd. of Trs.*, 35 F.3d 265, 268 (7th Cir. 1994)).

⁴⁷ 44 Fed. Reg. at 71,416 (stating that Title IX ensures equal opportunities for boys and girls “to engage in available ... post-season competition”); See *McCormick*, 370 F.3d at 294 (explaining that a policy that gives boys more post-season opportunities than girls in the same sport “[w]ithout a doubt ... has a negative impact on girls” and that this disparity alone is “substantial enough” to violate 34 C.F.R. § 106.41(c)’s equal-treatment mandate when boys do not suffer a similar disadvantage).

2. The CIAC Policy violates Title IX's mandate that recipients offer boys and girls equal athletic participation opportunities when it allows biological males to displace girls from championship positions in girls' track events, depriving girls of equal opportunities to be champions.⁴⁸ The Policy does not result in girls similarly displacing boys from championship positions in boys' track events. So while CIAC structures post-season competition so that boys and girls nominally have equivalent championship opportunities, in fact, the opposite is true.
3. The CIAC Policy violates Title IX's mandate that recipients effectively accommodate high school girls' athletic abilities when it forces girls to compete against biological males in a sport in which boys broadly outperform girls due to well-established physiological differences and performance advantages.⁴⁹
4. The CIAC Policy violates Title IX's mandate that recipients offer boys and girls equal-in-kind athletic opportunities when it effectively creates boys-only events for boys but only co-ed events for girls.⁵⁰
5. The CIAC Policy violates Title IX's mandate that recipients offer boys and girls equal-in-kind athletic opportunities when it allows boys to experience fair competition but denies the same experience to girls.⁵¹
6. The CIAC Policy violates Title IX's mandate that recipients offer boys and girls equal-in-kind athletic opportunities when it allows boys to experience public recognition of victory and achievement but disproportionately denies the same experience to girls.⁵²

⁴⁸ See *McCormick*, 370 F.3d at 295 (“Treating girls differently regarding a matter so fundamental to the experience of sports—the chance to be champions—is inconsistent with Title IX’s mandate of equal opportunity for both sexes.”).

⁴⁹ See 44 Fed. Reg. at 71,414 (recognizing that recipients must “accommodate effectively the athletic ... abilities of women as well as men”).

⁵⁰ See *Mansourian*, 602 F.3d at 964-65 (stating that Title IX promises boys and girls equal “kinds” of “athletic benefits and opportunities”); *Williams*, 988 F.2d at 175 (criticizing a scheme that in effect only afforded girls the opportunity to compete against boys); 44 Fed. Reg. at 71,415 (stating that the Department compares the “kinds of benefits, opportunities, and treatment afforded” boys and girls when it investigates Title IX violations).

⁵¹ *Id.*

⁵² *Id.*

7. The CIAC Policy violates Title IX's mandate that recipients offer boys and girls equal opportunities to receive "publicity" when it deprives them of equal opportunities to win championships and to advance to the higher post-season competitions that provide precisely the publicity which gives girls opportunities to attract the attention of college recruiters and thus opportunities for both college admission and scholarships. In effect, CIAC's policy makes girls invisible to media, college recruiters, and other interested audiences.⁵³
8. CIAC violated Title IX when it banned communications with [Second Complainant's Mother] after she complained about CIAC's sex discrimination. That act constituted retaliation. *See Jackson*, 544 U.S. at 173 *supra*.
9. Glastonbury High School violated Title IX when it imposed unusual conditions on Selina Soule's eligibility to compete in high school women's track events after she publicly criticized CIAC's sex discrimination. That act constituted retaliation. *See id.*
10. Glastonbury High School violates Title IX when it refuses to demand that CIAC change its discriminatory policy and thus fails to seek correction and equal treatment for its female athletes.⁵⁴

⁵³ *See* 34 C.F.R. § 106.41(c)(10) (requiring equal "publicity" opportunities for male and female athletes); 44 Fed. Reg. at 71,414 (same). *See also* 44 Fed. Reg. at 71,417 (forbidding recipients from offering unequal athletic "benefits" or "opportunities that "have a disproportionately limiting effect upon the recruitment of students of either sex"). *Cf. Pederson v. La. State Univ.*, 213 F.3d 858, 865 n.4 (5th Cir. 2000) (recognizing that Title IX requires "equal provision of athletic scholarships ... among the sexes"); *Beasley v. Ala. State Univ.*, 966 F. Supp. 1117, 1122 (M.D. Ala. 1997) (same). The rule in *Pederson* and *Beasley* implicitly means that Title IX forbids interscholastic athletic associations from adopting a policy that denies girls equal access to college recruitment and scholarship opportunities.

⁵⁴ *See* 34 C.F.R. § 106.6(c) (stating that recipients' "obligation to comply with [Title IX regulations] is not obviated or alleviated by any rule or regulation of any ... athletic ... association"); 44 Fed. Reg. at 71,422 (placing affirmative duty on athletic association member-schools to "resolve collectively any ... Title IX ... problems [that come] from association rules").

VII. Request for Intervention and Relief

1. Complainants respectfully request that the Office of Civil Rights investigate the violations of Title IX described in this Complaint. For all the reasons detailed above, Complainants believe that the OCR should find that the CIAC and its member schools are denying girls equal opportunities for participation and success in athletic activities, in violation of Title IX, as a result of the CIAC Policy and its member schools' enforcement or toleration of that Policy.

2. Prompt investigation and remedy is critical. While CIAC's 2019 outdoor track season just wrapped up, a new track and field season starts this winter; Complainants still must compete against biological males; and Connecticut girls stand to lose even more possible opportunities, recognitions, scholarships, and other benefits because of CIAC's discriminatory Policy.

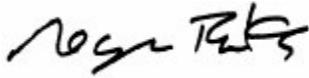
3. Complainants respectfully suggest that an effective remedy must include at least:

- a. An order requiring CIAC to revise its rules to exclude individuals who are in all physiological and hormonal respects males from participating in girls' or women's athletic competitions;
- b. An order requiring CIAC to issue revised records of all girls' athletic competitions from 2017 to the present in which any biological male participated who would have been disqualified by application of (a) above, removing such individuals from any list of winners or qualifiers for participation in any further competition;
- c. An order requiring CIAC to issue a press release naming and giving proper credit—including championship credit as appropriate—to every girl who would have been identified as a champion or as qualifying for participation in a higher-level competition but for the participation in any meet of any biological male who would have been disqualified by application of (a) above; and
- d. A declaration that Title IX neither permits nor requires CIAC's Policy that allows biological males to compete in high school women's athletic events.

4. These remedies would obviously remain incomplete, as those girls who were deprived of opportunities to qualify for and participate in state and New England meets cannot have those opportunities restored to them.

5. In the end, Complainants and countless other girls in Connecticut want a fair shot to compete and participate in the sports they love, with just as many opportunities as the boys to win, to participate in elite-level competitions, and to achieve their dreams. Title IX promises them exactly that.

Respectfully,

A handwritten signature in black ink, appearing to read "Roger Brooks".

Roger G. Brooks
Jacob P. Warner
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Exhibit A
Discrimination Complaint Form

1. Name of persons filing this complaint:

Roger G. Brooks, Counsel for Complainants
ALLIANCE DEFENDING FREEDOM
15100 N. 90th St.
Scottsdale, AZ 85260
(480) 444-0020
rbrooks@adfllegal.org

Bianca Stanescu, on behalf of her minor daughter Selina Soule

[REDACTED]

[Second Complainant]

Cheryl Radachowsky, on behalf of her minor daughter Alanna Smith

[REDACTED]

2. Name of persons discriminated against:

Selina Soule

[REDACTED]

[Second Complainant]

[Second Complainant's
Mother]

Alanna Smith

[REDACTED]

3. Institutions or agencies that engaged in discrimination:

Connecticut Interscholastic Athletic Conference

30 Realty Drive
Cheshire, CT 06410

Glastonbury Public Schools
628 Hebron Avenue
P.O. Box 191
Glastonbury, CT 06033-2361

4. Basis for complaint:

Discrimination based on sex and retaliation.

5. Discriminatory acts:

Please see the summary of known discriminatory acts in the accompanying complaint letter.

6. Most recent date of discrimination:

Up to the present. The Complainants allege that CIAC and Glastonbury Public Schools are engaged in a pattern and practice of sex discrimination and retaliation and are committing a continuing violation of Title IX.

7. Waiver for violations more than 180 days ago: Not applicable.

8. While Complainants have attempted to resolve these allegations with the institution through the discussions and correspondence detailed in the accompanying letter complaint, Complainants have not attempted to resolve these allegations through a formal internal grievance procedure, appeal, or due process hearing.

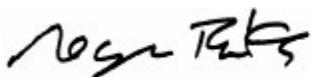
9. Complainants have not filed the allegations contained in this complaint with any other federal, state, or local civil rights agency, or any federal or state court.

10. Alternative contact information is not required.

11. Requested relief:

Complainants ask that the Office of Civil Rights investigate CIAC and its member schools, including Glastonbury Public Schools, and any other entity that has denied Complainants athletic opportunities on a discriminatory basis or retaliated against them for engaging in protected activity. Complainants ask that the Office of Civil Rights take all authorized actions, including those detailed in Section VII of the accompanying letter complaint, to correct the discrimination in athletic opportunities based on sex that Selina Soule, [Second Complainant], and Alanna Smith continue to experience.

12. Signatures:



06/17/2019

Roger G. Brooks
Alliance Defending Freedom

Date



06/17/2019

Bianca Stanescu, on behalf of her
minor child, Selina Soule

Date

[Second Complainant's Mother]

06/17/2019



06/17/2019

Cheryl Radachowsky, on behalf of her
minor child, Alanna Smith

Date