

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

L.E., by his next friends and parents,
SHELLEY ESQUIVEL and MARIO
ESQUIVEL,

Plaintiff,

v.

BILL LEE, et al.,

Defendants.

Case No. 3:21-cv-00835

Judge Crenshaw

Magistrate Judge Alistair E. Newbern

JOINT DISCOVERY DISPUTE STATEMENT

Plaintiff L.E. (“Plaintiff”), and Defendants Governor Bill Lee; Tennessee Education Commissioner Penny Schwinn; the Tennessee State Board of Education; Tennessee State Board of Education Executive Director Sara Heyburn; and members of the Tennessee State Board of Education Nick Darnell, Mike Edwards, Robert Eby, Gordon Ferguson, Elissa Kim, Lillian Hartgrove, Nate Morrow, Larry Jensen, Darrell Cobbins, and Emily House (collectively, “State Defendants”), submit this Joint Discovery Dispute Statement pursuant to LR 37.01(b).

REQUESTS AND RESPONSES AT ISSUE

This dispute comes before the Court upon Plaintiff’s first set of interrogatories (Nos. 1-8) and first set of requests for production of documents (Nos. 1-15). Plaintiff has received insufficient responses from Defendants, excepting Defendant Lee, who has provided no written responses, objections, or productions of documents to any of the attached requests. Therefore, State Defendants’ responses to all requests are at issue in this discovery dispute.

PLAINTIFF'S POSITION

A. Plaintiff's Certification of Attempt at Resolution

Plaintiff served his first set of written discovery requests on State Defendants on February 17, 2022. Declaration of Li Nowlin-Sohl ("N-S Decl.") ¶ 2. These requests included 6 interrogatories (N-S Decl. Ex. A) and 13 document requests (N-S Decl. Ex. B) to Governor Lee; and 8 interrogatories (N-S Decl. Ex. C) and 15 document requests (N-S Decl. Ex. D) to the remaining State Defendants. Responses were due on the first business day after 30 days from service, on March 21, 2022. State Defendants served nothing on that date. N-S Decl. ¶ 7.

Plaintiff's counsel emailed State Defendants' counsel, Stephanie Bergmeyer, on March 22, 2022, inquiring about the status of State Defendants' responses but received no answer. N-S Decl. Ex. E at 3. Counsel for Plaintiff left voicemails for Ms. Bergmeyer on March 24 and March 25, 2022, inquiring again about the status of Defendants' responses, N-S Decl. ¶ 9. The parties held a teleconference on March 28, 2022, and Plaintiff agreed to extend State Defendants' deadline to respond for approximately 30 days to April 18, 2022. N-S Decl. ¶ 10. The parties also discussed and agreed upon search terms to be used for identifying responsive documents. N-S Decl. ¶ 10.

In advance of the extended deadline, Ms. Nowlin-Sohl emailed Ms. Bergmeyer on April 8, 2022, and again on April 13, 2022, to ask whether the search terms were producing a manageable number of documents. N-S Decl. Ex. F at 3. Ms. Bergmeyer finally responded on April 13, 2022 – five days before the deadline – only to say that Defendants were still transferring emails so that searches could be performed. *Id.* at 2-3. On the April 18, 2022 deadline, Ms. Bergmeyer informed counsel that State Defendants would be unable to produce discovery responses that day and that she was still working on the data transfer process. *Id.* at 2. Ms. Nowlin-Sohl responded the same day to ask if State Defendants could serve their responses to Plaintiff's interrogatories that day, as previously agreed. *Id.* After receiving no response, Ms. Nowlin-Sohl emailed Ms. Bergmeyer

again on April 20, 2022. *Id.* at 1-2. Ms. Bergmeyer responded on Friday, April 22, 2022, stating that she was waiting for more information before she could respond to Plaintiff’s interrogatories and she would follow up on Monday with an estimated timeline. *Id.* at 1.

After failing to receive the promised response, Ms. Nowlin-Sohl emailed Ms. Bergmeyer again on May 2, 2022, explaining that Plaintiff would seek Court assistance if responses were not received by May 6, 2022. N-S Decl. ¶ 12; *id.* Ex. G at 3. Ms. Bergmeyer waited to respond until 4:52pm CDT on May 6, 2022 – two weeks after her last response – indicating she would produce documents on May 13, 2022. *Id.* at 2. Ms. Bergmeyer and Ms. Nowlin-Sohl spoke on May 11, 2022, where Ms. Bergmeyer reiterated her intent to respond to plaintiff’s interrogatories and provide documents by May 13, 2022; she also agreed to rolling productions of documents. N-S Decl. Ex. H at 2-3, ¶ 14. On May 13, 2022, Ms. Bergmeyer indicated that searches were only then being run on the first (of 23) custodians files. N-S Decl. Ex. H at 1. Defendants also produced discovery responses from Defendant Schwinn and the Tennessee State Board of Education. N-S Decl. Ex. I. Notably, Defendant Schwinn produced only two emails and four documents, the State Board produced no documents, and Defendant Lee provided no discovery responses at all. *Id.*; N-S Decl. ¶ 17. Ms. Nowlin-Sohl emailed on May 16, 2022, indicating that Plaintiff’s counsel would request a discovery conference with the Court if significant progress on the document production and Defendant Lee’s responses were not made by May 18, 2022. N-S Decl. Ex. J at 3-4.

On May 18, 2022, Ms. Bergmeyer responded to Ms. Nowlin-Sohl’s May 16, 2022 email indicating that searches for “trans” or “transgender” had returned 864 documents that she could produce. *Id.* at 2-3. Ms. Nowlin-Sohl asked for the 864 documents to be produced promptly. *Id.* at 2. Ms. Bergmeyer’s response stated that she would be able to provide some documents on May 20, 2022, and that she would provide more information on Defendant Lee’s responses the

following day. *Id.* at 1-2. She did not follow up the following day or even the next week. N-S Decl. ¶ 19. Ms. Nowlin-Sohl wrote Ms. Bergmeyer on May 26, 2022, noting that none of the action items had materialized as promised and that Plaintiff’s counsel would request a discovery dispute conference. N-S Decl. Ex. J at 1. No further information has been received regarding Defendant Lee’s responses nor have additional documents been produced. N-S Decl. ¶¶ 17, 20.

B. State Defendants’ Failure to Serve Any Written Responses is Dilatory and the Court Should Order Written Responses

Defendant Lee has failed to serve a single written response or objection to Plaintiff’s discovery requests served more than 15 weeks ago and the other State Defendants have produced almost no documents—all despite Plaintiffs’ accommodation of a 30-day extension to respond and diligence in pursuing responses. The State Defendants’ refusal to provide responses is the kind of “[f]ailure ... to comply ... [that] disrupts the orderly and prompt resolution of the lawsuit.” *Garrett v. Miller Plating Corp. of Ohio Loc. 81 Union Emps. Pension Plan*, 100 F.R.D. 418, 418-19 (E.D. Mich. 1983) (imposing \$1,000 in sanctions for failure to respond to interrogatories); *Flexider USA Corp. v. Richmond*, No. 3:19-0764, 2021 WL 6496809, at *2 (M.D. Tenn. Mar. 8, 2021) (FRCP 37 allows a motion to compel after failure to respond to document requests under FRCP 34).

With the deadline for fact discovery two months away, on August 10, 2022 (ECF No. 33 (granting extension of discovery)), State Defendants’ refusal to respond to Plaintiff’s requests has caused discovery to grind to a halt and is now obstructing the fair aims of this suit. This leaves Plaintiff unable to complete core discovery tasks, including identifying any further written requests that need to be served by the deadline; preparing for party depositions; and identifying any additional witnesses to depose. Given the amount of time State Defendants have had to respond to Plaintiff’s requests, Plaintiff should be given the opportunity to seek an order compelling Defendants to provide responsive documents, written responses.

DEFENDANTS' POSITION

Plaintiff propounded incredibly broad discovery requests, to include any communications of Defendant state officials and state offices over a three-and-one-half year period regarding certain issues. The transfer of communications that might contain said issues or terms totaled over one terabyte of data. The undersigned¹ had to secure access and approve payment for ediscovery software not normally utilized to store the data and search for relevant documents. Although the undersigned decided not to object to production in response to the overbroad and burdensome discovery requests, it took longer than anticipated to transfer the sizeable data and download it into the ediscovery software.

Defendants from the Department of Education and Tennessee Board of Education have provided responses to the interrogatories and produced documents in their immediate possession. All that remains is to conclude review and production of any responsive e-mail communications. Governor Lee objected to being a proper defendant in this case and denied having a specific connection to or enforcement responsibility for the challenged law. The Sixth Circuit has recently held that Governor Lee's general duty to "take care" that laws be faithfully executed "does not suffice to invoke federal jurisdiction." *Universal Life Church Monastery Storehouse v. Nabors*, --- F.4th ---, No. 21-5100, 2022 WL 1699304 (6th Cir. May 27, 2022). Defendant Governor Lee has no responsive documents in his immediate possession and his responses are dependent on review of e-mail communications and are forthcoming.

Plaintiff presumes that a request for documentation means that there are corresponding responsive documents. But Defendants stated in initial disclosures they did not have documents

¹ Undersigned refers to Senior Assistant Attorney General Stephanie Bergmeyer.

in their possession to utilize in this case and have denied that this Court has jurisdiction under the Eleventh Amendment over them. The undersigned counsel will work towards completion of any production before the case management and discovery conference and provide an update on status at that time.

* * *

Dated: June 3, 2022

/s/ Leslie Cooper

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Taylor Brown (*pro hac vice*)
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*Attorney for Governor Lee, Commissioner
Schwinn, Dr. Morrison, and the individual
members of the Tennessee State Board of
Education, in their official capacities, and the
Tennessee State Board of Education*

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2022, a true and correct copy of the foregoing Joint Discovery Dispute Statement was served on counsel for all Defendants via the Court's ECF/CM system.

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NASHVILLE DIVISION

L.E., by his next friends and parents,
SHELLEY ESQUIVEL and MARIO
ESQUIVEL,

Plaintiff,

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Defendants.

Case No. 3:21-cv-00835

Judge Crenshaw
Magistrate Judge Alistair E. Newbern

**DECLARATION OF LI (LISA) NOWLIN-SOHL IN SUPPORT OF JOINT
STATEMENT**

I, Li (Lisa) Nowlin-Sohl, make the following declaration. I have personal knowledge of the information set forth herein and if called upon to testify, I would testify to the truth of the following:

1. I am a Senior Staff Attorney with the American Civil Liberties Union (ACLU). I represent Plaintiff L.E. in the above-captioned matter.
2. On February 17, 2022, Stella Yarbrough, counsel for Plaintiff, served on Defendants' counsel Stephanie Bergmeyer and David Sanders Plaintiff's First Sets of Interrogatories and Requests for Production.
3. Attached hereto as Exhibit A is a true and correct copy of Plaintiff's First Set of Interrogatories to Governor Lee.
4. Attached hereto as Exhibit B is a true and correct copy of Plaintiff's First Set of Requests for Production to Defendant Governor Bill Lee.

5. Attached hereto as Exhibit C is a true and correct copy of Plaintiff's First Set of Interrogatories to Defendants Penny Schwinn, Tennessee State Board of Education, Sara Heyburn Morrison, and the Individual Members of the Tennessee State Board of Education (collectively "State Board Defendants").
6. Attached hereto as Exhibit D is a true and correct copy of Plaintiff's First Set of Requests for Production to the State Board Defendants.
7. Responses were due to Plaintiff's First Sets of Interrogatories and Requests for Production thirty days after service, on March 21, 2022. By March 21, 2022, Plaintiff had received no responses from Defendant Lee or the State Board Defendants.
8. Attached hereto as Exhibit E is a true and correct copy of a chain of email correspondence between myself, Stephanie Bergmeyer, and Stella Yarbrough, with Samuel Strongin and Sasha Buchert copied, dated between March 22, 2022 and March 28, 2022.
9. On March 24, 2022, and March 25, 2022, I attempted to call Ms. Bergmeyer and left two voicemails inquiring about the status of the State's discovery responses and requesting that she call me back.
10. On March 28, 2022, I spoke with Ms. Bergmeyer by telephone and agreed to extend the State's deadline to respond to Plaintiff's discovery requests for 30 days, to April 18, 2022. We also discussed search terms and agreed that the State would use the same search terms that Knox County had been using, as they were laid out in a March 22, 2022 email with Knox County that Ms. Bergmeyer had been copied on.
11. Attached hereto as Exhibit F is a true and correct copy of email correspondence between myself and Stephanie Bergmeyer, dated between April 8, 2022, and April 25, 2022.

12. I received no updates from Ms. Bergmeyer on the discovery responses from April 23, 2022 through May 5, 2022.
13. Attached hereto as Exhibit G is a true and correct copy of email correspondence between myself and Stephanie Bergmeyer, dated between May 2, 2022, and May 11, 2022.
14. On Wednesday, May 11, 2022, I had a Zoom videoconference with Ms. Bergmeyer. She stated that she would be able to get us the complete written interrogatory responses by Friday, May 13, 2022. Regarding document production, she did not anticipate being able to produce a large volume of documents by Friday. She had identified 28 custodians, but because there were a lot of privileged documents, they would need to do a careful review. She stated that rolling productions could begin the next week. She anticipated that the emails would finish uploading to the database that day or the following. She confirmed that no search terms had been run yet, but would be run early next week. She assured us that she had allotted her schedule to work almost full-time on this issue and that she would be in regular communication with us, and that she would provide us with substantial completion and completion target dates.
15. Attached hereto as Exhibit H is a true and correct copy of email correspondence between myself and Stephanie Bergmeyer, dated between May 11, 2022, and May 13, 2022.
16. Attached hereto as Exhibit I is a true and correct copy of the discovery responses served by Stephanie Bergmeyer upon Plaintiff's counsel on May 13, 2022. I was inadvertently omitted from this service and was forwarded Ms. Bergmeyer's email with the discovery responses by Plaintiff's counsel Samuel Strongin.
17. No discovery responses by Defendant Lee to Plaintiff's First Set of Interrogatories or First Set of Requests for Production were provided on May 14, 2022, nor since.

18. Attached hereto as Exhibit J is a true and correct copy of email correspondence between myself and Stephanie Bergmeyer, dated between May 16, 2022, and May 26, 2022.
19. After Ms. Bergmeyer's May 18, 2022 email, I did not receive any further updates from her regarding the discovery requests for the next week.
20. None of the State Defendants have provided any discovery responses or supplemental discovery responses since the May 13, 2022 production.
21. On May 26, 2022, I called Judge Newbern's chambers to request a discovery conference and was informed that I should file a motion requesting a conference.
22. Counsel for Plaintiff filed a Motion for Discovery Conference the following day, May 27, 2022.

Pursuant to 28 U.S.C. § 1746, I declare that the foregoing is true and correct.

Dated: June 3, 2022

/s/ Li (Lisa) Nowlin-Sohl
Li (Lisa) Nowlin-Sohl

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2022, a true and correct copy of the foregoing Declaration was served on counsel for all Defendants via the Court's ECF/CM system.

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Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

L.E., by his next friends and parents,
SHELLEY ESQUIVEL and MARIO
ESQUIVEL,

Plaintiff,

v.

BILL LEE, et al.,

Defendants.

Case No. 3:21-cv-00835

Chief Judge Waverly D. Crenshaw Jr.
Magistrate Judge Alistair E. Newbern

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO
DEFENDANT BILL LEE (NOS. 1 - 6)**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and the applicable Local Rules of the Middle District of Tennessee and this Court, Plaintiff L.E., by his next friends and parents, SHELLEY ESQUIVEL and MARIO ESQUIVEL, requests that Defendant Bill Lee, in his official capacity as Governor of Tennessee, serve sworn answers to the following Interrogatories in accordance with the Definitions and Instructions set forth below within thirty (30) days of service hereof, via email to all counsel of record for Plaintiff.

DEFINITIONS

Words in CAPITALS are defined as follows:

1. ACTION means the above-captioned litigation instituted by L.E. on November 4, 2021.
2. L.E. means L.E. and/or his parents, Shelley Esquivel and/or Mario Esquivel.
3. COMMUNICATION means any transmission of information from one PERSON to another by any means in the form of facts, ideas, inquiries, or otherwise.
4. CONCERNING is defined as information, things, COMMUNICATIONS, or DOCUMENTS that reflect, relate to, identify, constitute, embody, describe, discuss,

summarize, evidence, reference, comment on, or concern in any way the subject matter of the request.

5. DOCUMENT means any written, printed, typed, recorded, magnetic, punched, copied, graphic, or other tangible thing in, upon, or from which information may be embodied, translated, conveyed, or stored (including, but not limited to, correspondence, memoranda, notes, records, books, papers, telegrams, telexes, dictation or other audio tapes, video tapes, computer tapes, computer discs, computer printouts, microfilm, microfiche, worksheets, diaries, calendars, photographs, charts, drawings, sketches, and all other writings or drafts thereof) as defined in Federal Rule of Civil Procedure 34(a), Federal Rule of Civil Procedure 45, and Federal Rule of Evidence 1001, whether or not labeled “confidential.” A draft or non-identical copy is a separate DOCUMENT within the meaning of this term.
6. INTERSCHOLASTIC SPORTS means athletic competitions between students of schools at all educational levels, including but not limited to elementary school, middle school, high school, and college.
7. PERSON means any natural person or any business, legal, or governmental entity or association or any other cognizable entity, including, without limitation, corporations, proprietorships, partnerships, joint ventures, consortiums, clubs, associations, foundations, governmental agencies or instrumentalities, societies, and orders.
8. POLICY means any policy, procedure, rule, protocol, guideline, regulation, practice, or other principle or course of action.
9. GOVERNOR LEE means Bill Lee, in his official capacity as Governor of Tennessee, as includes each of the officers, directors, employees, partners, corporate parent,

subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents that report to him in his official capacity. It also means any PERSON who assumes any of Governor Lee's official positions or responsibilities in part, whether temporarily or permanently.

10. YOU, YOUR, or YOURS means GOVERNOR LEE.

11. S.B. 228 means Tennessee House Bill 3 of the 2021-2022 112th General Assembly, Tennessee Senate Bill 228 of the 2021-2022 112th General Assembly, or any implementing POLICY thereunder.

INSTRUCTIONS

1. YOU are requested to answer each Interrogatory set forth below separately and completely in writing under oath. YOUR response hereto is to be signed and verified by the PERSON making it, and the objections signed by the attorney making them, as required by Federal Rule of Civil Procedure 33(b).
2. Each Interrogatory shall be answered fully unless it is objected to in good faith, in which event the reason for YOUR objection shall be stated in detail. If an objection pertains to only a portion of an Interrogatory, or a word, phrase or clause contained within it, YOU are required to state YOUR objection to that portion only and to respond to the remainder of the Interrogatory, using YOUR best efforts to do so.
3. If YOU or YOUR counsel assert that any information responsive to any Interrogatory is privileged or otherwise protected from discovery, YOU must comply with the requirements of Federal Rule of Civil Procedure 26(b)(5) as to each DOCUMENT, COMMUNICATION, thing, or piece of information for which a claim of privilege or protection from discovery is made. For any DOCUMENT or information withheld on

- the grounds that it is privileged or otherwise claimed to be excludable from discovery, identify the information or DOCUMENT, describe its subject matter and date, identify all authors and recipients (including copied and blind copied recipients), and specify the basis for the claimed privilege or other grounds of exclusion.
4. If YOU answer any of the Interrogatories by reference to records from which the answer may be derived or ascertained, YOU must comply with the requirements of Federal Rule of Civil Procedure 33.
 5. If any responsive DOCUMENT is no longer in existence, cannot be located or is not in YOUR possession, custody, or control, identify it, describe its subject matter, and describe its disposition, including, without limitation, identifying the PERSON having knowledge of the disposition.
 6. If an Interrogatory is silent as to the time period for which information is sought, YOUR response should include all information known to YOU CONCERNING events that occurred, in whole or in part, at any time during the period of January 1, 2019, to the present.
 7. These Interrogatories are continuing in nature and YOUR responses to them are to be promptly supplemented or amended if, after the time of YOUR initial responses, YOU learn that any response is or has become in some material respect incomplete or incorrect, to the full extent provided for by Federal Rule of Civil Procedure 26(e).
 8. The use of the singular form of any word includes the plural, and the use of the plural form includes the singular form.
 9. For each response, where applicable, include each individual's name, current and former roles within the entity (and date ranges), and current contact information.

INTERROGATORIES

INTERROGATORY NO. 1: Identify all PERSONS who provided information in preparation of YOUR Answer to the Complaint, and for each such PERSON, state the following:

- (a) Their name, address, and telephone number;
- (b) Their relationship to YOU and/or L.E.; and
- (c) A detailed description of such information.

INTERROGATORY NO. 2: Identify all COMMUNICATIONS regarding the participation of students who are transgender in INTERSCHOLASTIC SPORTS, and the date and content of the COMMUNICATION.

INTERROGATORY NO. 3: Identify all COMMUNICATIONS regarding S.B. 228, or any other potential legislation in 2020 or 2021, regarding the participation of transgender athletes in INTERSCHOLASTIC SPORTS in Tennessee, and the date and content of the COMMUNICATION.

INTERROGATORY NO. 4: Identify all students who participated in or are participating in INTERSCHOLASTIC SPORTS in Tennessee who have been denied the opportunity to advance in their respective sports, including by obtaining college scholarships, as a result of students who are transgender participating on sports teams.

INTERROGATORY NO. 5: Identify all PERSONS responsible for implementing or enforcing S.B. 228.

INTERROGATORY NO. 6: Identify all the governmental interests advanced by S.B. 228 and how they are advanced by S.B. 228.

Dated: February 17, 2022

Respectfully submitted,

/s/ Stella Yarbrough
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***Attorneys for Plaintiff L.E., by his next
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Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
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L.E., by his next friends and parents,
SHELLEY ESQUIVEL and MARIO
ESQUIVEL,

Plaintiff,

v.

BILL LEE, et al.,

Defendants.

Case No. 3:21-cv-00835

Chief Judge Waverly D. Crenshaw Jr.
Magistrate Judge Alistair E. Newbern

**PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION TO
DEFENDANT BILL LEE (NOS. 1 - 13)**

Pursuant to Federal Rule of Civil Procedure 34 and the applicable Local Rules of the Middle District of Tennessee and this Court, Plaintiff L.E., by his next friends and parents, SHELLEY ESQUIVEL and MARIO ESQUIVEL, hereby demands that all documents and tangible things described below be produced for inspection and copying by Defendant Bill Lee, in his official capacity as Governor of Tennessee, in accordance with the Definitions and Instructions set forth below, within 30 days of service hereof, via email to all counsel of record for Plaintiff.

DEFINITIONS

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1. ACTION means the above-captioned litigation instituted by L.E. on November 4, 2021.
2. L.E. means L.E. and/or his parents, Shelley Esquivel and/or Mario Esquivel.
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summarize, evidence, reference, comment on, or concern in any way the subject matter of the request.

5. DOCUMENT means any written, printed, typed, recorded, magnetic, punched, copied, graphic, or other tangible thing in, upon, or from which information may be embodied, translated, conveyed, or stored (including, but not limited to, correspondence, memoranda, notes, records, books, written policies, papers, telegrams, telexes, dictation or other audio tapes, video tapes, computer tapes, computer discs, computer printouts, microfilm, microfiche, worksheets, diaries, calendars, photographs, charts, drawings, sketches, and all other writings or drafts thereof) as defined in Federal Rule of Civil Procedure 34(a), Federal Rule of Civil Procedure 45, and Federal Rule of Evidence 1001, whether or not labeled “confidential.” A draft or non-identical copy is a separate DOCUMENT within the meaning of this term.
6. INTERSCHOLASTIC SPORTS means athletic competitions between students of schools at all educational levels, including but not limited to elementary school, middle school, high school, and college.
7. PERSON means any natural person or any business, legal, or governmental entity or association or any other cognizable entity, including, without limitation, corporations, proprietorships, partnerships, joint ventures, consortiums, clubs, associations, foundations, governmental agencies or instrumentalities, societies, and orders.
8. POLICY means any policy, procedure, rule, protocol, guideline, regulation, practice, or other principle or course of action.
9. GOVERNOR LEE means Bill Lee, in his official capacity as Governor of Tennessee, as includes each of the officers, directors, employees, partners, corporate parent,

subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents that report to him in his official capacity. It also means any PERSON who assumes any of Governor Lee's official positions or responsibilities in part, whether temporarily or permanently.

10. YOU, YOUR, or YOURS means GOVERNOR LEE.

11. STATE OF TENNESSEE includes not just the State as an entity, but also the State's governors, attorneys general, agencies, legislators, officials, affiliates, attorneys, accountants, consultants, representatives, and agents.

12. S.B. 228 means Tennessee House Bill 3 of the 2021-2022 112th General Assembly, Tennessee Senate Bill 228 of the 2021-2022 112th General Assembly, or any implementing POLICY thereunder.

INSTRUCTIONS

1. If a document request is silent as to the time period for which information is sought, YOU should produce material dated from January 1, 2019, to the present.
2. Pursuant to Rule 34 of the Federal Rules of Civil Procedure, YOU are to produce all information within the scope of the definitions set forth herein that is within YOUR possession, custody, or control, as well as all information within the possession, custody, or control of anyone acting on YOUR behalf including, but not limited to, YOUR agents, representatives, employees, officers, directors, and attorneys.
3. Defendants' written response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested unless the request is refused, in which event the reasons for refusal shall be stated. If the refusal relates to part of an item or category, the part shall be specified.

4. One legible copy of each document requested is to be produced. Any copy of a document that varies in any way whatsoever from the original or from any other copy of the document, whether by reason of handwritten or other notation or any addition or omission, shall constitute a separate document and must be produced. Plaintiff reserves the right to inspect the original of any document produced upon reasonable request.
5. In producing the documents, all documents that are physically attached to each other shall be considered one document and left so attached. Documents that are segregated or separated from other documents, whether by inclusion in binders, files, sub-files, or by use of dividers, tabs, or other methods, shall be left so segregated or separated. Documents shall be retained in the order in which they are maintained in the file where they are found.
6. YOU shall produce DOCUMENTS and electronically stored information (“ESI”) pursuant to the Default Standard for Discovery of Electronically Stored Information in the United States District Court for the Middle District of Tennessee.
7. Each document request shall be complied with fully unless it is objected to in good faith, in which event the reasons for YOUR objection shall be stated in detail. If an objection pertains to only a portion of the document request, or a word, phrase, or clause contained within it, YOU are required to state YOUR objection to that portion and to comply with the remainder of the request, using YOUR best efforts to do so.
8. Pursuant to Federal Rule of Civil Procedure 34, information produced in response to these document requests shall be produced as it is kept in the usual course of business or shall be organized and labeled to correspond with the categories in the demand.

DOCUMENTS or COMMUNICATIONS attached to each other consisting of multiple pages must not be separated.

9. Information is to be produced in its full and unredacted form; redacted information shall not constitute compliance with these document requests unless such information is redacted pursuant to a claim of privilege, as set forth below.
10. If YOU or YOUR counsel assert that any information responsive to any document request is privileged or otherwise protected from discovery, YOU are to comply with the requirements of Federal Rule of Civil Procedure 26(b)(5) and any order concerning ESI filed in this ACTION as to each DOCUMENT, COMMUNICATION, thing, or piece of information for which a claim of privilege or protection from discovery is made.
11. If any responsive DOCUMENT or COMMUNICATION is no longer in existence, cannot be located, or is not in YOUR possession, custody, or control, then identify the DOCUMENT or COMMUNICATION, describe its subject matter, and describe its disposition, including, without limitation, identifying the PERSON having knowledge of the disposition.
12. If production of any requested information is objected to on the grounds that production is unduly burdensome or the information is not reasonably accessible as defined in Rule 26(b)(2) of the Federal Rules of Civil Procedure, describe in detail the burden or expense of producing the requested information, including but not limited to identification of the steps that would be necessary to retrieve and produce the information and a dollar estimate of the cost of performing those steps.

13. Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, these document requests are continuing in nature, and YOU are to promptly supplement (i) if YOU learn that the information YOU disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Plaintiff during the discovery process or in writing, or (ii) if ordered by the Court.
14. The use of the singular form of any word includes the plural and use of the plural form includes the singular form. Verb tenses shall be interpreted to include past, present, and future tenses. The word “all” includes the word “any” and vice versa. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these requests any information that might otherwise be construed to be outside the scope of these requests.
15. Each paragraph herein shall be construed independently and not by reference to any other paragraph for the purpose of limitation.

DOCUMENTS TO BE PRODUCED

REQUEST NO. 1:

All DOCUMENTS and COMMUNICATIONS CONCERNING the participation of students who are transgender in INTERSCHOLASTIC SPORTS in Tennessee, including but not limited to COMMUNICATIONS between YOU and any school district; complaints or concerns YOU have received from students, teachers, parents, school officials, or school coaches; and briefing materials provided to YOU.

REQUEST NO. 2:

All POLICIES CONCERNING the participation of students who are transgender in INTERSCHOLASTIC SPORTS in Tennessee, including but not limited to POLICIES issued by State agencies or local school boards.

REQUEST NO. 3:

All DOCUMENTS and COMMUNICATIONS CONCERNING the POLICIES identified in Request No. 2, including but not limited to drafts of POLICIES.

REQUEST NO. 4:

All DOCUMENTS, POLICIES, and COMMUNICATIONS CONCERNING sex-separated sports teams in INTERSCHOLASTIC SPORTS in Tennessee.

REQUEST NO. 5:

All DOCUMENTS, POLICIES, and COMMUNICATIONS CONCERNING the implementation and/or enforcement of S.B. 228, including with respect to L.E. or to any other student.

REQUEST NO. 6:

All DOCUMENTS and COMMUNICATIONS CONCERNING any impact the participation of students who are transgender in INTERSCHOLASTIC SPORTS has or had on cisgender students, including with respect to:

- a) the opportunities for cisgender students to participate in INTERSCHOLASTIC SPORTS;
- b) the opportunities for cisgender students to advance in their respective INTERSCHOLASTIC SPORTS, including by obtaining college scholarships; or
- c) the safety of cisgender students who participate in INTERSCHOLASTIC SPORTS.

REQUEST NO. 7:

All DOCUMENTS, POLICIES, and COMMUNICATIONS CONCERNING any alleged violation of S.B. 228.

REQUEST NO. 8:

All DOCUMENTS and COMMUNICATIONS CONCERNING L.E., including but not limited to COMMUNICATIONS YOU have received from students, teachers, parents, school officials, school coaches, legislators, members of the Tennessee State Board of Education, members of Tennessee county boards of education, or other PERSONS.

REQUEST NO. 9:

All DOCUMENTS from or exchanged between, and COMMUNICATIONS with, any representative of any advocacy organization, including but not limited to the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council, CONCERNING S.B. 228 or the participation of students who are transgender in INTERSCHOLASTIC SPORTS in Tennessee.

REQUEST NO. 10:

All DOCUMENTS, POLICIES, and COMMUNICATIONS reflected in YOUR Fed. R. Civ. P. Rule 26(a) initial disclosures.

REQUEST NO. 11:

All DOCUMENTS YOU relied upon, referenced in, or identified in answering L.E.'s interrogatories.

REQUEST NO. 12:

All DOCUMENTS, POLICIES, and COMMUNICATIONS considered by YOU CONCERNING the implementation, enforcement, elimination, modification, or amendment of

S.B. 228, including but not limited to all DOCUMENTS reflecting data, reports, research, or studies that YOU contend support continued implementation and enforcement of S.B. 228.

REQUEST NO. 13:

All DOCUMENTS, POLICIES, and COMMUNICATIONS considered by YOU CONCERNING any reasoning or evidence supporting or against the decision to sign into law S.B. 228, or any other legislation regarding the participation of people who are transgender in INTERSCHOLASTIC SPORTS in Tennessee, prior to March 26, 2021, including, but not limited to:

- a) All DOCUMENTS related to research and studies performed by or on behalf of the STATE OF TENNESSEE, including any Tennessee state official or agency;
- b) All DOCUMENTS related to research and studies that were considered or relied upon by the STATE OF TENNESSEE;
- c) All DOCUMENTS reflecting or related to testimony given, considered, or relied upon by the STATE OF TENNESSEE;
- d) All DOCUMENTS reflecting COMMUNICATIONS with lobbyists or any other PERSONS;
- e) The complete legislative record for S.B. 228.

Dated: February 17, 2022

Respectfully submitted,

/s/ Stella Yarbrough
Stella Yarbrough (No. 33637)
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/s/ Leslie Cooper
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***Attorneys for Plaintiff L.E., by his next
friends and parents, Shelley Esquivel and
Mario Esquivel***

Exhibit C

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

L.E., by his next friends and parents,
SHELLEY ESQUIVEL and MARIO
ESQUIVEL,

Plaintiff,

v.

BILL LEE, et al.,

Defendants.

Case No. 3:21-cv-00835

Chief Judge Waverly D. Crenshaw Jr.
Magistrate Judge Alistair E. Newbern

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO
DEFENDANTS PENNY SCHWINN,
TENNESSEE STATE BOARD OF
EDUCATION, SARA HEYBURN
MORRISON, and the INDIVIDUAL
MEMBERS OF THE TENNESSEE
STATE BOARD OF EDUCATION
(NOS. 1 - 8)**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and the applicable Local Rules of the Middle District of Tennessee and this Court, Plaintiff L.E., by his next friends and parents, SHELLEY ESQUIVEL and MARIO ESQUIVEL, requests that Defendants Penny Schwinn, in her official capacity as the Tennessee Education Commissioner; the Tennessee State Board of Education; Sara Heyburn Morrison, in in her official capacity as the Executive Director of the Tennessee State Board of Education; and Nick Darnell, Jordan Mollenhour, Robert Eby, Gordon Ferguson, Elissa Kim, Lillian Hartgrove, Nate Morrow, Larry Jensen, Darrell Cobbins, and Emily House, the individual members of the Tennessee State Board of Education, in their officials capacities, serve sworn answers to the following Interrogatories in accordance with the Definitions and Instructions set forth below within thirty (30) days of service hereof, via email to all counsel of record for Plaintiff.

DEFINITIONS

Words in CAPITALS are defined as follows:

1. ACTION means the above-captioned litigation instituted by L.E. on November 4, 2021.
2. L.E. means L.E. and/or his parents, Shelley Esquivel and/or Mario Esquivel.
3. COMMUNICATION means any transmission of information from one PERSON to another by any means in the form of facts, ideas, inquiries, or otherwise.
4. CONCERNING is defined as information, things, COMMUNICATIONS, or DOCUMENTS that reflect, relate to, identify, constitute, embody, describe, discuss, summarize, evidence, reference, comment on, or concern in any way the subject matter of the request.
5. DOCUMENT means any written, printed, typed, recorded, magnetic, punched, copied, graphic, or other tangible thing in, upon, or from which information may be embodied, translated, conveyed, or stored (including, but not limited to, correspondence, memoranda, notes, records, books, papers, telegrams, telexes, dictation or other audio tapes, video tapes, computer tapes, computer discs, computer printouts, microfilm, microfiche, worksheets, diaries, calendars, photographs, charts, drawings, sketches, and all other writings or drafts thereof) as defined in Federal Rule of Civil Procedure 34(a), Federal Rule of Civil Procedure 45, and Federal Rule of Evidence 1001, whether or not labeled “confidential.” A draft or non-identical copy is a separate DOCUMENT within the meaning of this term.
6. INTERSCHOLASTIC SPORTS means athletic competitions between students of schools at all educational levels, including but not limited to elementary school, middle school, high school, and college.

7. PERSON means any natural person or any business, legal, or governmental entity or association or any other cognizable entity, including, without limitation, corporations, proprietorships, partnerships, joint ventures, consortiums, clubs, associations, foundations, governmental agencies or instrumentalities, societies, and orders.
8. POLICY means any policy, procedure, rule, protocol, guideline, regulation, practice, or other principle or course of action.
9. STATE BOARD means the Tennessee State Board of Education, as well as its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents.
10. BOARD DIRECTOR means Sara Heyburn Morrison in her official capacity as the Executive Director of the STATE BOARD, as includes each of the officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents that report to her in her official capacity. It also means any PERSON who assumes any of Dr. Morrison's official positions or responsibilities in part, whether temporarily or permanently.
11. COMMISSIONER means Dr. Penny Schwinn in her official capacity as the Tennessee Education Commissioner, as includes each of the officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents that report to her in her official capacity. It also means any PERSON who assumes any of Dr. Schwinn's official positions or responsibilities in part, whether temporarily or permanently.
12. YOU, YOUR, or YOURS means the STATE BOARD, the BOARD DIRECTOR, and the COMMISSIONER collectively.

13. S.B. 228 means Tennessee House Bill 3 of the 2021-2022 112th General Assembly, Tennessee Senate Bill 228 of the 2021-2022 112th General Assembly, or any implementing POLICY thereunder.

INSTRUCTIONS

1. YOU are requested to answer each Interrogatory set forth below separately and completely in writing under oath. YOUR response hereto is to be signed and verified by the PERSON making it, and the objections signed by the attorney making them, as required by Federal Rule of Civil Procedure 33(b).
2. Each Interrogatory shall be answered fully unless it is objected to in good faith, in which event the reason for YOUR objection shall be stated in detail. If an objection pertains to only a portion of an Interrogatory, or a word, phrase or clause contained within it, YOU are required to state YOUR objection to that portion only and to respond to the remainder of the Interrogatory, using YOUR best efforts to do so.
3. If YOU or YOUR counsel assert that any information responsive to any Interrogatory is privileged or otherwise protected from discovery, YOU must comply with the requirements of Federal Rule of Civil Procedure 26(b)(5) as to each DOCUMENT, COMMUNICATION, thing, or piece of information for which a claim of privilege or protection from discovery is made. For any DOCUMENT or information withheld on the grounds that it is privileged or otherwise claimed to be excludable from discovery, identify the information or DOCUMENT, describe its subject matter and date, identify all authors and recipients (including copied and blind copied recipients), and specify the basis for the claimed privilege or other grounds of exclusion.

4. If YOU answer any of the Interrogatories by reference to records from which the answer may be derived or ascertained, YOU must comply with the requirements of Federal Rule of Civil Procedure 33.
5. If any responsive DOCUMENT is no longer in existence, cannot be located or is not in YOUR possession, custody, or control, identify it, describe its subject matter, and describe its disposition, including, without limitation, identifying the PERSON having knowledge of the disposition.
6. If an Interrogatory is silent as to the time period for which information is sought, YOUR response should include all information known to YOU CONCERNING events that occurred, in whole or in part, at any time during the period of January 1, 2019, to the present.
7. These Interrogatories are continuing in nature and YOUR responses to them are to be promptly supplemented or amended if, after the time of YOUR initial responses, YOU learn that any response is or has become in some material respect incomplete or incorrect, to the full extent provided for by Federal Rule of Civil Procedure 26(e).
8. The use of the singular form of any word includes the plural, and the use of the plural form includes the singular form.
9. For each response, where applicable, include each individual's name, current and former roles within the entity (and date ranges), and current contact information.

INTERROGATORIES

INTERROGATORY NO. 1: Identify all PERSONS who provided information in preparation of YOUR Answer to the Complaint, and for each such PERSON, state the following:

- (a) Their name, address, and telephone number;

- (b) Their relationship to YOU and/or L.E.; and
- (c) A detailed description of such information.

INTERROGATORY NO. 2: Identify all COMMUNICATIONS, including but not limited to, any complaints or concerns YOU have received from students, teachers, parents, school officials, or school coaches, CONCERNING students who are transgender participating in INTERSCHOLASTIC SPORTS in Tennessee.

INTERROGATORY NO. 3: Identify the number of students who are transgender that YOU are aware of who play or have played INTERSCHOLASTIC SPORTS in Tennessee, and for each student, please specify the sport(s) played by the student and, if applicable, the current grade of that student.

INTERROGATORY NO. 4: Identify all students who participated in or are participating in INTERSCHOLASTIC SPORTS in Tennessee who have been denied the opportunity to advance in their respective sports, including by obtaining college scholarships, as a result of students who are transgender participating on sports teams.

INTERROGATORY NO. 5: Identify all PERSONS responsible for promulgating POLICIES or rules to implement S.B. 228.

INTERROGATORY NO. 6: Identify all the governmental interests advanced by S.B. 228 and how they are advanced by S.B. 228.

INTERROGATORY NO. 7: Identify all steps YOU have taken to develop POLICIES CONCERNING the implementation and enforcement of S.B. 228, including rulemaking.

INTERROGATORY NO. 8: Describe any impacts the participation of students who are transgender in INTERSCHOLASTIC SPORTS has or had on cisgender students, including the opportunities for cisgender students to participate in school sports, advance in their respective

sports, obtain college scholarships, and the safety of cisgender students who participate in INTERSCHOLASTIC SPORTS.

Dated: February 17, 2022

Respectfully submitted,

/s/ Stella Yarbrough
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*Attorneys for Plaintiff L.E., by his next
friends and parents, Shelley Esquivel and
Mario Esquivel*

Exhibit D

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

L.E., by his next friends and parents,
SHELLEY ESQUIVEL and MARIO
ESQUIVEL,

Plaintiff,

v.

BILL LEE, et al.,

Defendants.

Case No. 3:21-cv-00835

Chief Judge Waverly D. Crenshaw Jr.
Magistrate Judge Alistair E. Newbern

**PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION TO
DEFENDANTS PENNY SCHWINN,
TENNESSEE STATE BOARD OF
EDUCATION, SARA HEYBURN
MORRISON, and the INDIVIDUAL
MEMBERS OF THE TENNESSEE
STATE BOARD OF EDUCATION
(NOS. 1 - 15)**

Pursuant to Federal Rule of Civil Procedure 34 and the applicable Local Rules of the Middle District of Tennessee and this Court, Plaintiff L.E., by his next friends and parents, SHELLEY ESQUIVEL and MARIO ESQUIVEL, hereby demands that all documents and tangible things described below be produced for inspection and copying by Defendants Penny Schwinn, in her official capacity as the Tennessee Education Commissioner; the Tennessee State Board of Education; Sara Heyburn Morrison, in in her official capacity as the Executive Director of the Tennessee State Board of Education; and Nick Darnell, Jordan Mollenhour, Robert Eby, Gordon Ferguson, Elissa Kim, Lillian Hartgrove, Nate Morrow, Larry Jensen, Darrell Cobbins, and Emily House, the individual members of the Tennessee State Board of Education, in their officials capacities, in accordance with the Definitions and Instructions set forth below, within 30 days of service hereof, via email to all counsel of record for Plaintiff.

DEFINITIONS

Words in CAPITALS are defined as follows:

1. ACTION means the above-captioned litigation instituted by L.E. on November 4, 2021.
2. L.E. means L.E. and/or his parents, Shelley Esquivel and/or Mario Esquivel.
3. COMMUNICATION means any transmission of information from one PERSON to another by any means in the form of facts, ideas, inquiries, or otherwise.
4. CONCERNING is defined as information, things, COMMUNICATIONS, or DOCUMENTS that reflect, relate to, identify, constitute, embody, describe, discuss, summarize, evidence, reference, comment on, or concern in any way the subject matter of the request.
5. DOCUMENT means any written, printed, typed, recorded, magnetic, punched, copied, graphic, or other tangible thing in, upon, or from which information may be embodied, translated, conveyed, or stored (including, but not limited to, correspondence, memoranda, notes, records, books, written policies, papers, telegrams, telexes, dictation or other audio tapes, video tapes, computer tapes, computer discs, computer printouts, microfilm, microfiche, worksheets, diaries, calendars, photographs, charts, drawings, sketches, and all other writings or drafts thereof) as defined in Federal Rule of Civil Procedure 34(a), Federal Rule of Civil Procedure 45, and Federal Rule of Evidence 1001, whether or not labeled “confidential.” A draft or non-identical copy is a separate DOCUMENT within the meaning of this term.
6. INTERSCHOLASTIC SPORTS means athletic competitions between students of schools at all educational levels, including but not limited to elementary school, middle school, high school, and college.

7. PERSON means any natural person or any business, legal, or governmental entity or association or any other cognizable entity, including, without limitation, corporations, proprietorships, partnerships, joint ventures, consortiums, clubs, associations, foundations, governmental agencies or instrumentalities, societies, and orders.
8. POLICY means any policy, procedure, rule, protocol, guideline, regulation, practice, or other principle or course of action.
9. STATE BOARD means the Tennessee State Board of Education, as well as its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents.
10. BOARD DIRECTOR means Dr. Sara Heyburn Morrison in her official capacity as the Executive Director of the STATE BOARD, as includes each of the officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents that report to her in her official capacity. It also means any PERSON who assumes any of Dr. Morrison's official positions or responsibilities in part, whether temporarily or permanently.
11. COMMISSIONER means Dr. Penny Schwinn in her official capacity as the Tennessee Education Commissioner, as includes each of the officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents that report to her in her official capacity. It also means any PERSON who assumes any of Dr. Schwinn's official positions or responsibilities in part, whether temporarily or permanently.
12. YOU, YOUR, or YOURS means the STATE BOARD, the BOARD DIRECTOR, and the COMMISSIONER collectively.

13. S.B. 228 means Tennessee House Bill 3 of the 2021-2022 112th General Assembly, Tennessee Senate Bill 228 of the 2021-2022 112th General Assembly, or any implementing POLICY thereunder.

INSTRUCTIONS

1. If a document request is silent as to the time period for which information is sought, YOU should produce material dated from January 1, 2019, to the present.
2. Pursuant to Rule 34 of the Federal Rules of Civil Procedure, YOU are to produce all information within the scope of the definitions set forth herein that is within YOUR possession, custody, or control, as well as all information within the possession, custody, or control of anyone acting on YOUR behalf including, but not limited to, YOUR agents, representatives, employees, officers, directors, and attorneys.
3. Defendants' written response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested unless the request is refused, in which event the reasons for refusal shall be stated. If the refusal relates to part of an item or category, the part shall be specified.
4. One legible copy of each document requested is to be produced. Any copy of a document that varies in any way whatsoever from the original or from any other copy of the document, whether by reason of handwritten or other notation or any addition or omission, shall constitute a separate document and must be produced. Plaintiff reserves the right to inspect the original of any document produced upon reasonable request.
5. In producing the documents, all documents that are physically attached to each other shall be considered one document and left so attached. Documents that are segregated or separated from other documents, whether by inclusion in binders, files, sub-files, or

by use of dividers, tabs, or other methods, shall be left so segregated or separated. Documents shall be retained in the order in which they are maintained in the file where they are found.

6. YOU shall produce DOCUMENTS and electronically stored information (“ESI”) pursuant to the Default Standard for Discovery of Electronically Stored Information in the United States District Court for the Middle District of Tennessee.
7. Each document request shall be complied with fully unless it is objected to in good faith, in which event the reasons for YOUR objection shall be stated in detail. If an objection pertains to only a portion of the document request, or a word, phrase, or clause contained within it, YOU are required to state YOUR objection to that portion and to comply with the remainder of the request, using YOUR best efforts to do so.
8. Pursuant to Federal Rule of Civil Procedure 34, information produced in response to these document requests shall be produced as it is kept in the usual course of business or shall be organized and labeled to correspond with the categories in the demand. DOCUMENTS or COMMUNICATIONS attached to each other consisting of multiple pages must not be separated.
9. Information is to be produced in its full and unredacted form; redacted information shall not constitute compliance with these document requests unless such information is redacted pursuant to a claim of privilege, as set forth below.
10. If YOU or YOUR counsel assert that any information responsive to any document request is privileged or otherwise protected from discovery, YOU are to comply with the requirements of Federal Rule of Civil Procedure 26(b)(5) and any order concerning ESI filed in this ACTION as to each DOCUMENT, COMMUNICATION, thing, or

piece of information for which a claim of privilege or protection from discovery is made.

11. If any responsive DOCUMENT or COMMUNICATION is no longer in existence, cannot be located, or is not in YOUR possession, custody, or control, then identify the DOCUMENT or COMMUNICATION, describe its subject matter, and describe its disposition, including, without limitation, identifying the PERSON having knowledge of the disposition.
12. If production of any requested information is objected to on the grounds that production is unduly burdensome or the information is not reasonably accessible as defined in Rule 26(b)(2) of the Federal Rules of Civil Procedure, describe in detail the burden or expense of producing the requested information, including but not limited to identification of the steps that would be necessary to retrieve and produce the information and a dollar estimate of the cost of performing those steps.
13. Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, these document requests are continuing in nature, and YOU are to promptly supplement (i) if YOU learn that the information YOU disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Plaintiff during the discovery process or in writing, or (ii) if ordered by the Court.
14. The use of the singular form of any word includes the plural and use of the plural form includes the singular form. Verb tenses shall be interpreted to include past, present, and future tenses. The word “all” includes the word “any” and vice versa. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to

bring within the scope of these requests any information that might otherwise be construed to be outside the scope of these requests.

15. Each paragraph herein shall be construed independently and not by reference to any other paragraph for the purpose of limitation.

DOCUMENTS TO BE PRODUCED

REQUEST NO. 1:

All DOCUMENTS and COMMUNICATIONS, internal or external, CONCERNING the participation of students who are transgender in INTERSCHOLASTIC SPORTS in Tennessee, including but not limited to COMMUNICATIONS between YOU and any school district; complaints or concerns YOU have received from students, teachers, parents, school officials, or school coaches; and briefing materials provided to YOU.

REQUEST NO. 2:

All POLICIES CONCERNING the participation of students who are transgender in INTERSCHOLASTIC SPORTS in Tennessee, including but not limited to POLICIES issued by State agencies or local school boards.

REQUEST NO. 3:

All DOCUMENTS and COMMUNICATIONS CONCERNING the POLICIES identified in Request No. 2, including but not limited to drafts of POLICIES.

REQUEST NO. 4:

All DOCUMENTS, POLICIES, and COMMUNICATIONS CONCERNING sex-separated sports teams in INTERSCHOLASTIC SPORTS in Tennessee.

REQUEST NO. 5:

All DOCUMENTS, POLICIES, and COMMUNICATIONS CONCERNING the implementation and/or enforcement of S.B. 228, including with respect to L.E. or to any other student.

REQUEST NO. 6:

All DOCUMENTS and COMMUNICATIONS CONCERNING any impact the participation of students who are transgender in INTERSCHOLASTIC SPORTS has or had on cisgender students, including with respect to:

- a) the opportunities for cisgender students to participate in INTERSCHOLASTIC SPORTS;
- b) the opportunities for cisgender students to advance in their respective INTERSCHOLASTIC SPORTS, including by obtaining college scholarships; or
- c) the safety of cisgender students who participate in INTERSCHOLASTIC SPORTS.

REQUEST NO. 7:

All DOCUMENTS, POLICIES, and COMMUNICATIONS CONCERNING any alleged violation of S.B. 228.

REQUEST NO. 8:

All DOCUMENTS and COMMUNICATIONS, internal or external, CONCERNING L.E., including but not limited to COMMUNICATIONS YOU have received from students, teachers, parents, school officials, school coaches, legislators, members of Tennessee county boards of education, or other PERSONS.

REQUEST NO. 9:

All DOCUMENTS from or exchanged between, and COMMUNICATIONS with, any representative of any advocacy organization, including but not limited to the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council, CONCERNING S.B. 228 or the participation of students who are transgender in INTERSCHOLASTIC SPORTS in Tennessee.

REQUEST NO. 10:

All DOCUMENTS, POLICIES, and COMMUNICATIONS reflected in YOUR Fed. R. Civ. P. Rule 26(a) initial disclosures.

REQUEST NO. 11:

All DOCUMENTS YOU relied upon, referenced in, or identified in answering L.E.'s interrogatories.

REQUEST NO. 12:

All DOCUMENTS, POLICIES, and COMMUNICATIONS CONCERNING girls who participated in INTERSCHOLASTIC SPORTS in Tennessee on teams primarily made up of boys, or boys who participated in INTERSCHOLASTIC SPORTS in Tennessee on teams primarily made up of girls.

REQUEST NO. 13:

All DOCUMENTS, POLICIES, and COMMUNICATIONS considered by YOU CONCERNING the implementation, enforcement, elimination, modification, or amendment of S.B. 228, including but not limited to all DOCUMENTS reflecting data, reports, research, or studies that YOU contend support continued implementation and enforcement of S.B. 228.

REQUEST NO. 14:

All DOCUMENTS and POLICIES CONCERNING YOUR delegation of authority over secondary school athletics to the Tennessee Secondary School Athletic Association and the Tennessee Middle School Athletic Association.

REQUEST NO. 15:

All DOCUMENTS and POLICIES CONCERNING YOUR duty to supervise schools in Tennessee, including, but not limited to, any supervision over Tennessee county boards of education and county superintendents or directors.

Dated: February 17, 2022

Respectfully submitted,

/s/ Stella Yarbrough
Stella Yarbrough (No. 33637)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF TENNESSEE
P.O. Box 120160
Nashville, TN 37212
Tel: (615) 320-7142
syarbrough@aclu-tn.org

/s/ Leslie Cooper
Leslie Cooper (*pro hac vice*)
Taylor Brown (*pro hac vice*)
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New York, NY 10004
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/s/ Alan Schoenfeld
Alan Schoenfeld (*pro hac vice*)
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/s/ Tara L. Borelli
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samuel.strongin@wilmerhale.com

***Attorneys for Plaintiff L.E., by his next
friends and parents, Shelley Esquivel and
Mario Esquivel***

Exhibit E

Li Nowlin-Sohl

From: Li Nowlin-Sohl
Sent: Monday, March 28, 2022 8:07 AM
To: Stephanie A. Bergmeyer
Cc: Stella Yarbrough; Strongin, Samuel M.; Sasha Buchert
Subject: RE: Update: LE v. Lee written discovery requests

Stephanie,
I'm sorry to hear you're having ongoing computer issues and glad that it's almost back up and running. Let's go with 11:15 Central. I just updated the calendar invitation.

Speak to you soon,
Li

From: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Sent: Monday, March 28, 2022 7:59 AM
To: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>
Cc: Stella Yarbrough <syarbrough@aclu-tn.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>; Sasha Buchert <sbuchert@lambdalegal.org>
Subject: RE: Update: LE v. Lee written discovery requests

This Message Is From an External Sender

This message came from outside your organization.

I apologize for my delay. IT almost has my computer back up and running. I am available today any time after 11.

Stephanie

Stephanie Bergmeyer | Senior Assistant Attorney General
Office of Tennessee Attorney General
p. 615.741.6828



From: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>
Sent: Sunday, March 27, 2022 1:27 PM
To: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Cc: Stella Yarbrough <syarbrough@aclu-tn.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>; Sasha Buchert <sbuchert@lambdalegal.org>
Subject: Re: Update: LE v. Lee written discovery requests

Stephanie,
Thank you for your response and willingness to talk on Monday. Would 10:30 central Monday morning work for you? I think there are a couple of us that would like to join, so it may be easiest to set up a conference line or Zoom? If that time works, I can circulate a calendar appointment tomorrow morning.

Thanks,
Li

On Mar 25, 2022, at 4:28 PM, Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov> wrote:

Thank you for your e-mail. I have been out of the office and am having trouble with our network and Outlook this afternoon. I call call you to discuss Monday morning. Let me know if there is a time preferable.

Stephanie

From: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>
Sent: Friday, March 25, 2022 2:48 PM
To: Stella Yarbrough <syarbrough@aclu-tn.org>; Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Cc: Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>; Sasha Buchert <sbuchert@lambdalegal.org>
Subject: RE: Update: LE v. Lee written discovery requests

Stephanie,
It's nice to virtually meet you and I look forward to working with you on this matter. I am following up on Stella's email regarding the State's failure to respond to our written discovery requests. We have not heard anything from you about our requests or when we can expect a response. We have tried calling you twice (3/24 and 3/25) and left a voicemail both times, but have not received a call in return. If the State needs an extension, we are happy to discuss that, but are a bit concerned by the lack of any response.

If we don't hear from you soon regarding the State's plans for responding to our discovery requests, we will need to file a motion to compel. We'd much rather sort this out without having to go to the court, so please contact us as soon as possible.

Regards,
Li

Li Nowlin-Sohl
Pronouns: she, her, hers

Senior Staff Attorney
Jon L. Stryker and Slobodan Randjelović LGBTQ & HIV Project
American Civil Liberties Union Foundation
206-348-3163 | lnowlin-sohl@aclu.org



From: Stella Yarbrough <SYarbrough@aclu-tn.org>
Sent: Tuesday, March 22, 2022 10:21 AM
To: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Cc: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>
Subject: Update: LE v. Lee written discovery requests

Hi Stephanie,

I am writing with two purposes in mind. The first is to “introduce” you to Li Nowlin-Sohl—an attorney from ACLU national who is going to be shepherding this case for the Plaintiff team. I believe we have just filed her motion to appear pro hac vice. She is cc’d on this email and will be taking over the responsibility of being your point of contact.

The second purpose is to ask whether the State has prepared its responses to our written discovery requests which were submitted to you on Feb. 17, 2022. If our math is right, that would mean we were to expect disclosure from the State yesterday. As you’ve been cc’d on the emails with the Knox defendants, you are likely aware that they have requested (and we agreed) to a 30-day extension. We did not receive a similar request from the State. Would you be able to let us know when we can expect the State’s response?

Regards,

Stella

Stella Yarbrough (she/her)
Staff Attorney
ACLU Foundation of Tennessee
P.O. Box 120160
Nashville, Tennessee 37212
615-320-7142
615-645-5070 (Direct line)
www.aclu-tn.org



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Exhibit F

Li Nowlin-Sohl

From: Li Nowlin-Sohl
Sent: Monday, April 25, 2022 2:18 PM
To: Stephanie A. Bergmeyer
Cc: Stella Yarbrough; Strongin, Samuel M.; Sasha Buchert
Subject: RE: LE v Lee: Search Terms Follow Up

Stephanie,
Thank you for the update and we look forward to hearing from you soon.

Li

From: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Sent: Friday, April 22, 2022 1:41 PM
To: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>
Cc: Stella Yarbrough <syarbrough@aclu-tn.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>; Sasha Buchert <sbuchert@lambdalegal.org>
Subject: RE: LE v Lee: Search Terms Follow Up

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This message came from outside your organization.

Sorry for my delay in responding; I was waiting for more information on the e-mail pulls. It is my understanding that the e-mails are being transferred this afternoon, and I have a meeting with my office's litigation specialist Monday morning regarding applying the search terms. Once I have that meeting Monday, I will follow up with an eta. The delay in the interrogatories is due to receipt and review of e-mails to ensure responses are complete and accurate, and I hope to be able to complete that work early next week.

Stephanie

Stephanie Bergmeyer | Senior Assistant Attorney General
Office of Tennessee Attorney General
p. 615.741.6828



From: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>
Sent: Wednesday, April 20, 2022 6:29 PM
To: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Cc: Stella Yarbrough <syarbrough@aclu-tn.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>; Sasha Buchert <sbuchert@lambdalegal.org>
Subject: RE: LE v Lee: Search Terms Follow Up

Stephanie,

I am following up to see if you have a sense of when we can expect your clients' responses to our interrogatories, which, per our agreed upon extension, were due on Monday, April 18, 2022.

Regards,
Li

From: Li Nowlin-Sohl
Sent: Monday, April 18, 2022 4:10 PM
To: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Cc: Stella Yarbrough <syarbrough@aclu-tn.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>; Sasha Buchert <sbuchert@lambdalegal.org>
Subject: RE: LE v Lee: Search Terms Follow Up

Stephanie,
Thank you for the update on the searches and I appreciate the plan to expedite things by producing documents on a rolling basis. I also want to confirm whether we can expect your responses to Plaintiff's First Set of Interrogatories by today's deadline (service on February 17, 2022, with 30 days to respond and a 30-day extension), and if not, when you anticipate producing them?

Regards,
Li

From: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Sent: Monday, April 18, 2022 1:53 PM
To: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>
Cc: Stella Yarbrough <syarbrough@aclu-tn.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>; Sasha Buchert <sbuchert@lambdalegal.org>
Subject: RE: LE v Lee: Search Terms Follow Up

I apologize that I will be unable to produce our discovery responses today. I have been working with our litigation specialist and our information systems agency on how to speed up the process. I have asked that they narrow the transfer to of e-mail data to smaller time periods (first, in two batches from 01/01/21 to today; and then the remaining time period; or if needed into 6 month time periods), in order to apply the search terms and produce any responsive documents on a rolling basis. I am waiting on them to confirm more specifics on the data size and transfer dates, and will follow up with you in the next few days when how quickly I anticipate being able to respond.

Stephanie

Stephanie Bergmeyer | Senior Assistant Attorney General
Office of Tennessee Attorney General
p. 615.741.6828



From: Stephanie A. Bergmeyer
Sent: Wednesday, April 13, 2022 4:31 PM
To: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>
Cc: Stella Yarbrough <syarbrough@aclu-tn.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>; Sasha

Buchert <sbuchert@lambdalegal.org>

Subject: RE: LE v Lee: Search Terms Follow Up

Thanks for checking in. I have been working on this with the client. Unfortunately our process involves transfer of an incredibly large number of e-mails (2.5 years of numerous employees and officials), from the departments to the AG office for input into a database in order to apply the search terms. I will follow up tomorrow on how that is going.

Stephanie

Stephanie Bergmeyer | Senior Assistant Attorney General
Office of Tennessee Attorney General
p. 615.741.6828



From: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>

Sent: Wednesday, April 13, 2022 3:41 PM

To: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>

Cc: Stella Yarbrough <syarbrough@aclu-tn.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>; Sasha Buchert <sbuchert@lambdalegal.org>

Subject: RE: LE v Lee: Search Terms Follow Up

Stephanie,

I am checking in on our discovery requests and the searches you are conducting. Knox County continues to get a large number of results and I anticipate that you may be as well, so please let us know if it'd be helpful to discuss.

Li

From: Li Nowlin-Sohl

Sent: Friday, April 8, 2022 11:46 AM

To: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>

Cc: Stella Yarbrough <SYarbrough@aclu-tn.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>; Sasha Buchert <sbuchert@lambdalegal.org>

Subject: LE v Lee: Search Terms Follow Up

Stephanie,

I wanted to follow up on our March 28 call and see how the searches in response to our discovery requests are going. Did they yield a manageable number of results? Please let us know if you'd like to talk through any modifications of the search terms.

Regards,

Li

Li Nowlin-Sohl

Pronouns: she, her, hers

Senior Staff Attorney

Jon L. Stryker and Slobodan Randjelović LGBTQ & HIV Project

American Civil Liberties Union Foundation



Exhibit G

Li Nowlin-Sohl

From: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Sent: Wednesday, May 11, 2022 3:18 PM
To: Li Nowlin-Sohl
Cc: Stella Yarbrough; Sasha Buchert; Strongin, Samuel M.
Subject: RE: L.E. v. Lee: Discovery and Motion to Compel

This Message Is From an External Sender

This message came from outside your organization.

Technology update to the best of my ability:

Our state administrator confirmed that the total amount of data is approximately 1 TB (1,000 GB), and that 710GB has been transferred to a sharepoint site. He was having some trouble with downloading the remaining 200GB but expects for it to be done by end of week. My office has downloaded approximately 400+ GB from that sharepoint site and continues to do so. There is an issue with space on that transfer site and we need to download more of data today/tomorrow to make space for more transfers. I think that is the hold up on getting the Everlaw database set up. I've instructed our litigation specialist to set up Everlaw as soon as she is able to. I will be given full administrator rights in Everlaw but do not have the capability/knowledge to run the search terms. I will follow up as this progresses.

Stephanie

Stephanie Bergmeyer | Senior Assistant Attorney General
Office of Tennessee Attorney General
p. 615.741.6828



From: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>
Sent: Tuesday, May 10, 2022 12:31 PM
To: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Cc: Stella Yarbrough <syarbrough@aclu-tn.org>; Sasha Buchert <sbuchert@lambdalegal.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>
Subject: RE: L.E. v. Lee: Discovery and Motion to Compel

Stephanie,
Let's talk tomorrow at 11am CT. I'll send a calendar invitation.

Thanks,
Li

From: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Sent: Tuesday, May 10, 2022 8:00 AM
To: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>

Cc: Stella Yarbrough <syarbrough@aclu-tn.org>; Sasha Buchert <sbuchert@lambdalegal.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>

Subject: RE: L.E. v. Lee: Discovery and Motion to Compel

Today won't work but I am available tomorrow any time except from 3:30-4:30, and Thursday any time except for 10-11 a.m.

Thank you,

Stephanie

Stephanie Bergmeyer | Senior Assistant Attorney General
Office of Tennessee Attorney General
p. 615.741.6828



From: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>

Sent: Monday, May 9, 2022 4:19 PM

To: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>

Cc: Stella Yarbrough <syarbrough@aclu-tn.org>; Sasha Buchert <sbuchert@lambdalegal.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>

Subject: RE: L.E. v. Lee: Discovery and Motion to Compel

Stephanie,

Thank you for your email and for providing a clearer timeline on when Plaintiff may expect discovery responses from Defendants. We would like to take you up on your offer to discuss the measures that you have taken thus far and what we can expect to receive. Are you available tomorrow for a call? We can be available from 10-11am, 12:30-2pm, or 2:30-3pm Central tomorrow.

Hopefully we can also use the call to attempt to resolve the case, as required in the case management order, and to discuss the joint status report that is due on May 20th regarding our efforts to resolve the case.

Regards,
Li

From: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>

Sent: Friday, May 6, 2022 2:52 PM

To: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>

Cc: Stella Yarbrough <syarbrough@aclu-tn.org>; Sasha Buchert <sbuchert@lambdalegal.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>

Subject: RE: L.E. v. Lee: Discovery and Motion to Compel

Thank you for your e-mail. I am replying separately to the e-mail regarding the protective order. I am not able to produce the discovery responses today but will do so by next Friday, May 13. I am available to discuss with you anytime next week the measures we have taken and what you can expect to receive. I understand your concerns and will work to address them with you next week.

Stephanie

Stephanie Bergmeyer | Senior Assistant Attorney General
Office of Tennessee Attorney General
p. 615.741.6828



From: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>
Sent: Monday, May 2, 2022 4:13 PM
To: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Cc: Stella Yarbrough <syarbrough@aclu-tn.org>; Sasha Buchert <sbuchert@lambdalegal.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>
Subject: L.E. v. Lee: Discovery and Motion to Compel

Stephanie,

I am following up again on our discovery requests, including the searches for documents in response to our RFPs and the answers to our Interrogatories. We are concerned about the ongoing delays in Defendants' responses, as well as the impending discovery deadline in two months. It has now been over 10 weeks since we served our discovery requests and we have not received any productions of documents or responses to our interrogatories. We agreed to a courtesy 30-day extension for Defendants; that deadline passed two weeks ago and still we have received nothing. These delays harm Plaintiff's ability to complete the necessary discovery in this case before the deadline, including reviewing the discovery responses, preparing any necessary follow-up requests, and conducting depositions.

Accordingly, I wanted to inform you that if we have not received responses to our discovery requests by this Friday, May 6, we plan to file a motion to compel next week.

Lastly, I wanted to follow up on the draft protective order that my colleague Sam emailed you on April 18, 2022 (attached). Please let us know if you have any edits and if not, we will clean it up and prepare a joint motion.

Regards,
Li

Li Nowlin-Sohl

Pronouns: she, her, hers

Senior Staff Attorney
Jon L. Stryker and Slobodan Randjelović LGBTQ & HIV Project
American Civil Liberties Union Foundation
206-348-3163 | lnowlin-sohl@aclu.org



Exhibit H

Li Nowlin-Sohl

From: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Sent: Friday, May 13, 2022 3:01 PM
To: Li Nowlin-Sohl
Cc: Sasha Buchert; External - Tara Borelli; Strongin, Samuel M.; Stella Yarbrough
Subject: RE: L.E.: Discovery Call Follow Up

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I am happy to report that we are running our first search term on a custodian's file. It so far has hit on non-relevant terms such as "trans-fat," "trans- Atlantic," and "trans-Pacific," but I don't expect that this will end up in the vain of "transportation" like occurred in Knox County's search. We will go through what we can today, and are planning to download one of the larger custodian files over the weekend into Everlaw. I can follow up on the specific hits for the search terms on Monday.

More coming to you today.

Stephanie

Stephanie Bergmeyer | Senior Assistant Attorney General
Office of Tennessee Attorney General
p. 615.741.6828



From: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>
Sent: Thursday, May 12, 2022 3:57 PM
To: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Cc: Sasha Buchert <sbuchert@lambdalegal.org>; External - Tara Borelli <Tborelli@lambdalegal.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>; Stella Yarbrough <syarbrough@aclu-tn.org>
Subject: RE: L.E.: Discovery Call Follow Up

Stephanie,

I wanted to follow up and see how the email transfer is coming along and if your team was able to run any search terms against the emails today.

Also, with regard to our conversation about potentially stipulating to narrowing RFP 6, I thought the following language from our complaint might be helpful: "WHEREFORE, L. prays that this Court grant the following relief: 1. Declaring that the provisions of and enforcement by Defendants of SB 228 violate L.'s rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Title IX of the Education Amendments of 1972; 2. Permanently enjoining all Defendants, their officials, agents, employees, assigns, and all other persons acting in concert or participating with them from enforcing SB 228 or any other law, custom, or policy that precludes L.'s participation on a boys' school sports team in Tennessee..."

Regards,
Li

From: Li Nowlin-Sohl <>

Sent: Wednesday, May 11, 2022 4:34 PM

To: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>

Cc: Sasha Buchert <sbuchert@lambdalegal.org>; External - Tara Borelli <Tborelli@lambdalegal.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>; Stella Yarbrough <SYarbrough@aclu-tn.org>

Subject: L.E.: Discovery Call Follow Up

Stephanie,

Thank you for the call today regarding discovery and settlement. The following are my takeaways from the call and what I understand to be next steps. Please clarify if I am mistaken on any aspect.

- Interrogatories
 - o Defendants will provide their complete written responses to Plaintiff's interrogatories this Friday, May 13, as well as any documents that they currently have.
- Search for documents
 - o Defendants have identified 28 custodians and their emails are being transferred over to Everlaw in two batches (1/1/19-12/30/20 and 1/1/21 – present); you anticipate those transfers being completed today or tomorrow.
 - You have since updated us via email that the data transfer is ongoing and is taking longer than expected, but should be fully complete by the end of the week.
 - o You will start with an initial search of: trans or transgender or "biological sex," and see what that yields. You will also run searches regarding TSSAA, TMSAA, and some of the email domain names that were identified in Plaintiff's conversations with Knox County.
 - Your IT team has confirmed for you that a search of "trans" will only yield the whole word and not capture words like "transportation" or "transfer."
 - o The initial search for documents will be on the 2019-2020 subset of documents, with the search of the 2021-present documents to follow.
 - o You anticipate that the yield for the searches will be low, but either way, you will promptly follow up with us to discuss the results and whether further narrowing of the search terms is necessary.
- Timing
 - o You have allotted your schedule to focus almost full time on this and will be in regular communication with us.
 - o You will work on getting us substantial completion and completion target dates.
 - o Defendants will provide rolling productions of documents starting next week.
- Anticipated objections
 - o Defendants believe Plaintiff's definition of the Department of Education is too broad and will be narrowing that
 - o For RFP 15, Defendants believe it is too broad. Plaintiff agreed for Defendants to just provide policies at this point, and will follow up with suggestions on how to narrow that request.
 - o You will follow up by email with additional objections, though this will not be a situation of "all objections and no responses."
- Case settlement
 - o We discussed this and Plaintiff will follow up with a proposed joint report for the Court.
- Depositions
 - o We will work on getting proposed dates for depositions of Plaintiff and his parents.
 - o We will try to get you an initial list of proposed deponents by early next week.
 - o You will provide us with a list of the 28 custodians that you are searching.
 - o You will consider the possibility of remote depositions.

Lastly, I would like to reiterate our request that the search terms be run against the data – even if it is only a subset of the data – as soon as possible and ideally tomorrow. Tomorrow will mark 12 weeks since we served our discovery requests and Defendants are only now preparing to run search terms. I also have concerns that the application of search terms and identifying documents for production will not be as straightforward as you hope and will introduce additional delays, making it all the more imperative that the searches be run as soon as possible. Please keep us updated on the progress of the transfer, the application of the search terms, and the document yields they return.

Regards,
Li

Li Nowlin-Sohl

Pronouns: she, her, hers

Senior Staff Attorney
Jon L. Stryker and Slobodan Randjelović LGBTQ & HIV Project
American Civil Liberties Union Foundation
206-348-3163 | lnowlin-sohl@aclu.org



Exhibit I

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

L.E., by his next friends and parents,
SHELLEY ESQUIVEL and MARIO
ESQUIVEL,

Plaintiff,

v.

BILL LEE, et al.,

Defendants.

Case No. 3:21-cv-00835

Chief Judge Waverly D. Crenshaw Jr.
Magistrate Judge Alistair E. Newbern

**PLAINTIFF’S FIRST SET OF
INTERROGATORIES TO
DEFENDANTS PENNY SCHWINN,
TENNESSEE STATE BOARD OF
EDUCATION, SARA HEYBURN
MORRISON, and the INDIVIDUAL
MEMBERS OF THE TENNESSEE
STATE BOARD OF EDUCATION
(NOS. 1 - 8)**

**RESPONSE OF DR. PENNY SCHWINN, COMMISSIONER,
TENNESSEE DEPARTMENT OF EDUCATION**

Commissioner Penny Schwinn, in her official capacity, objects and responds to Plaintiff’s First Set of Interrogatories as follows. Commissioner Schwinn objects to the definition of “interscholastic sports” as overbroad because it (1) includes elementary schools and colleges, schools to which Tenn. Code Ann. § 49-6-310 does not apply, and (2) is not limited to public middle school or high school interscholastic athletic activities or events, to which Tenn. Code Ann. § 49-6-310 applies, because it also includes athletic competitions simply among students who attend public schools. Additionally, the Commissioner objects to the use of masculine pronouns to refer to L.E. because the gender-classification of student athletes is at issue in this case. Accordingly, this response refers to Plaintiff without the use of pronouns.

Commissioner Schwinn objects to the definition of “Commissioner” as overbroad and unduly burdensome to the extent it would require a response by each officer and employee of the Department to the interrogatories below. The following persons have been identified as persons who may have information relevant to this lawsuit and the responses provided below are limited to the Commissioner’s knowledge and their knowledge:

Chelsea Crawford
Chief of Staff

Charlie Bufalino
Assistant Commissioner
Policy & Legislative Affairs

Jack Powers
Director of Policy
Policy & Legislative Affairs

Jay Klein
Director of Legislative Affairs
Policy & Legislative Affairs

Robin Yeh
Policy Analyst
Policy & Legislative Affairs

Rachel Suppé
Deputy General Counsel
Office of General Counsel

Shaundraya Hersey
Staff Attorney
Office of General Counsel

Victoria Robinson
Director of Communications

INTERROGATORY NO. 1: Identify all PERSONS who provided information in preparation of YOUR Answer to the Complaint, and for each such PERSON, state the following:

- (a) Their name, address, and telephone number;
- (b) Their relationship to YOU and/or L.E.; and
- (c) A detailed description of such information.

RESPONSE:

Christy Ballard, General Counsel, and Rachel Suppé, Deputy General Counsel. Their address is 710 James Robertson Parkway, Nashville, Tennessee 37243, and telephone number is (615) 741-2921. Commissioner Schwinn objects to providing a detailed description of the information to the extent it is privileged as attorney-client communication or attorney-work product. Notwithstanding that objection, counsel provided information as to the allegations about the Commissioner and Department of Education.

INTERROGATORY NO. 2: Identify all COMMUNICATIONS, including but not limited to, any complaints or concerns YOU have received from students, teachers, parents, school officials, or school coaches, CONCERNING students who are transgender participating in INTERSCHOLASTIC SPORTS in Tennessee.

RESPONSE: In compliance with Fed. R. Civ. P. 33, the Commissioner responds with information available; because the Department of Education administers education statewide, it is not a party or person likely to have available information as to particular students. The Department received e-mails from school officials, which are produced in response to Request for Production No. 1.

INTERROGATORY NO. 3: Identify the number of students who are transgender that YOU are aware of who play or have played INTERSCHOLASTIC SPORTS in Tennessee, and for each student, please specify the sport(s) played by the student and, if applicable, the current grade of that student.

RESPONSE: In compliance with Fed. R. Civ. P. 33, the Commissioner responds with information available; because the Department of Education administers education statewide, it is not a party or person likely to have available information as to particular students. The Department is aware of more than one transgender student who participated or participates in interscholastic athletic activities or events.

INTERROGATORY NO. 4: Identify all students who participated in or are participating in INTERSCHOLASTIC SPORTS in Tennessee who have been denied the opportunity to advance in their respective sports, including by obtaining college scholarships, as a result of students who are transgender participating on sports teams.

RESPONSE: In compliance with Fed. R. Civ. P. 33, the Commissioner responds with information available; because the Department of Education administers education statewide, it is not a party or person likely to have available information as to particular students. The Department does not know the identity of those students.

INTERROGATORY NO. 5: Identify all PERSONS responsible for promulgating POLICIES or rules to implement S.B. 228.

RESPONSE:

The entities governing the public schools are responsible for adopting policies. The Department is responsible for: the Tennessee School for the Blind; Tennessee Schools for the Deaf; the Alvin C. York Agricultural Institute; and the Achievement School District.

INTERROGATORY NO. 6: Identify all the governmental interests advanced by S.B. 228 and how they are advanced by S.B. 228.

RESPONSE:

Commissioner Schwinn objects that this interrogatory seeks legal determinations and to the extent it seeks information privileged by attorney-work product. Notwithstanding these objections and subject to them, the legislature provided some governmental interests in the whereas clauses of Senate Bill 228 and those interests are advanced by safe and orderly participation in interscholastic athletic activity as provided for in the law.

INTERROGATORY NO. 7: Identify all steps YOU have taken to develop POLICIES CONCERNING the implementation and enforcement of S.B. 228, including rulemaking.

RESPONSE:

The Department revised its interscholastic athletics policies for: Tennessee School for the Blind; Tennessee Schools for the Deaf; the Alvin C. York Agricultural Institute; and the Achievement School District.

INTERROGATORY NO. 8: Describe any impacts the participation of students who are transgender in INTERSCHOLASTIC SPORTS has or had on cisgender students, including the opportunities for cisgender students to participate in school sports, advance in their respective sports, obtain college scholarships, and the safety of cisgender students who participate in INTERSCHOLASTIC SPORTS.

RESPONSE: In compliance with Fed. R. Civ. P. 33, the Commissioner responds with information available; because the Department of Education administers education statewide, it is not a party or person likely to have available information as to particular students. The Department will rely on experts and disclose them pursuant to the Fed. R. Civ. P. and case management order entered in this lawsuit.

Respectfully Submitted,

HERBERT H. SLATERY III
Attorney General and Reporter

s/ Stephanie A. Bergmeyer

Stephanie A. Bergmeyer, BPR # 27096
Senior Assistant Attorney General
Office of Tennessee Attorney General
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Nashville, Tennessee 37202-0207
Stephanie.Bergmeyer@ag.tn.gov
(615) 741-6828

*Attorney for Governor Lee, Commissioner
Schwinn, Dr. Morrison, the individual
members of the Tennessee State Board of
Education, in their official capacities, and
the Tennessee State Board of Education*

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Response has been served by agreement through e-mail on May 13, 2022, to:

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Sasha Buchert
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Tara L. Borelli
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Alan Schoenfeld
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Emily L. Stark
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Emily.Stark@wilmerhale.com
Samuel.Strongin@wilmerhale.com

s/ Stephanie A. Bergmeyer
Stephanie A. Bergmeyer

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
TENNESSEE NASHVILLE DIVISION**

L.E., by his next friends and parents,
SHELLEY ESQUIVEL and MARIO
ESQUIVEL,

Plaintiff,

v.

BILL LEE, et al.,

Defendants.

Case No. 3:21-cv-00835

Chief Judge Waverly D. Crenshaw Jr.
Magistrate Judge Alistair E. Newbern

**PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION TO
DEFENDANTS PENNY SCHWINN,
TENNESSEE STATE BOARD OF
EDUCATION, SARA HEYBURN
MORRISON, and the INDIVIDUAL
MEMBERS OF THE TENNESSEE
STATE BOARD OF EDUCATION
(NOS. 1 - 15)**

**RESPONSE OF DR. PENNY SCHWINN, COMMISSIONER,
TENNESSEE DEPARTMENT OF EDUCATION**

Commissioner Penny Schwinn, in her official capacity, objects and responds to Plaintiff's First Set of Requests for Production as follows. Commissioner Schwinn objects to the definition of "interscholastic sports" as overbroad because it (1) includes elementary schools and colleges, schools to which Tenn. Code Ann. § 49-6-310 does not apply, and (2) is not limited to public middle school or high school interscholastic athletic activities or events, to which Tenn. Code Ann. § 49-6-310 applies, because it also includes athletic competitions simply among students who attend public schools. Additionally, the Commissioner objects to the use of masculine pronouns to refer to L.E. because the gender-classification of student athletes is at issue in this case. Accordingly, this response refers to Plaintiff without the use of pronouns.

Commissioner Schwinn objects to the definition of “Commissioner” as overbroad and unduly burdensome to the extent it would require a response by each officer and employee of the Department to the requests below. The following persons have been identified as persons who may have information relevant to this lawsuit and the responses provided below are limited to the Commissioner’s knowledge and their knowledge:

Chelsea Crawford
Chief of Staff

Charlie Bufalino
Assistant Commissioner
Policy & Legislative Affairs

Jack Powers
Director of Policy
Policy & Legislative Affairs

Jay Klein
Director of Legislative Affairs
Policy & Legislative Affairs

Robin Yeh
Policy Analyst
Policy & Legislative Affairs

Rachel Suppé
Deputy General Counsel
Office of General Counsel

Shaundraya Hersey
Staff Attorney
Office of General Counsel

Victoria Robinson
Director of Communications

Commissioner Schwinn objects to the instructions that material dated from January 1, 2019, to the present be produced and, thus, to the corresponding scope of these requests because approximately 3.5 years of communications is overbroad and unduly burdensome. Notwithstanding these objections and subject to the agreement between counsel of certain search terms to narrow the potentially responsive documents, the Department responds and will supplement these responses pursuant to the Fed. R. Civ. P.

REQUEST NO. 1:

All DOCUMENTS and COMMUNICATIONS, internal or external, CONCERNING the participation of students who are transgender in INTERSCHOLASTIC SPORTS in Tennessee, including but not limited to COMMUNICATIONS between YOU and any school district; complaints or concerns YOU have received from students, teachers, parents, school officials, or school coaches; and briefing materials provided to YOU.

RESPONSE:

The Commissioner objects that this request is overbroad and unduly vague. Notwithstanding this objection and subject to it, see attached.

REQUEST NO. 2:

All POLICIES CONCERNING the participation of students who are transgender in INTERSCHOLASTIC SPORTS in Tennessee, including but not limited to POLICIES issued by State agencies or local school boards.

RESPONSE:

The Commissioner objects to this request to the extent it requests policies of local school boards that are not in the Department's possession, custody, or control. Not waiving this objection and subject to it, none.

REQUEST NO. 3:

All DOCUMENTS and COMMUNICATIONS CONCERNING the POLICIES identified in Request No. 2, including but not limited to drafts of POLICIES.

RESPONSE:

Not applicable.

REQUEST NO. 4:

All DOCUMENTS, POLICIES, and COMMUNICATIONS CONCERNING sex-separated sports teams in INTERSCHOLASTIC SPORTS in Tennessee.

RESPONSE:

See attached.

REQUEST NO. 5:

All DOCUMENTS, POLICIES, and COMMUNICATIONS CONCERNING the implementation and/or enforcement of S.B. 228, including with respect to L.E. or to any other student.

RESPONSE:

The Commissioner objects to this request to the extent it seeks communications or documents privileged as attorney-client communication or attorney-work product. Notwithstanding these objections and subject to them, the Department produces the following policies with respect to the Achievement School District and Tennessee Special Schools.

REQUEST NO. 6:

All DOCUMENTS and COMMUNICATIONS CONCERNING any impact the participation of students who are transgender in INTERSCHOLASTIC SPORTS has or had on cisgender students, including with respect to:

- a) the opportunities for cisgender students to participate in INTERSCHOLASTIC SPORTS;
- b) the opportunities for cisgender students to advance in their respective INTERSCHOLASTIC SPORTS, including by obtaining college scholarships; or
- c) the safety of cisgender students who participate in INTERSCHOLASTIC SPORTS.

RESPONSE:

The Commissioner objects to this request to the extent it seeks communications privileged as attorney-work product. Notwithstanding this objection and subject to it, the Department will rely on experts and any documents they identify and disclose such information pursuant to the Fed. R. Civ. P. and case management order entered in this lawsuit.

REQUEST NO. 7:

All DOCUMENTS, POLICIES, and COMMUNICATIONS CONCERNING any alleged violation of S.B. 228.

RESPONSE:

None that the Department can recall.

REQUEST NO. 8:

All DOCUMENTS and COMMUNICATIONS, internal or external, CONCERNING L.E., including but not limited to COMMUNICATIONS YOU have received from students, teachers, parents, school officials, school coaches, legislators, members of Tennessee county boards of education, or other PERSONS.

RESPONSE:

The Commissioner objects to this request to the extent it seeks documents and communications privileged as attorney-client communication or attorney-work product. Notwithstanding this objection and subject to it, see attached.

REQUEST NO. 9:

All DOCUMENTS from or exchanged between, and COMMUNICATIONS with, any representative of any advocacy organization, including but not limited to the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council, CONCERNING S.B. 228 or the participation of students who are transgender in INTERSCHOLASTIC SPORTS in Tennessee.

RESPONSE:

None that the Department can recall.

REQUEST NO. 10:

All DOCUMENTS, POLICIES, and COMMUNICATIONS reflected in YOUR Fed. R. Civ. P. Rule 26(a) initial disclosures.

RESPONSE:

None.

REQUEST NO. 11:

All DOCUMENTS YOU relied upon, referenced in, or identified in answering L.E.'s interrogatories.

RESPONSE:

None that have not already been produced in response to another request.

REQUEST NO. 12:

All DOCUMENTS, POLICIES, and COMMUNICATIONS CONCERNING girls who participated in INTERSCHOLASTIC SPORTS in Tennessee on teams primarily made up of boys, or boys who participated in INTERSCHOLASTIC SPORTS in Tennessee on teams primarily made up of girls.

RESPONSE:

None that the Department can recall.

REQUEST NO. 13:

All DOCUMENTS, POLICIES, and COMMUNICATIONS considered by YOU CONCERNING the implementation, enforcement, elimination, modification, or amendment of S.B. 228, including but not limited to all DOCUMENTS reflecting data, reports, research, or studies that YOU contend support continued implementation and enforcement of S.B. 228.

RESPONSE:

The Commissioner objects to this request to the extent it seeks documents or communications privileged as attorney-work product or as deliberative process. Notwithstanding this objection and subject to it, as to support for the law, the Department will rely on experts and any documents they identify and disclose such information pursuant to the Fed. R. Civ. P. and case management order entered in this lawsuit.

REQUEST NO. 14:

All DOCUMENTS and POLICIES CONCERNING YOUR delegation of authority over secondary school athletics to the Tennessee Secondary School Athletic Association and the Tennessee Middle School Athletic Association.

RESPONSE:

None that the Department can recall.

REQUEST NO. 15:

All DOCUMENTS and POLICIES CONCERNING YOUR duty to supervise schools in Tennessee, including, but not limited to, any supervision over Tennessee county boards of education and county superintendents or directors.

RESPONSE:

OBJECTION. This request is overbroad and unduly vague. Notwithstanding these objections and subject to them, see Rule 0520-01-02-.01 that can be access here: [0520-01-02.20220302.pdf \(tnsosfiles.com\)](https://www.tnsosfiles.com/0520-01-02.20220302.pdf).

Respectfully Submitted,

HERBERT H. SLATERY III
Attorney General and Reporter

s/ Stephanie A. Bergmeyer
Stephanie A. Bergmeyer, BPR # 27096
Senior Assistant Attorney General
Office of Tennessee Attorney General
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(615) 741-6828

Attorney for Governor Lee, Commissioner Schwinn, Dr. Morrison, the individual members of the Tennessee State Board of Education, in their official capacities, and the Tennessee State Board of Education

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Response has been served by agreement through e-mail on May 13, 2022, to:

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CERTIFICATE OF SERVICE
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Emily.Stark@wilmerhale.com
Samuel.Strongin@wilmerhale.com

s/ Stephanie A. Bergmeyer
Stephanie A. Bergmeyer

Request 4

From: [Rachel E. Suppé](#)
To: [Tracy Watson](#)
Cc: [Stella Yarbrough](#)
Subject: RE: [EXTERNAL] Fwd: question
Date: Wednesday, September 4, 2019 8:16:00 AM
Attachments: [federal.register.pdf](#)

Hi Tracy,

Sorry for my delay! I have attached some federal resources that address your question. Generally speaking, schools may not segregate students by sex. However, Title IX allows schools to separate students by sex in the following categories:

- Contact sports in physical education classes;
- Certain ability grouping in physical education classes;
- Classes that deal primarily with human sexuality;
- Choruses; and
- Classes IF the school can demonstrate that:
 - The single-sex class is based on an “important objective” to
 - Improve students achievement by offering diverse educational opportunities;
 - or
 - Meet the particular, identified educational needs of its students; and
 - The single-sex nature of the class is “substantially related” to achieving that important objective.

What that last category basically means is that there must be an important purpose for separating the students based on sex and separating them based on gender is needed to achieve the that purpose or outcome.

The above rules are discussed in greater detail in [this guidance](#) from the federal Office for Civil Rights. The regulations themselves can be found [here](#).

If you have any specific questions or would like more detail, please just let me know. Thanks,
Rachel

From: Tracy Watson [mailto:tracywatson@stewartcountyschools.org]

Sent: Thursday, August 29, 2019 11:51 AM

To: Rachel E. Suppé <Rachel.E.Suppe@tn.gov>

Subject: [EXTERNAL] Fwd: question

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. *****

I wanted to follow up on the question below. Do we follow the same guideline on the bus as in the classroom as far as separating boys and girls?

----- Forwarded message -----

From: Tracy Watson <tracywatson@stewartcountyschools.org>

Date: Fri, Aug 23, 2019 at 10:24 AM

Subject: question

To: Rachel E. Suppé <rachel.e.suppe@tn.gov>

Cc: ERIC WATKINS <ericwatkins@stewartcountyschools.org>

I'm sure you hate to see my name pop up but I do have another question. I know you mentioned on the phone about not lining students up by boys and girls in the classrooms. What about on the bus? Can the bus driver ask the boys to sit together and the girls sit together?



Federal Register

Wednesday,
October 25, 2006

Part III

Department of Education

34 CFR Part 106

**Nondiscrimination on the Basis of Sex in
Education Programs or Activities
Receiving Federal Financial Assistance;
Final Rule**

DEPARTMENT OF EDUCATION

34 CFR Part 106

RIN 1870-AA11

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance**AGENCY:** Office for Civil Rights, Department of Education.**ACTION:** Final regulations.

SUMMARY: The Secretary amends the regulations implementing Title IX of the Education Amendments of 1972 (Title IX), which prohibits sex discrimination in federally assisted education programs and activities. These amendments clarify and modify Title IX regulatory requirements pertaining to the provision of single-sex schools, classes,¹ and extracurricular activities in elementary and secondary schools. The amendments expand flexibility for recipients to provide single-sex education, and they explain how single-sex education may be provided consistent with the requirements of Title IX.

DATES: These regulations are effective November 24, 2006.

FOR FURTHER INFORMATION CONTACT: Sandra G. Battle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6125, Potomac Center Plaza, Washington DC 20202-1100. Telephone: (202) 245-6767.

If you use a telecommunications device for the deaf (TDD), you may call 1-877-521-2172. For additional copies of this document, you may call the Customer Service Team for the Office for Civil Rights (OCR) at (202) 245-6800 or 1-800-421-3481.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotope, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Title IX prohibits discrimination on the basis of sex in education programs and activities that receive Federal financial assistance.² The Department's Title IX regulations implement Title IX's nondiscrimination requirements in

¹ The requirements for classes and extracurricular activities are the same. For the sake of simplicity, we generally use the term "class" in the preamble analysis of comments and changes. A noted exception is our discussion of comments from the public regarding extracurricular activities specifically.

² 20 U.S.C. 1681(a).

education programs and activities assisted by the Department.³ These amendments to the regulations establish new standards that OCR will use in determining⁴ whether recipients that choose to operate single-sex elementary and secondary classes, extracurricular activities, and schools⁵ are doing so consistent with their Title IX obligations not to discriminate on the basis of sex for the purposes of receiving financial assistance from the Department.

On March 9, 2004, the Secretary published a notice of proposed rulemaking (NPRM) for this part in the **Federal Register** (69 FR 11276). We explained that these amendments to the regulations are intended to provide recipients with additional flexibility in providing single-sex classes, extracurricular activities, and schools in elementary and secondary education. At the same time, these amendments ensure for students that single-sex classes, extracurricular activities, and schools are provided in a nondiscriminatory manner. In the preamble to the proposed regulations, on pages 11276 through 11282, we discussed the major changes needed to accomplish these objectives.⁶ These changes included the following:

³ 34 CFR part 106.

⁴ OCR would make these determinations in resolving any complaints or compliance reviews related to these issues. See 34 CFR 100.7, made applicable to the Title IX regulations by § 106.71.

⁵ These regulations do not require single-sex classes, extracurricular activities, or schools.

⁶ The NPRM also discussed minor and technical changes including:

- Amending § 106.34(a) to delete obsolete timeframes; to move the general prohibition against providing education programs or activities separately on the basis of sex or refusing or requiring participation in education programs or activities on the basis of sex from an undesignated part of the former § 106.34 published in 1980 to § 106.34(a); and, because the proposed amendments provided for an exception that would permit single-sex classes in nonvocational elementary and secondary schools of any type, except for vocational education classes or vocational extracurricular activities, to delete from § 106.34 the introductory listing of specific types of classes to which the general prohibition applies.

- Amending § 106.34(a) to move the exceptions to the general prohibition, relating to physical education, sex education, and chorus, to § 106.34(a)(1) and (2), (a)(3) and (a)(4), respectively, and to expand the exception for sex education, § 106.34(a)(3), to include classes in elementary and secondary education that deal "primarily" with human sexuality, rather than only those that deal "exclusively" with human sexuality.

- Amending § 106.35 to clarify that the prohibitions against sex discrimination in admissions to vocational education schools apply to all recipients, public and private, and to move the requirements, including the substantive amendments, related to nonvocational schools operated by local educational agencies (LEAs) to § 106.34(c).

- Adding a new § 106.43 and moving to it, from § 106.34(d) of the former regulations, the provision

- Amending § 106.34(b) to add a new exception to the general prohibition against single-sex classes and extracurricular activities. The exception applies to nonvocational classes and extracurricular activities in elementary and secondary coeducational schools that are not vocational schools.⁷ Under this exception a recipient would be permitted to offer a single-sex class or extracurricular activity if (1) the purpose of the class or extracurricular activity is achievement of an important governmental or educational objective, and (2) the single-sex nature of the class or extracurricular activity is substantially related to achievement of that objective. (Proposed § 106.34(b)(1)(i)). The two important objectives described in the proposed regulations were to provide a diversity of educational options to parents and students and to meet the particular, identified educational needs of students. (Proposed § 106.34(b)(1)(i)). The proposed amendments also described, for those recipients that choose to provide single-sex classes or extracurricular activities under this new exception, requirements necessary to ensure nondiscrimination. Under these requirements, as described in the proposed regulations, the recipient must treat male and female students in an evenhanded manner in implementing its objective, and it must always provide a substantially equal coeducational class or extracurricular activity in the same subject or activity. (Proposed § 106.34(b)(1)(ii), (iii)). The proposed amendments provided that, in addition to the required substantially equal coeducational class or extracurricular activity in the same subject or activity, a substantially equal single-sex class or extracurricular activity for students of the other sex may be required to ensure nondiscriminatory implementation. (Proposed § 106.34(b)(2)). The proposed amendment provided a non-exhaustive list of factors that the Department will

regarding standards for measuring skill or progress in physical education.

⁷ As explained in the preamble to the proposed regulations, the requirements for classes and extracurricular activities apply to recipients that operate public and private nonvocational coeducational schools. Private elementary and secondary schools are subject to the requirements pertaining to classes if they receive a grant or subgrant of Federal funds from the Department. Private schools with students who participate in programs conducted by LEAs that are funded under Federal programs such as Title I of the Elementary and Secondary Education Act of 1965, as amended, or the Individuals with Disabilities Education Act are not considered recipients of Federal funds unless they otherwise receive a grant or subgrant of Federal funds. These private schools are not subject to these amended regulations, but the LEA must ensure that its programs, including services to private school students, are consistent with Title IX.

consider in determining whether classes or extracurricular activities are substantially equal (Proposed § 106.34(b)(3)), and required the recipient to conduct periodic evaluations to ensure nondiscrimination (Proposed § 106.34(b)(4)). The proposed regulations defined “classes” to include all education activities provided for students by a school or sponsored by a school, and it was intended to include extracurricular activities.⁸ (Proposed § 106.34(b)(5)).

- Amending § 106.34(c) to include from former § 106.35, with substantive changes, the nondiscrimination requirements applicable to the operation of nonvocational single-sex public schools.⁹ The proposed amendment provided generally that a recipient that operates a public nonvocational elementary or secondary school may operate a single-sex school only if it provides substantially equal opportunities for students of the other sex in another school and that the other school may be either single-sex or coeducational. (Proposed § 106.34(c)(1)). As explained in the preamble to the proposed regulations, this represents a change in interpretation of Title IX. Under the prior interpretation, if a recipient operated a single-sex public school for students of one sex, we required it to offer a comparable single-sex school for students of the other sex.

The proposed amendments also exempted nonvocational public charter schools that are single-school LEAs from the requirement to provide a substantially equal school for students of the other sex. (Proposed § 106.34(c)(2)). In addition, the proposed amendments provided a non-exhaustive list of factors the Department would use in determining whether the schools are substantially equal and provided that the Department will use an aggregate approach in making this determination. (Proposed § 106.34(c)(3)).

Significant Changes Between the Proposed Regulations and the Final Regulations

- *Clarification that § 106.34(b)(1) through (5) applies to extracurricular activities, as well as to classes:* We have added the term “extracurricular activities” throughout § 106.34(b)(1) through (5) to clarify that these provisions apply to both classes and extracurricular activities. As described

later in this section, we are also clarifying the scope of coverage of paragraph (b)(1) through (4) of § 106.34.

- *Clarification that a recipient’s objective must be “important”:* Section 106.34(b)(1) of the proposed regulations specified, in paragraph (i), that each single-sex class or extracurricular activity must be based on the “recipient’s objective.” Recipients that are public entities must have an important governmental objective and recipients that are private entities must have an important educational objective. We have clarified this provision in the final regulations by adding the word “important” to describe the recipient’s objective.

- *Revisions of “diversity of educational options” objective:* The proposed regulations stated that a “diversity of educational options to parents and students” was an important objective that may serve as a basis for providing single-sex classes. (Proposed § 106.34(b)(1)(i)(A)). We have revised the regulatory language to clarify that this objective is “to improve educational achievement of its students, through a recipient’s overall established policy, to provide diverse educational opportunities, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective.”

- *Clarification that participation in single-sex classes and extracurricular activities must be completely voluntary:* The proposed regulations in § 106.34(b)(1)(ii) referenced the requirements of § 106.34(a) to ensure together with the requirement to provide a coeducational class, that recipients did not assign students involuntarily to single-sex classes. New paragraph (iii) of § 106.34(b)(1) provides that student enrollment in single-sex classes and extracurricular activities must be completely voluntary.

To accommodate the addition of this new paragraph, we have renumbered the other paragraphs in this section. The requirement for evenhanded treatment of male and female students is now in § 106.34(b)(1)(ii), the requirement that participation in single-sex classes and extracurricular activities must be completely voluntary is in § 106.34(b)(1)(iii), and the requirement to provide a substantially equal coeducational class or extracurricular activity is in § 106.34(b)(1)(iv). We also have removed the reference to paragraph (a) in this paragraph because it is no longer needed.

- *Clarification of aggregate approach regarding the assessment of substantial equality of classes in § 106.34(b)(3) and schools in § 106.34(c)(3):* We have

clarified the description of the Department’s use of an aggregate approach for considering factors in assessments of substantial equality by deleting § 106.34(c)(ii) of the proposed regulations, which was misunderstood by commenters, and by adding the clarifying language, “either individually or in the aggregate as appropriate,” to § 106.34(b)(3), regarding factors the Department will consider in the assessment of substantial equality of classes, and to § 106.34(c)(3), regarding factors the Department will consider in the assessment of substantial equality of schools, in the final regulations.

- *Addition of “intangible features” to factors in § 106.34(b)(3) and (c)(3); addition of “geographic accessibility” factor in § 106.34(b)(3):* The proposed regulations provided non-exhaustive lists of factors in § 106.34(b)(3) and (c)(3) that the Department will consider in comparing classes or extracurricular activities and schools, respectively, for the purposes of determining compliance. We have added “intangible features” and “reputation of faculty” as an example of an intangible feature to both lists of factors in the final regulations. We also have added “geographic accessibility” as a factor in § 106.34(b)(3) because it may be relevant in certain circumstances in compliance determinations.

- *Modification of provisions on periodic evaluations:* The proposed regulations in § 106.34(b)(4) required that recipients conduct periodic evaluations of single-sex classes to ensure, among other things, that the classes and activities are based on genuine justifications and do not rely on overly broad generalizations about the different talents or capacities of either sex. Title IX also does not permit single-sex classes or extracurricular activities to rely on overly broad generalizations about the preferences of either sex.

Therefore, we added the word “preferences” to § 106.34(b)(4). We also have added the term “important” to clarify that the evaluation must ensure that the single-sex class or extracurricular activity is substantially related to the recipient’s important objective.

- *Clarification addressing the frequency of the procedural requirement for periodic evaluations:* In the preamble to the proposed regulations, we requested comments regarding how often recipients should conduct the periodic evaluations required by § 106.34(b)(4). The proposed regulations were silent on this issue. The final regulations add a new paragraph (ii) to § 106.34(b)(4) that specifies that evaluations for the purposes of

⁸ 69 FR 11276, footnote 1.

⁹ As explained in the preamble to the proposed regulations, the requirements pertaining to the provision of single-sex schools do not apply to recipients that operate private, nonvocational elementary or secondary schools.

§ 106.34(b)(4)(i) must be conducted at least every two years.

- *Scope of coverage of § 106.34(b)(1) through (4):* The proposed regulations in § 106.34(b)(5) defined “class” for the purposes of § 106.34(b)(1) through (4), and that definition was intended to cover academic classes and extracurricular activities. We have determined that rather than define “class,” it is clearer and more useful to include a provision on the scope of coverage of paragraph (b)(1) through (4) of § 106.34. We have revised § 106.34(b)(5) to provide that paragraph (b)(1) through (4) applies to classes and extracurricular activities provided by a recipient directly or through another entity, and to clarify that paragraph (b)(1) through (4) does not apply to interscholastic, club, or intramural athletics, which are subject to the requirements of §§ 106.41 and 106.37(c).

- *Definition of “school” and “school within a school”:* The proposed regulations in § 106.34(c)(1) referred to a single-sex education unit. For the purposes of this paragraph, we consider an “education unit” to mean a “school within a school” and that term to mean a school that is housed within another school. We believe that the term “school within a school” and this explanation are clearer, more accurate, and more useful to recipients than the term “education unit.” For this reason we have added a new paragraph (4) to § 106.34(c) that defines the term “school” for the purposes of paragraph (c)(1) through (3) to include a “school within a school” and explains that the latter term means “an administratively separate school located within another school.” We have deleted the term “single-sex education unit” from § 106.34(c)(1) because it is no longer necessary in light of the new definition.

Analysis of Comments and Changes

In response to the Secretary’s invitation in the preamble to the proposed regulations, we received approximately 5,860 comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the proposed regulations follows.

We group major issues according to subject under the appropriate sections of the final regulations. Generally, we do not address technical or minor changes and suggested changes that the law does not authorize the Secretary to make.

Section 106.34. Access to Classes and Schools

1. Research

Comments: Some commenters recommended that the Department postpone amendment of the regulations. Among the comments were recommendations that we wait until pilot projects were conducted, until completion of a Department-commissioned study on single-sex schools, or until the completion of additional scientific research that concludes that single-sex education is beneficial to students.

Discussion: Title IX has always permitted single-sex schools under conditions that ensure nondiscrimination. Existing educational research suggests that single-sex education may provide benefits to some students under certain circumstances. For an overview of the literature assessing single-sex schools, see *Single Sex Versus Coeducational Schooling: A Systematic Review*, U.S. Department of Education, Office of Planning, Evaluation and Policy Development, 2005, available on the Department’s Web site. Although there is a debate among educators on the effectiveness of single-sex education, the final regulations permit each recipient to make an individualized decision about whether single-sex educational opportunities will achieve the recipient’s important objective and whether the single-sex nature of those opportunities is substantially related to achievement of that important objective consistent with the nondiscrimination requirements of these regulations.

Changes: None.

2. Legal Standards for Single-Sex Classes (§ 106.34(b))

Comments: Some commenters objected to amending the regulations to permit additional flexibility to provide single-sex education because they were concerned that sex discrimination may result. Some commenters were particularly concerned about sex discrimination resulting from single-sex classes, given that the former regulations had restricted single-sex classes to very limited circumstances. Some commenters expressed the view that single-sex public education is generally illegal, analogizing it to race-segregated public education, which is unconstitutional. Some commenters expressed the view that the amendments were inconsistent with standards pertaining to sex discrimination under the Equal Protection Clause of the 14th Amendment to the U.S. Constitution

(Equal Protection Clause) and that recipients who implemented programs consistent with these regulations might be subject to litigation. Some commenters recommended that the final regulations provide notice about constitutional requirements.

Discussion: The Title IX statute requires equal educational opportunity regardless of sex, and both Title IX and the regulations¹⁰ have always permitted single-sex nonvocational elementary and secondary schools.¹¹ With respect to schools, Congress both required that recipients that operate public schools conduct their education program or activity in a manner that does not discriminate on the basis of sex and permitted these recipients to operate single-sex schools within their school districts consistent with the nondiscrimination requirements. In issuing the original Title IX regulations, the former Department of Health, Education, and Welfare chose to require generally that classes be coeducational to ensure nondiscrimination. 45 CFR 86.34 (1975). Given that Congress intended for school districts to be operated in a manner that both prohibits sex discrimination and permits the operation of single-sex schools under conditions that ensure nondiscrimination, we believe that it is consistent with the intent of Congress to permit recipients additional flexibility to offer single-sex classes as long as they are offered under conditions that ensure nondiscrimination. These regulations permit recipients to continue to operate solely coeducational classes and provide the requirements that will ensure that, if recipients choose to provide single-sex classes, they will do so in a nondiscriminatory manner.

Although the Supreme Court has ruled race-segregated public education per se unconstitutional,¹² the Court has

¹⁰ Comments pertaining solely to the legal standards applicable to schools are discussed in subsequent paragraphs in connection with § 106.34(c)(1) through (4), which provides requirements for single-sex schools.

¹¹ 20 U.S.C. 1681(a)(1); § 106.15(d) and former § 106.35 published in 1980. Title IX also includes exemptions for voluntary youth organizations (e.g., Boy Scouts and Girl Scouts), Boys’ and Girls’ Nation or State conferences, and father-son and mother-daughter activities. 20 U.S.C. 1681(a)(6)(B), (7), and (8). The Title IX regulations historically have permitted sex-separate athletic teams if selection is based on competitive skill or the activity involved is a contact sport (§ 106.41(b)) and sex-separate physical education activities involving a contact sport (former § 106.34(c) or § 106.34(a)(1) in these final regulations). The Title IX regulations also historically have permitted sex separation in classes on human sexuality (former § 106.34(e) or § 106.34(a)(3) in these final regulations) and for pregnant students, on a voluntary basis (§ 106.40(b)(1) and (3)).

¹² *Brown v. Board of Education*, 347 U.S. 483 (1954).

not struck down the legality of single-sex public elementary or secondary education¹³ under either Title IX or the Constitution.¹⁴ In analyzing whether sex-separate admissions policies in public postsecondary undergraduate institutions were consistent with the standards of the Equal Protection Clause, the Supreme Court has indicated that to justify a sex-based classification the public entity must demonstrate that it is based on an important governmental objective and that exclusion of students of the other sex is substantially related to achievement of that objective.¹⁵ The Supreme Court has ruled that the “justification must be genuine, not hypothesized or invented *post hoc* in response to litigation” and that “it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females.”¹⁶ Subsequent paragraphs describe how the Title IX regulations also prohibit treatment based on overly broad sex-based generalizations.

With respect to the comments about consistency of these regulations with Equal Protection Clause standards, the Department enforces its Title IX regulations, which prohibit discrimination on the basis of sex in education programs and activities by public and private recipients of Federal assistance. The Equal Protection Clause prohibits sex discrimination by public actors, such as public school districts. If possible, the regulatory provisions of Title IX are informed by constitutional principles, but because the scope of the Title IX statute differs from the scope of

the Equal Protection Clause,¹⁷ these regulations do not regulate or implement constitutional requirements or constitute advice about the U.S. Constitution. Rather, they implement Title IX by establishing the nondiscrimination requirements that the Department will enforce with respect to recipients that choose to provide single-sex education. These regulations do not require that recipients implement single-sex education. Recipients may wish to consult legal counsel regarding how the Equal Protection Clause or other applicable legal authorities prohibiting sex discrimination¹⁸ may affect any particular single-sex school or class they propose to offer.

Changes: None.

3. Procedural Safeguards

Comments: Some commenters recommended additional requirements, such as pre-approval of single-sex classes or schools by the Department, specific data maintenance requirements in the regulations, reporting requirements to the Department, and routine review or monitoring by the Department to ensure nondiscrimination.

Discussion: We believe that these regulations and our current enforcement requirements and procedures are sufficient to ensure compliance. These regulations recognize that recipients that implement single-sex education will have differing objectives addressing differing student populations and that requiring a particular data set in the regulations could be both over-inclusive and under-inclusive. The Department has authority to access recipient records and other sources of information to determine compliance.¹⁹ Recipients

have an ongoing responsibility to maintain compliance with Title IX and these regulations.²⁰ Additionally, the amended regulations require a recipient to periodically conduct self-evaluations. If students and their parents believe there has been a violation of these regulations, they may file a complaint alleging discrimination under the recipient’s grievance procedures.²¹ Students, parents, and third parties may also file complaints with the Department’s Office for Civil Rights (OCR) if they believe discrimination in violation of these regulations has occurred. See, e.g., 34 CFR 100.7(b), (c), and (d), which are incorporated by reference in 34 CFR 106.71. In addition, OCR has authority to conduct periodic compliance reviews of recipients to ensure compliance.²² If OCR finds that a recipient has failed to comply with the Title IX regulations, OCR will negotiate with the recipient to secure compliance by voluntary means, and will take action to enforce²³ if voluntary compliance cannot be achieved.

Changes: None.

4. Effect on Other Issues

Comments: Some commenters expressed concern that additional flexibility for single-sex education might result in a reversion to sex-based stereotypes or roles. Some commenters indicated concern that single-sex education may have negative effects on socialization of children. Another commenter was concerned that recipients might not be aware that the amendments do not affect Federal law that prohibits recipient employers from making job assignments on the basis of sex.

Discussion: With respect to commenters who expressed concern that increased flexibility to provide single-sex education might result in a reversion to sex-based stereotypes or roles, the regulations establish substantive and procedural requirements to ensure nondiscrimination. The regulations make it clear that a recipient’s failure to have a justification, i.e., an important objective and a substantial relationship between the important objective and the sex-based means to further that objective, that is genuine would be sex discrimination. Thus, the regulations also make it clear that a recipient’s use of overly broad sex-based

¹³ There are no Supreme Court opinions on the issue of single-sex public elementary and secondary education. In 1977, the Court, by an evenly divided vote and without an opinion, let stand a decision allowing, under the Equal Protection Clause, a school district that also operated coeducational high schools to operate two comparable single-sex high schools, one for girls and one for boys.

Vorchheimer v. School District of Philadelphia, 532 F.2d 880 (3rd Cir. 1976), affirmed by an equally divided Court, 430 U.S. 703 (1977) (per curiam). More recently, the Court determined in a case involving the Virginia Military Institute that, by denying females the educational opportunities provided to males in a single all-male postsecondary school, the State had denied equal protection to females. *United States v. Virginia*, 518 U.S. 515 (1996).

¹⁴ The Court uses different standards to evaluate classifications based on race, as compared to sex, to determine if they are consistent with the U.S. Constitution. Racial classifications are analyzed under the standard of strict scrutiny, whereas sex-based classifications are analyzed under the standard of intermediate scrutiny. *Grutter v. Bollinger*, 539 U.S. 306, 326–327 (2003); *Virginia*, 518 U.S. at 532–533.

¹⁵ *Virginia*, 518 U.S. at 533, quoting *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982).

¹⁶ *Virginia*, 518 U.S. at 533.

¹⁷ For example, as explained in the Department’s “Guidelines on current title IX requirements related to single-sex classes and schools,” although recipients that operate public schools are subject to constitutional requirements pertaining to their justification for establishing single-sex schools, because the Title IX statute does not cover admissions to nonvocational elementary and secondary schools, the Department is generally precluded from examining the recipient’s justification. 67 FR 31101, 31103 (May 8, 2002).

¹⁸ Recipients that are public entities, such as public school districts, are subject to the sex discrimination prohibitions of the Equal Protection Clause. Public elementary and secondary schools are also subject to the requirements of the Equal Educational Opportunities Act of 1974, 20 U.S.C. 1701–1721 (EEOA), which, among other things, contains prohibitions against the involuntary assignment of students to sex-separate schools on the basis of sex. 20 U.S.C. 1703(c), 1705, and 1720(c). Recipients also are subject to private litigation under Title IX for intentional discrimination on the basis of sex. Public school and private school recipients also may be subject to State or local laws prohibiting single-sex classes or schools.

¹⁹ Section 106.71, incorporating by reference 34 CFR 100.6(c).

²⁰ Section 106.4.

²¹ Section 106.8(b).

²² Section 106.71, incorporating 34 CFR 100.7.

²³ Enforcement options include commencement of proceedings to terminate Federal funds administratively or referral to the Department of Justice for judicial enforcement. 20 U.S.C. 1682.

generalizations in connection with offering single-sex education would be sex discrimination. With respect to commenters who were concerned about the effect of single-sex education on the socialization of students, we reiterate that these regulations do not require single-sex education. Rather, they permit a recipient that has determined that single-sex education may be beneficial for some portion of its student population to offer single-sex education consistent with the requirements in these regulations.

These regulations do not change the prohibitions on sex discrimination in employment, or any other area not specifically addressed in these amendments, in the Title IX regulations. Among other things, the Title IX regulations prohibit recipients from making job assignments on the basis of sex, § 106.51(b)(4), and from classifying jobs as being for males or females, § 106.55(a). Both of these provisions would prohibit schools from assigning teachers to single-sex classes based on their sex.

Changes: None.

5. Important Objective (§ 106.34(b)(1)(i))

Comments: Some commenters objected to the description, in the preamble to the proposed regulations, of the recipient's objective for establishing a single-sex class as being an important "educational" objective because they perceived that the educational objective requirement imposed a lesser standard than the important "governmental" objective requirement.

Discussion: The same Title IX nondiscrimination standards apply to classes, whether public or private recipients operate them. We used two terms, "important educational objective" and "important governmental objective," in recognition of the fact that the regulatory provisions on single-sex classes apply to both private and public recipients. Recipients that are public actors, such as school districts, must have an important governmental objective to use any sex-based classification for the purposes of the Equal Protection Clause. Accordingly, for public recipients the same important governmental objective that would satisfy the requirements of the Equal Protection Clause will satisfy this portion of the regulations for the purposes of Title IX. Private recipients are not subject to the Equal Protection Clause because they are not governmental agencies. Thus, it is not appropriate to describe the objective for private recipients as an important "governmental" objective. However, with respect to single-sex classes, unlike

single-sex schools, the same demanding standards apply under Title IX for both public and private recipients. Thus, the regulations impose a Title IX requirement on private recipients that is analogous to the requirement for public recipients that they base any single-sex class on an "important governmental objective." The analogous requirement for private recipients is that they must base any single-sex class on an "important educational objective." In addition, because some commenters perceived that the reference to an important "educational" objective was a lesser standard than important "governmental" objective, we have added the term "important" to modify the term "objective" in the regulatory language in § 106.34(b)(1)(i).

Changes: The term "important" has been added to modify the term "objective" in § 106.34(b)(1)(i).

6. Diversity Objective (§ 106.34(b)(1)(i)(A))

Comments: Some commenters objected to the diversity of educational options rationale for single-sex classes. Some of these commenters expressed the view that providing diverse educational options was not an important governmental interest for the purposes of the constitutional test for sex-based classifications. Some commenters stated that there is not an important governmental interest in a sex-based educational option as a diverse option without a requirement that the recipient demonstrate that the single-sex option advances educational goals, because otherwise the single-sex nature of the class would always be justified as substantially related to achievement of the objective, which is circular.

Some commenters argued that implementation of diversity of educational options was an impermissible justification for single-sex classes because it might permit classes to be based on sex-based stereotypes or overly broad generalizations about the different talents, capacities, or preferences of either sex.

Discussion: The Department continues to believe that, for the purposes of justifying a single-sex class under Title IX, a recipient can have an important governmental or educational objective evenhandedly to provide the opportunity to choose among diverse educational opportunities, provided that the single-sex nature of the class is substantially related to achieving that important objective. Although the Supreme Court has not decided the specific issue of whether this objective

is an important governmental or educational objective for the purposes of justifying a sex-based classification under either Title IX or the Equal Protection Clause, the Court has suggested it would uphold the evenhanded provision of single-sex public educational opportunities, among a diversity of educational opportunities.²⁴

Given that Title IX encompasses broad nondiscrimination requirements, with narrow statutory exceptions,²⁵ our intent is to establish regulatory exceptions for single-sex classes consistent with the statutory approach. We have clarified that a recipient's evenhanded provision of single-sex classes for the purpose of improving educational achievement of its students, through a recipient's overall established policy to provide diverse educational opportunities consistent with the requirements of these regulations meets the nondiscrimination requirements of Title IX.

In this regard, subject to the requirements of these regulations, some recipients might determine that the diversity of educational opportunities they provide to students would appropriately include providing single-sex opportunities in addition to coeducational opportunities.²⁶ The regulations also require that the single-sex nature of any class offered pursuant to this objective must be substantially related to achievement of the objective.²⁷

The purpose of providing diverse educational opportunities is to engage parents in the education of their children and students in their own education with the goal of improving student outcomes. This will provide parents the opportunity to choose single-sex classes as well as other diverse opportunities because they

²⁴ In considering admissions policies at the postsecondary level, the Court stated that "we do not question the State's prerogative evenhandedly to support diverse educational opportunities." *Virginia*, 518 U.S. at 534, n.7. Responding to the Virginia Military Institute's defense that its male-only admissions policy was established and maintained to further a State policy of diversity, the court recognized that the reality that "single-sex education affords pedagogical benefits to at least some students" was uncontested in the litigation and that "it is not disputed that diversity among public educational institutions can serve the public good." 518 U.S. at 535. See also *Virginia*, 518 U.S. at 564 (Chief Justice Rehnquist, concurring.)

²⁵ *Jackson v. Birmingham Board of Education*, 544 U.S. 167, 175 (2005).

²⁶ For example, a recipient may seek to achieve an educational benefit for its students such as improvement in class work.

²⁷ For example, a recipient may have evidence that some boys and girls show educational improvement in single-sex classes during their adolescent years.

believe that these classes will help their children. In support of this objective and to further bolster the connection between the diversity justification and the legitimate interest in providing diverse educational opportunities, the final regulations clarify that the provision of single-sex classes must be pursuant to a recipient's established policy of offering diverse educational opportunities. This means that the range of choices offered to students and parents is not limited to single-sex schools and classes and coeducational schools and classes. A school or school district may not simply establish a single-sex class and declare that the class by definition promotes diversity and is therefore consistent with these regulations. This ensures that a single-sex class in fact must be related to the important objective of improving educational achievement of its students, through a recipient's overall established policy to provide diverse educational opportunities.

At the school district level examples of diverse educational opportunities that a recipient might offer as part of an overall established policy include charter schools, magnet schools, coeducational schools, single-sex schools, coeducational schools that offer both coeducational and single-sex classes, or other forms of public school opportunities. At the school level, this policy may include a range of elective classes or the opportunity to take classes at other schools.

A recipient's justification, i.e., an important objective and a substantial relationship between the important objective and the sex-based means to further the objective, must be genuine. Thus, recipients are prohibited from determining which classes to offer on a single-sex basis or providing single-sex classes on the basis of overly broad generalizations about the different talents, capacities, or preferences of either sex. However, to the extent that a recipient offers single-sex classes, consistent with the requirements of these regulations, among its diverse educational opportunities, these regulations recognize that a parent or guardian may make an individualized decision to select from those opportunities regarding enrollment of his or her child.

Changes: We have revised § 106.34(b)(1)(i)(A) to clarify that single-sex classes offered under this objective are offered to improve educational achievement of its students, through an overall established policy of providing diverse educational opportunities.

7. Needs Objective (§ 106.34(b)(1)(i)(B))

Comments: Numerous commenters questioned, on a variety of grounds, whether the amendments permitting single-sex classes to address particular, identified educational needs met the requirements of Title IX or met the test for sex-based classifications under the Equal Protection Clause. Numerous commenters expressed concern that the regulations did not require a recipient to articulate the educational benefit that it would be trying to achieve pursuant to the particular, identified educational needs objective or to produce evidence that the class would achieve the benefit described in the objective. Numerous commenters indicated that the proposed regulations did not require a recipient to compile evidence that the single-sex nature of its class is substantially related to the particular, identified educational need or educational benefit the recipient seeks to provide. Several commenters were concerned that recipients would establish single-sex classes based on administrative convenience.

Commenters also objected to the implementation of the particular educational need objective for single-sex classes because it might permit classes to be based on sex-based stereotypes or overly broad generalizations about the different talents, capacities, or preferences of either sex.

Discussion: The Supreme Court has not decided the issue of whether the particular, identified educational needs objective is an important governmental or educational objective for the purposes of justifying a sex-based classification under either Title IX or the Equal Protection Clause. However, the Court has indicated in Equal Protection Clause decisions that an array of "important objectives" can support sex-based classifications, including "to advance full development of the talent and capacities of our Nation's people."²⁸ We believe that a recipient's evenhanded provision of single-sex classes to meet the particular, identified educational needs of its students in order to improve educational outcomes for its students is consistent with the objective found by the Court of "advance[ment of] full development of the talent and capacities of our Nation's people." Thus, we continue to believe that meeting the particular, identified educational need of students is an important governmental or educational objective for recipients for the purposes of Title

²⁸ *Virginia*, 518 U.S. at 533 (internal quotations omitted; citations omitted). See also *Hogan*, 458 U.S. at 728 (finding that in limited circumstances, sex-based classifications can be justified.)

IX, and that, if single-sex classes are evenhandedly implemented pursuant to this objective and consistent with the safeguards in these amended regulations, they will meet the nondiscrimination requirements of Title IX.²⁹

The regulations require a recipient to evenhandedly identify the particular educational needs of students of both sexes. A student's particular, identified educational need is evidenced by limited or deficient educational achievement.³⁰ After the needs of its students have been evenhandedly identified, a recipient then evenhandedly determines how to meet those needs. This determination must be made on a nondiscriminatory basis and should include nondiscriminatory consideration of whether a single-sex class would meet the particular needs identified for its male and female students. Establishment of a single-sex class requires a determination, based on an analysis of evidence, that the single-sex nature of the class would be substantially related to the achievement of a recipient's important objective of meeting the particular, identified educational needs of its students. Administrative convenience cannot justify sex-based classifications under Title IX.³¹ As discussed previously regarding single-sex classes, to provide the opportunity to choose among diverse educational opportunities, under Title IX, a recipient's justification, i.e., an important objective and a substantial relationship between the important objective and the sex-based means used to further that objective, must be genuine and cannot be based on overly broad generalizations about the different talents, capacities, or preferences of either sex.³²

Changes: We have made a nonsubstantive revision to § 106.34(b)(1)(i)(B) to change the term "meeting those needs" to "achieving that objective" in order to reflect the language used by the Supreme Court in *Virginia*. Our previous language was intended to convey this concept.

²⁹ See *Virginia*, 518 U.S. at 534, n.7.

³⁰ For example, limited educational achievement may be shown when students are not taking higher level courses; deficient educational achievement may be shown when students have remedial needs.

³¹ See *Wengler v. Druggists Mutual Insurance Company*, 446 U.S. 142, 151–52 (1980) (citing cases); *Frontiero v. Richardson*, 411 U.S. 677, 689–90 (1973).

³² See *Virginia*, 518 U.S. at 533. See also *Hogan*, 458 U.S. at 726; *Craig v. Boren*, 429 U.S. 190, 198 (1976) (holding that sex cannot be used as a proxy for other more germane bases of classification.)

8. Social Needs (§ 106.34(b)(1)(i)(B))

Comments: Two commenters responded to OCR's invitation for comments on whether there were additional important governmental or educational objectives that could be the basis for single-sex classes that should be incorporated into the final regulations. They proposed to add as an important objective one that addresses social problems affecting students, i.e., social needs. The types of social needs they mentioned included pregnancy, discipline problems, drug or alcohol abuse, delinquency, and criminal activity.

Discussion: We recognize that a recipient's educational mission may legitimately extend beyond strictly academic objectives and outcomes, that their classes may provide social benefits, in addition to academic benefits, to students, and that positive social outcomes for students can have a positive effect on their educational outcomes. Thus, it may be consistent with a recipient's broad educational mission to provide classes and extracurricular activities to meet the types of social needs described by these commenters. We interpret the regulations pertaining to a recipient's important objective to meet particular, identified educational needs as already covering the types of social needs described by these commenters. For example, under the educational needs objective a school district that has high school students who are pregnant or are parents may determine that it is important to help students address a related particular, identified need, and may offer a single-sex class³³ to meet that need consistent with these regulations as long as the single-sex nature of the class is substantially related to the objective and the other requirements of § 106.34(b) are met. For this reason, it is unnecessary to change the regulations pertaining to a recipient's important objective to add a separate social needs objective.

Changes: None.

9. Evenhanded Implementation (§ 106.34(b)(1)(ii))

Comments: In the preamble to the proposed regulations, we invited specific comments on whether OCR needs more information on how to assess if a recipient is implementing its objective in an evenhanded manner. Commenters indicated that they found the evenhanded implementation standard vague and subjective and

found that it did not provide sufficient guidance.

Discussion: Under Title IX, subject to the other requirements of these regulations, evenhanded³⁴ implementation of the recipient's important objective means that a recipient that offers single-sex classes in connection with achieving its important objective must provide equal educational opportunity to students regardless of their sex, with the end result that it must provide substantially equal classes.³⁵

A recipient's important objective may be providing diverse educational opportunities to students pursuant to § 106.34(b)(1)(i)(A). That choice of diverse educational opportunities, including the single-sex or coeducational class opportunity, must be provided evenhandedly to male and female students. In this regard, evenhanded implementation of single-sex opportunities requires an evenhanded assessment of what to offer. This means that the recipient must determine, in a manner that provides equal educational opportunity to male and female students, which classes in which subjects should be offered as a single-sex opportunity and to whom (i.e., does it have an obligation to offer a particular single-sex class to students of both sexes or is it permissible to offer it to students of one sex only; see the discussion in subsequent paragraphs), and then offer those classes evenhandedly to students. A recipient may collect pre-enrollment information from its student and parent populations in an evenhanded manner as part of its determination of the types of classes in which students would enroll. In a school in which male and female students sought to enroll in single-sex classes in the same subjects, the recipient would be required to accommodate them evenhandedly, absent a non-discriminatory reason, which would result in male and female students being provided single-sex classes in the same subjects.

³⁴ In *Virginia*, 518 U.S. at 534, n.7, the Court noted that briefs submitted by *amici* argued that "diversity in educational opportunities is an altogether appropriate governmental pursuit and that single-sex schools can contribute importantly to such diversity," and the Court stated: "We do not question the Commonwealth's prerogative evenhandedly to support diverse educational opportunities." The Court indicated that its decision addressed only the facts presented by the Virginia Military Institute's program, a unique educational opportunity available only at one public institution for students of one sex.

³⁵ *Virginia*, 518 U.S. at 554 (Virginia failed to show "substantial equality in the separate educational opportunities" offered in the two institutions).

If a recipient's important objective is meeting the particular, identified educational needs of students pursuant to § 106.34(b)(1)(i)(B), evenhanded implementation requires the recipient's unbiased assessment, based on evidence, of the educational needs of students of both sexes within a particular setting. After the needs of students have been identified, the recipient then determines how to meet those needs on an evenhanded basis. The regulations permit a recipient to consider in an evenhanded manner whether a single-sex class would meet the particular, identified educational needs for male or female students, or for students of both sexes, and whether the single-sex nature of such a class would be substantially related to the achievement of the objective of meeting the particular, identified need.

For example, if a recipient has evidence that providing a single-sex class in a particular subject would meet the particular, identified educational needs of students of one sex and that the single-sex nature of the class is substantially related to achievement of the objective, (i.e., meeting the needs of students of that sex), subject to the other requirements of these regulations, the recipient may offer that class on a single-sex basis to students of that sex. If the recipient also has evidence that providing a single-sex class in that same subject would meet the particular, identified educational needs of students of the other sex and that the single-sex nature of the class would be substantially related to meeting those needs, then the requirement that the recipient implement its objective evenhandedly would require that, absent a non-discriminatory reason, it provide a single-sex class in that subject to students of the other sex as well. On the other hand, if a recipient has evidence that providing a single-sex class in that subject would not meet the particular, identified needs of students of the other sex or that the single-sex nature of the class would not be substantially related to achievement of that objective, the recipient is not required to provide a single-sex class to students of the other sex, but would be required to offer a substantially equal coeducational class in that subject. However, although a single-sex class would not be required in that subject, evenhanded implementation of the recipient's objective does require the recipient to determine, based on its assessment of educational needs of students, whether a class in another subject should be offered on a single-sex

³³ Compare with § 106.40(b)(1) and (3), regarding pregnant students.

basis to meet the particular, identified needs of students of the excluded sex.

Changes: None.

10. Voluntary Participation (§ 106.34(b)(1)(iii))

Comments: Commenters recommended that we clarify the regulations to require clearly that student participation in single-sex classes must be voluntary. Some commenters were concerned, unless the regulations were clear about this requirement, that in situations in which many students of one sex voluntarily chose a single-sex class that a recipient might, for administrative convenience, assign or attempt to “steer” students of the other sex to a single-sex class, even if they wanted to enroll in a coeducational class. A commenter recommended that the regulations be revised to require that recipients notify parents or guardians of all their options, including the option of enrolling their child in a single-sex class.

Discussion: The proposed regulations in § 106.34(b)(1)(ii) were intended to require recipients to offer single-sex classes only on a completely voluntary basis, by requiring a recipient to provide a coeducational class in the same subject, in conjunction with the requirement in § 106.34(a) that a recipient may not require participation in classes on the basis of sex. We agree with commenters that the proposed regulations may not have been as clear as we intended, and we have revised the regulations to require clearly that participation in single-sex classes must be completely voluntary.

Unless a recipient offers enrollment in a coeducational class in the same subject, enrollment in a single-sex class is not voluntary. In order to ensure that participation in any single-sex class is completely voluntary, if a single-sex class is offered, the recipient is strongly encouraged to notify parents, guardians, and students about their option to enroll in either a single-sex or coeducational class and receive authorization from parents or guardians to enroll their children in a single-sex class.

Changes: We have added new regulatory language in § 106.34(b)(1)(iii), clearly requiring that student participation in a single-sex class must be completely voluntary. For the sake of clarity, we have also deleted the reference in paragraph (b) of § 106.34 to the requirements of paragraph (a) of that section.

11. Coeducational Class (§ 106.34(b)(1)(iv))

Comments: Some commenters expressed concern that if a recipient

provides a single-sex class for students of one sex, the regulations always require a coeducational class, but they do not always require a single-sex class for students of the other sex. Some commenters argued that it would be a denial of equal opportunity to provide a single-sex class or other benefit, service, or opportunity for students of one sex, but not for the other. Some commenters expressed the view that a recipient could legally provide a single-sex class for students of one sex, without a corresponding single-sex class for students of the other sex, only if the purpose was to remediate discrimination.

Discussion: The regulations always require a recipient that offers a single-sex class to offer a substantially equal coeducational class in the same subject to all students, including students excluded from the single-sex class. A recipient must provide single-sex classes in an evenhanded manner when seeking to fulfill its important objectives either to provide a diversity of educational opportunities or to address particular, identified educational needs.

Thus, if a recipient’s procedure includes obtaining information from parents and students about interest in enrolling in potential single-sex classes in order to provide a diversity of educational opportunities, the recipient must include students of both sexes and their parents. Similarly, if a recipient is seeking to address educational needs of students, the recipient must treat male and female students in an evenhanded manner when identifying particular educational needs, determining if a single-sex class would meet those needs, and meeting the educational needs of both sexes. A recipient may not decide simply to offer single-sex classes only to students of one sex, but rather may do so only if it can show (1) students of the other sex are not interested in having the option to voluntarily enroll in a single-sex class if the recipient is seeking to further its important objective of providing diverse educational opportunities, or (2) students of the other sex do not have educational needs that can be addressed by a single-sex class if the recipient is seeking to meet the educational needs of its students. Thus, under these circumstances, the recipient would not be denying students of the other sex a substantially equal class by providing them only a substantially equal coeducational class in the same subject as the single-sex class.

Additionally, OCR will examine recipients that provide significantly more single-sex opportunities to students of one sex than to students of

the other sex to determine if this is the result of sex discrimination.

Changes: We have added to § 106.34(b)(1)(iv) the words “to all other students, including students of the excluded sex” to clarify the scope of this requirement.

12. Private Schools (§ 106.34(b)(1)(iv))

Comments: Two commenters sought a revision to the regulations to provide an exemption, under certain circumstances, for coeducational recipient private schools from the requirement that they provide a substantially equal coeducational class if they provided a single-sex class to students of both sexes.

Discussion: Because all recipients are subject to Title IX and because a substantially equal coeducational class option for students is essential to prevent involuntary assignment to a single-sex class on the basis of sex, Title IX does not permit a categorical exception to this requirement. However, in some cases, parents of all students in a particular grade in a private school may provide their completely voluntary consent to the private school to offer a single-sex class with no coeducational class. If the parents of the affected students in a class in a private school enroll their children, or the students themselves enroll, in a single-sex class on a completely voluntary basis, and there are no students who would choose to enroll in a coeducational class in that subject, these regulations do not require the school to provide a coeducational class in that subject.

Changes: None.

13. Substantially Equal Classes (§ 106.34(b)(1)(iv) and (b)(2))

Comments: Some commenters stated that the regulations needed to state specifically that recipients are required to provide students of both sexes equal educational opportunities. Some commenters objected to the term “substantially equal” in the proposed regulations because it might be interpreted as a lower standard than a requirement of equal educational opportunity. Some commenters stated that the term “substantially equal” was too vague and that recipients would not understand what was required for compliance.

Discussion: Section 106.34(b)(1)(ii) of the proposed regulations provided that a recipient that offered a single-sex class to students of one sex was required to offer a substantially equal coeducational class in the same subject, and § 106.34(b)(2) provided that a recipient that offered a single-sex class to students of one sex also may be required

to offer a substantially equal single-sex class for the excluded sex. Section 106.34(b)(3) of the proposed regulations described factors that the Department would consider in comparing classes.

We disagree with the comments that the substantially equal standard for comparing and measuring classes is a lower standard or is too vague. The substantially equal standard in these regulations is informed by, and consistent with, the nondiscrimination requirements of the Equal Protection Clause. The Supreme Court compared two single-sex postsecondary institutions and used the term “substantial equality” in measuring whether the standards of the Equal Protection Clause were met.³⁶ This standard ensures that students who are excluded from a single-sex class will be provided a class with tangible and intangible features substantially equal to the corresponding features in the single-sex class. We recognize, however, that in comparing classes, a recipient may provide students with a substantially equal class even if the classes are not identical in every respect.

Changes: None.

14. Factors (§ 106.34(b)(3))

Comments: Some commenters suggested that the proposed list of factors to be used in determining whether a class meets the requirements of § 106.34(b)(1)(iv) or (b)(2) should include intangible factors because the Supreme Court considered intangible features, as well as tangible features, in comparing single-sex educational institutions to determine if Equal Protection standards had been met. Some commenters recommended that additional factors be added to the list including educational methods, single-sex opportunities, factors that would capture sex-stereotyping, and motive for creating single-sex classes.

Discussion: Section 106.34(b)(3) of the proposed regulations listed several factors that the Department proposed to consider in comparing classes and determining if a class provided to students of the excluded sex is substantially equal to the single-sex class. The list of factors, which was not intended to be exhaustive, included—the policies and criteria of admission; the educational benefits provided, including the quality, range, and content of curriculum and other services, and the quality and availability of books, instructional materials, and technology; the qualifications of faculty and staff; and the quality, accessibility,

and availability of facilities and resources. Under the substantially equal standard, classes are not required to be identical, and there may be differences in factors that may be justified for legitimate, nondiscriminatory reasons or because the differences are not significant enough, alone or aggregated together, to constitute sex discrimination under these regulations. Alternatively, a substantial difference (or differences) of an unjustified nature in the benefits, treatment, services, or opportunities that constitute one factor in the respective classes, if significant enough, in and of itself, to cause the classes not to be substantially equal, is sex discrimination under these regulations. Also, when factors for determining substantial equality of the respective classes are considered in the aggregate, if there is a pattern of differences of an unjustified nature that favors one class with regard to the benefits, treatment, services, or opportunities provided to students to the extent that the pattern of differences is significant enough to cause the classes not to be substantially equal, this pattern constitutes sex discrimination under these regulations. Because, as described in a subsequent section on schools, commenters who objected to a provision in the proposed regulations regarding the aggregate approach for assessing the substantial equality in schools misunderstood it, we have clarified the regulatory language for both classes and schools by adding the term “either individually or in the aggregate as appropriate.”

The Supreme Court considered intangible and tangible features in comparing postsecondary institutions for the purposes of the Equal Protection Clause.³⁷ The Department will consider all relevant factors in determining whether classes meet the requirements of § 106.34(b)(1)(iv) or (b)(2) and agrees that, for the purposes of assessing compliance with Title IX, intangible features should be considered whenever relevant.

Although we have not listed other factors suggested by commenters, the Department will consider all relevant factors in any case investigation. The list of factors is not exhaustive. We note that some aspects of single-sex education that commenters suggested be included in the list of factors will be considered in connection with compliance with other parts of these regulations.

Although we did not receive comments from the public, we are adding geographic accessibility as a

factor pertaining to substantial equality of classes. In most cases a recipient’s substantially equal classes for a particular school will be in the same school building, and geographic accessibility will not be relevant to substantial equality. There are, however, situations in which geographic accessibility will be relevant for classes. For example, if a recipient operates a consortium of schools whereby students at three neighboring high schools take some classes at the school to which they are assigned on the basis of their residence and are permitted to take certain other classes, which are not offered at their assigned school, at one of the neighboring schools, location, *i.e.*, geographic accessibility, of the classes in the same subject, would be relevant to the issue of substantial equality. The list of factors described in the regulations is not exhaustive. However, because the proposed regulations listed geographic accessibility as a factor for schools, but not for classes, it is important to ensure that recipients have notice that geographic accessibility is also a factor for classes.

Changes: We have revised the regulatory language to clarify the aggregate approach in assessing substantial equality in classes by adding the clarifying term, “either individually or in the aggregate as appropriate.” Section 106.34(b)(3) of the final regulations provides in relevant part: “Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether classes or extracurricular activities are substantially equal include. * * *”

We have revised the list of factors in § 106.34(b)(3) to be considered in comparing classes to include “intangible features” and “reputation of faculty” as an example of an intangible feature. We have also revised the list of factors to include “geographic accessibility.”

15. Periodic Evaluations for Classes (§ 106.34(b)(4))

Comments: In the preamble to the proposed regulations we invited specific comments as to how often a recipient should be required to conduct periodic evaluations. Comments ranged from yearly, biennially, or variable depending on the single-sex classes offered. Of the four comments received on this issue, two commenters recommended biennial evaluation. In addition, commenters were concerned that the regulations did not require the evaluation to ensure against reliance on overly broad generalizations about the different preferences of either sex consistent with Equal Protection Clause requirements.

³⁶ *Virginia*, 518 U.S. at 554 (citing *Sweatt v. Painter*, 339 U.S. 629, 633 (1950)).

³⁷ *Virginia*, 518 U.S. at 554, 557.

Discussion: Recipients have an ongoing responsibility to comply with the nondiscrimination requirements of the Title IX regulations. These regulations require recipients to conduct periodic evaluations to ensure that their single-sex classes are based on justifications, *i.e.*, an important objective and a substantial relationship between the important objective and the sex-based means used to further that objective, that are genuine and that do not rely on overly broad generalizations about either sex. Part of the periodic evaluation requirement involves an assessment of the degree to which the recipient's important objective has been achieved and an assessment of whether the single-sex nature of the class is substantially related to achievement of the recipient's objective. This procedural provision requires a recipient to evaluate its own classes so that it can take appropriate corrective action if it identifies compliance problems. We have determined that recipients must conduct evaluations at least every two years in order to meet this procedural obligation. Recipients may evaluate single-sex classes more often because the substantive obligation to comply is ongoing or because its own findings have identified issues that may require a more frequent evaluation. In addition, if the Department investigates a recipient and identifies compliance problems, we may require the recipient to conduct more frequent evaluations. Because § 106.71 of the Title IX regulations, which incorporates the requirements of 34 CFR 100.6(b) and (c), requires generally that recipients keep records to show that they are in compliance with civil rights requirements and requires them to provide the Department access to information relevant to compliance determinations, recipients should have appropriate records to show compliance with the periodic evaluation requirement.

We agree that under Title IX, single-sex classes cannot be based on overly broad generalizations about the talents, capacities, or preferences of either sex. As discussed previously, recipients must make fact-specific determinations.

Changes: We have revised § 106.34(b)(4)(i) to add "or preferences" and to delete "male and female students" and substitute in its place "either sex." We have also added the term "important" to clarify that the evaluation must ensure that the single-sex class or extracurricular activity is substantially related to the recipient's important objective. In addition we have revised § 106.34(b)(4) to provide that a recipient must conduct evaluations of

its classes at least every two years (§ 106.34(b)(4)(ii)) in order to comply with the procedural requirement for periodic evaluations (§ 106.34(b)(4)(i)).

16. Extracurricular Activities (§ 106.34(b)(1) Through (5))

Comments: None.

Discussion: Section 106.34(b)(1) through (5) applies to extracurricular activities, as well as classes.

Changes: We have added the term "extracurricular activities" throughout § 106.34(b)(1) through (5) of the regulations to clarify that these provisions apply both to classes and extracurricular activities.

17. Athletics

Comments: Some commenters objected to the coverage of extracurricular activities in the proposed regulations because they perceived that the amendments would be applied to athletics, which would result in undermining the Department's longstanding Title IX regulations requiring equal athletic opportunity for students of both sexes and would permit sex discrimination in athletics.

Discussion: The proposed regulations defined "classes," for the purposes of proposed § 106.34(b), to include "all education activities provided for students by a school or in a school" (proposed § 106.34(b)(5)), and this definition was intended to cover extracurricular activities, as well as classes. It was not, however, intended to affect or change the longstanding Title IX requirements applicable to athletics, including interscholastic, club, or intramural athletics.³⁸

Changes: Because some commenters interpreted the proposed definition as extending the requirements in § 106.34(b)(1) through (4) to athletics, we have revised § 106.34(b)(5) in the final regulations. We have determined that rather than define "class" and "extracurricular activity," it is clearer and more useful to include a provision on the scope of coverage of paragraph (b)(1) through (4) of § 106.34. We have revised § 106.34(b)(5) to provide that paragraph (b)(1) through (4) applies to classes and extracurricular activities provided by a recipient covered by § 106.34(b)(1) either directly or through another entity and to clarify that paragraph (b)(1) through (4) does not apply to interscholastic, club, or intramural athletics, which are subject to the provisions of §§ 106.41 and 106.37(c).

³⁸ Sections 106.41 and 106.37(c).

18. Physical Education Classes

Comments: Commenters objected to these amendments because they perceived that they would weaken the current Title IX regulatory standards pertaining to physical education classes in a manner that would permit sex discrimination. Commenters indicated that separation in physical activity should be based on differences in skill, size, or strength, rather than on the sex of the student. Some female commenters described how playing sports with boys had enhanced their sports skills.

Discussion: The longstanding regulatory provision that permits recipients to separate students in physical education classes on the basis of ability is not affected by these amendments.³⁹ Similarly, the regulatory exception that permits recipients to separate students by sex within physical education classes or activities during participation in contact sports⁴⁰ is not affected by these amendments. The amended regulations provide a recipient the additional flexibility to offer single-sex classes, including physical education classes, if all the requirements of § 106.34(b)(1) through (5) are met. These requirements, which are discussed in previous paragraphs, require a recipient that provides a single-sex class, including a physical education class, to provide substantially equal classes to students of both sexes. These requirements prohibit discrimination on the basis of sex, including physical education classes, which means that single-sex classes must be based on a justification, *i.e.*, an important objective and a substantial relationship between the important objective and the sex-based means used to further the objective, that is genuine and not based on overly broad sex-based generalizations about either sex.

Changes: None.

19. Legal Standards for Single-Sex Schools (§ 106.34(c)(1))

Comments: In addition to the general concerns about legal standards discussed in previous paragraphs, some commenters had specific concerns about the legal standards applicable to the proposed regulations regarding single-sex schools. Some commenters objected to permitting any "new" single-sex schools (*i.e.*, after the effective date of Title IX), citing the reasoning in a Federal district court decision, as contrary to congressional intent.

³⁹ Compare former § 106.34(b) with § 106.34(a)(2) of these final regulations.

⁴⁰ Compare former § 106.34(c) with § 106.34(a)(1) of these final regulations.

A commenter objected to the proposed regulations on schools on the basis that sex-segregated schools violate the Equal Educational Opportunity Act of 1974 (EEOA),⁴¹ citing a Federal appellate court decision⁴² holding that a sex-segregated assignment plan violated the EEOA.

Some commenters objected to the proposed provisions on schools because public recipients are subject to both Title IX and the Equal Protection Clause, but the regulatory requirements did not require constitutionally sufficient justifications for sex-based classifications.

Discussion: The Title IX regulations have permitted single-sex nonvocational schools since the regulations were issued in 1975. Thus, it is not a change that these regulations continue to permit single-sex schools. Both the plain language of the statute and legislative intent support this interpretation. Section 901 of Title IX covers admissions only to certain types of educational entities named in the statute.⁴³ Because nonvocational elementary and secondary schools are not among those listed, admission to these schools is not covered. The legislative history of Title IX shows that Congress was aware of the existence of public single-sex elementary and secondary schools and that Congress understood that, by exempting admissions to these schools from the general prohibitions, single-sex admissions policies could continue.⁴⁴ Our longstanding and current interpretation that the Department is precluded from examining a recipient's justifications for offering single-sex schools is based on the plain language of Title IX and its legislative history. As the commenter pointed out, involuntary assignment to single-sex public schools violates the EEOA.

Changes: We have made a nonsubstantive revision to § 106.34(c) to add "*General Standard*" to the title of this provision to make it consistent with § 106.34(b). We also revised the statement of the general standard for single-sex schools to align it more closely to the statute. Section 106.34(c)(1) requires, subject to an exception for certain charter schools, discussed in a later paragraph, a

recipient that operates a public, nonvocational single-sex elementary or secondary school to provide a substantially equal single-sex school or coeducational school to students of the excluded sex.

20. Schools for Excluded Sex (§ 106.34(c)(1))

Comments: Some commenters objected to amending the regulations to permit a recipient to offer a single-sex school to students of one sex and to offer either a coeducational or a single-sex school to students of the excluded sex, rather than requiring that excluded students also be offered a single-sex school. Commenters objected to this change in our previous interpretation of the Title IX statute. They stated that to provide students of one sex the opportunity to attend a single-sex school, but not to provide students of the other sex an equal opportunity to attend a single-sex school, is discriminatory treatment on the basis of sex in violation of the requirements of Title IX and the Equal Protection Clause.

Discussion: The Title IX statute does not cover admissions to nonvocational elementary and secondary schools.⁴⁵ We have determined that, by excluding these schools from the admissions coverage, Congress was not only permitting recipients to operate public schools with single-sex admissions policies without sanction under Title IX,⁴⁶ but it also was permitting recipients to operate single-sex schools without requiring them also to provide a corresponding single-sex school for students of the excluded sex, again without sanction under Title IX. We no longer interpret Title IX to require that if a recipient offers a single-sex school for students of one sex, it must offer students of the other sex a corresponding single-sex school. The regulations now require, in § 106.34(c)(1), that the recipient must provide a substantially equal school to students of both sexes,⁴⁷ but the school may be a coeducational or single-sex school.

Changes: None.

21. Substantially Equal Schools (§ 106.34(c)(1))

Comments: Many commenters had the same concerns regarding the regulatory language in § 106.34(c)(1) used to describe the standard for comparing and measuring schools as they had for classes. As discussed in previous paragraphs regarding requirements for classes, commenters were concerned that the term "substantially equal," as used in the proposed regulations for comparing benefits provided to students, described a lower standard than the equal educational opportunity standard required by Title IX and the Equal Protection Clause.

Discussion: Title IX does not cover admissions to nonvocational elementary and secondary schools. Title IX does require that a recipient that operates public schools must not provide a single-sex school to students of one sex and discriminate against students of the excluded sex with respect to the educational opportunities the recipient provides them in another school, regardless of whether the other school is coeducational or single-sex. Under the original Title IX regulations, if an LEA chose to provide a single-sex school, the standard for comparison of benefits and treatment provided to students in schools was described as "comparable." Under the final regulations the standard of comparison for schools is described as "substantially equal."

As discussed under the paragraphs on single-sex classes, we disagree with the comments that the substantially equal standard is a lower standard for comparing schools than is required under Title IX or the Equal Protection Clause. This standard ensures that students who are excluded from a single-sex school will be provided a school with tangible and intangible features substantially equal to the corresponding features in the single-sex school. We recognize, however, that in comparing two schools, a recipient may provide students with a substantially equal school even if the schools are not identical in every respect.

Changes: None.

22. School Within a School (§ 106.34(c)(1) and (c)(4))

Comments: None.

Discussion: Section 106.34(c)(1) of the proposed regulations referred to a school or "education unit." We explained in the preamble to the proposed regulations that "education unit" meant a "school within a school," which was a school located within another school. We believe that it is important for recipients to have this information included in the regulations.

⁴¹ 20 U.S.C. 1701 through 1721.

⁴² *United States v. Hinds County Sch. Bd.*, 560 F.2d 619 (5th Cir. 1977).

⁴³ 20 U.S.C. 1681(a)(1). The nondiscrimination provisions of section 901 of Title IX apply to admissions to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education.

⁴⁴ 118 Cong. Rec. 5804, 5807, 5812–13 (1972).

⁴⁵ 20 U.S.C. 1681(a)(1) ("in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of higher education").

⁴⁶ 118 Cong. Rec. 5804, 5807, 5812–13 (1972).

⁴⁷ Subject to the exception for certain public charter schools in § 106.34(c)(2).

Changes: We have deleted the term “education unit” from § 106.34(c)(1) and added a new paragraph (4) that defines “school” to include “school within a school” and explains what we mean by a “school within a school.”

23. Limited Charter Schools Exception (§ 106.34(c)(2))

Comments: Some commenters objected to the provision in the proposed regulations that would exempt nonvocational public single-sex charter schools that are single-school LEAs from the requirements that apply to other public schools. Many of these commenters stated that public charter schools, like other public schools that receive Federal funds, are subject to the requirements of Title IX and the U.S. Constitution. They believed that all single-sex public schools should be required to demonstrate an exceedingly persuasive justification for limiting admission to one sex. One commenter noted that recipients authorizing the operation of single-sex charter schools, as opposed to the individual schools themselves, are likewise subject to the constitutional and Title IX requirements. One commenter stated that the Department’s rationale that it would be unduly burdensome to require single-sex charter schools that are single-school LEAs to create a single-sex charter school for students of the excluded sex was not a valid reason to excuse those schools from the constitutional requirements of the Equal Protection Clause.

Discussion: The constitutional standard referenced in the comments is not a Title IX requirement. The Title IX statute does not cover admissions to nonvocational elementary and secondary schools.⁴⁸ Given Congress’ intent, OCR does not have the authority to require recipients to provide a justification for single-sex nonvocational elementary or secondary schools. Accordingly, the regulatory amendment regarding single-sex schools is consistent with Title IX. Of course, public schools are subject to constitutional requirements, including the Equal Protection Clause, which requires that a recipient demonstrate that its sex-based classification serves an important governmental objective and that the sex-based classification is substantially related to the achievement of that objective.

With regard to public charter schools, it would be impracticable to require either chartering authorities, which are merely approving applications for—but are not operating—single-sex charter

schools, or the groups of community leaders, developers, or parents who seek to establish a single-sex charter school that will be a single-school LEA under State law, to establish and operate an additional substantially equal school to meet the needs of the other sex. Because it would be unlikely that those groups would be able to create two substantially equal charter schools, absent the exception in § 106.34(c)(2) those groups would be unable to establish a single-sex charter school. Title IX does not require such a rigid approach. On the other hand, any LEA that operates multiple schools, including charter schools, must comply with § 106.34(c)(1). The notion of excepting certain types of schools from the Title IX requirements is not new. Pursuant to § 106.35 of the former regulations, private schools that received Federal assistance were permitted to operate single-sex schools without providing the excluded sex with a comparable school. The requirements of § 106.34(c)(1) of these regulations do not apply to recipients that operate private, nonvocational elementary or secondary schools.

Changes: We have made a nonsubstantive revision to describe more precisely the single-school LEAs that are entitled to this exception.

24. Chartering Authorities

Comments: A commenter noted that a school board that serves as a chartering authority of public charter schools should not be found to have violated Title IX if it approves a charter school application for a single-sex charter school, but does not provide the resources to establish a single-sex school for students of the excluded sex. Additionally, the commenter suggested that the final regulations include a statement clarifying that Title IX does not obligate a chartering authority that is an LEA to approve an application for a single-sex charter school.

Discussion: Title IX would require all chartering authorities that receive Federal financial assistance to review, and approve or reject, applications in a nondiscriminatory manner. Nothing in Title IX or these regulations requires that applications for single-sex charter schools be approved. Title IX simply requires that the same standards be applied to a proposed single-sex charter school, regardless of which sex the charter school proposes to serve. An LEA will be considered to be “operating” a charter school that is part of the LEA. Thus, if a recipient LEA chartering authority approves an application for a single-sex charter school that will be part of the LEA, the

LEA must comply with the requirements of § 106.34(c)(1) and must provide students of the excluded sex with a substantially equal single-sex school or coeducational school. As stated in the discussion of § 106.34(c)(2), however, if a chartering authority’s role is merely approving an application for a single-sex charter school that is a single-school LEA, the chartering authority will not be required to provide the students of the excluded sex with a substantially equal school. State charter school laws govern whether a charter school will be a public school within the LEA or whether it will be a single-school LEA.

Changes: None.

25. Factors (Proposed § 106.34(c)(3)(i))

Comments: Several commenters stated that the proposed list of factors used to compare schools must include intangible factors.

Discussion: Readers should refer to the prior discussion of this issue under the classes section of this analysis.

Changes: We have removed paragraph designation (i) from § 106.34(c)(3). With respect to the list of factors (in proposed § 106.34(c)(3)(i)), we have revised the regulations to include “intangible features” and to list “reputation of faculty” as an example of an intangible feature on the non-exhaustive list of factors. Further changes with respect to the consideration of these factors (proposed § 106.34(c)(3)(ii)) are discussed in the next section.

26. Aggregate Approach (Proposed § 106.34(c)(3)(ii))

Comments: Some commenters objected to the proposed “aggregate” approach⁴⁹ for comparing the benefits and treatment provided to students in single-sex schools and the benefits and treatment provided to students excluded from those schools. Commenters were concerned that this approach would permit inequities between schools that would constitute discrimination on the basis of sex against the students in one of the schools in violation of Title IX and the U.S. Constitution. A commenter stated that the proposed aggregate approach would condone inequities between a single-sex and coeducational school as long as the inequities balanced in some unspecified way.

Discussion: Commenters misunderstood the aggregate approach

⁴⁹The proposed amendments in § 106.34(c)(3)(i) provided a non-exhaustive list of factors that the Department would consider in determining whether schools were substantially equal, and in § 106.34(c)(3)(ii) provided that “this determination involves an assessment in the aggregate of the educational benefits provided by each school as a whole.”

⁴⁸20 U.S.C. 1681(a)(1).

in the proposed regulations to permit inequities that would be prohibited by Title IX. This perception of the proposed provision was inconsistent with the intent of the proposed provision and of the substantial equality standard.

We have revised the regulations to provide more clarity on the aggregate approach. The same regulatory language added in these final regulations to clarify the aggregate approach for assessing substantial equality of classes, § 106.34(b)(3), has also been added to the regulatory language on assessing substantial equality of schools, and § 106.34(c)(ii) of the proposed regulations has been deleted in the final regulations. For more information about assessments of substantial equality, readers should refer to the prior discussion in this analysis of how compliance with the requirement of substantial equality will be assessed for classes.

Changes: Section 106.34(c)(3) has been revised to clarify the aggregate approach in assessing substantial equality of schools, by adding the term "either individually or in the aggregate as appropriate" so that the regulatory language now provides in relevant part: "Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether schools are substantially equal include * * *." Section 106.34(c)(3)(ii) of the proposed regulations has been deleted and the section has been renumbered to reflect this change.

27. Periodic Evaluations

Comments: Some commenters stated that the regulations should require recipients to periodically evaluate single-sex schools.

Discussion: As discussed in previous paragraphs, we interpret the Title IX admissions exception for nonvocational elementary and secondary schools to prevent the Department from regulating the justifications for single-sex schools. For that reason we have not included a requirement for periodic evaluations, similar to the requirement for single-sex classes. Regardless of the lack of this additional procedural requirement for schools, recipients continue to be subject to the substantive requirements of Title IX and our Title IX regulations, and they continue to be subject to investigation if there is a complaint or compliance review.⁵⁰ Recipients that voluntarily monitor their single-sex and

coeducational schools for compliance with these regulations are in the best position to achieve compliance.

Changes: None.

Executive Order 12250

Pursuant to Executive Order 12250, which provides for the Attorney General to review regulations implementing Title IX, the Attorney General has reviewed and approved these final regulations for publication.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The benefit of the final regulations is the expanded flexibility to provide single-sex schools, classes, or extracurricular activities, if they are desired. The final regulations do not require recipients to provide single-sex schools, classes, or extracurricular activities and thus do not require recipients to incur any additional costs. If recipients choose to continue to operate schools, classes, or extracurricular activities under their current policies or practices and choose not to provide single-sex education, no added costs will be incurred. Those recipients that choose to provide single-sex schools, classes, or extracurricular activities may incur additional expenses. The costs associated with providing single-sex education under the final regulations will range from minimal to substantial, depending on what options recipients choose to provide.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations

would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

These final regulations also will be available at OCR's Web site on the Internet at: <http://www.ed.gov/ocr>.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 106

Education, Sex discrimination.

Dated: October 20, 2006.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends part 106 of title 34 of the Code of Federal Regulations as follows:

PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 1. The authority citation for part 106 continues to read as follows:

Authority: 20 U.S.C. 1681 *et seq.*, unless otherwise noted.

■ 2. Section 106.34 is revised to read as follows:

§ 106.34 Access to classes and schools.

(a) *General standard.* Except as provided for in this section or otherwise in this part, a recipient shall not provide or otherwise carry out any of its

⁵⁰ 34 CFR 100.6(c); 34 CFR 100.7(a)(b). As discussed in previous paragraphs, public schools and school districts are also subject to the Equal Protection Clause.

education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on the basis of sex.

(1) *Contact sports in physical education classes.* This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(2) *Ability grouping in physical education classes.* This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) *Human sexuality classes.* Classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality may be conducted in separate sessions for boys and girls.

(4) *Choruses.* Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

(b) *Classes and extracurricular activities.* (1) *General standard.* Subject to the requirements in this paragraph, a recipient that operates a nonvocational coeducational elementary or secondary school may provide nonvocational single-sex classes or extracurricular activities, if—

(i) Each single-sex class or extracurricular activity is based on the recipient's important objective—

(A) To improve educational achievement of its students, through a recipient's overall established policy to provide diverse educational opportunities, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective; or

(B) To meet the particular, identified educational needs of its students, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective;

(ii) The recipient implements its objective in an evenhanded manner;

(iii) Student enrollment in a single-sex class or extracurricular activity is completely voluntary; and

(iv) The recipient provides to all other students, including students of the

excluded sex, a substantially equal coeducational class or extracurricular activity in the same subject or activity.

(2) *Single-sex class or extracurricular activity for the excluded sex.* A recipient that provides a single-sex class or extracurricular activity, in order to comply with paragraph (b)(1)(ii) of this section, may be required to provide a substantially equal single-sex class or extracurricular activity for students of the excluded sex.

(3) *Substantially equal factors.* Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether classes or extracurricular activities are substantially equal include, but are not limited to, the following: the policies and criteria of admission, the educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology, the qualifications of faculty and staff, geographic accessibility, the quality, accessibility, and availability of facilities and resources provided to the class, and intangible features, such as reputation of faculty.

(4) *Periodic evaluations.* (i) The recipient must conduct periodic evaluations to ensure that single-sex classes or extracurricular activities are based upon genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex and that any single-sex classes or extracurricular activities are substantially related to the achievement of the important objective for the classes or extracurricular activities.

(ii) Evaluations for the purposes of paragraph (b)(4)(i) of this section must be conducted at least every two years.

(5) *Scope of coverage.* The provisions of paragraph (b)(1) through (4) of this section apply to classes and extracurricular activities provided by a recipient directly or through another entity, but the provisions of paragraph (b)(1) through (4) of this section do not apply to interscholastic, club, or intramural athletics, which are subject to the provisions of §§ 106.41 and 106.37(c) of this part.

(c) *Schools.* (1) *General Standard.* Except as provided in paragraph (c)(2) of this section, a recipient that operates a public nonvocational elementary or secondary school that excludes from admission any students, on the basis of

sex, must provide students of the excluded sex a substantially equal single-sex school or coeducational school.

(2) *Exception.* A nonvocational public charter school that is a single-school local educational agency under State law may be operated as a single-sex charter school without regard to the requirements in paragraph (c)(1) of this section.

(3) *Substantially equal factors.* Factors the Department will consider, either individually or in the aggregate as appropriate, in determining whether schools are substantially equal include, but are not limited to, the following: The policies and criteria of admission, the educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology, the quality and range of extracurricular offerings, the qualifications of faculty and staff, geographic accessibility, the quality, accessibility, and availability of facilities and resources, and intangible features, such as reputation of faculty.

(4) *Definition.* For the purposes of paragraph (c)(1) through (3) of this section, the term "school" includes a "school within a school," which means an administratively separate school located within another school.

(Authority: 20 U.S.C. 1681, 1682)

■ 3. Section 106.35 is revised to read as follows:

§ 106.35 Access to institutions of vocational education.

A recipient shall not, on the basis of sex, exclude any person from admission to any institution of vocational education operated by that recipient.

(Authority: 20 U.S.C. 1681, 1682)

■ 4. Section 106.43 is added to subpart D to read as follows:

§ 106.43 Standards for measuring skill or progress in physical education classes.

If use of a single standard of measuring skill or progress in physical education classes has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have that effect.

(Authority: 20 U.S.C. 1681, 1682)

[FR Doc. E6-17858 Filed 10-24-06; 8:45 am]

BILLING CODE 4000-01-P

Request 5

Tennessee School for the Blind	
Interscholastic Athletics	
Policy Number: 4.3010	Monitoring Review: Annually
Revised Date: August 2, 2021	Signature:
Approved by: Dr. Penny Schwinn, Commissioner	

I. General

- (1) All Tennessee School for the Blind students shall have equal athletic opportunities. Students shall not, on the basis of sex, race, color, national origin, disability, or any other category protected by state or federal law, be excluded from participation in, be denied the benefits of, be treated differently, or otherwise discriminated against in any Tennessee School for the Blind athletic program. Equal athletic opportunities shall be provided for members of both sexes.¹ Student athletes shall only be allowed to participate in athletic activities or events that align with the student’s sex indicated on his/her original birth certificate.² The director of schools or designee shall require the parent/guardian to provide the student’s original birth certificate prior to participation in any interscholastic athletics. If the original birth certificate is not available or does not indicate the student’s sex at the time of birth, the parent/guardian shall provide medical documentation showing evidence of the student’s sex at birth.
- (2) Interscholastic athletics shall be administered as a part of the regular school program and shall be the principal’s responsibility. Principals shall ensure that school regulations regarding participation in a sport are reasonable. Athletic schedules shall be filed in each school principal’s office. The principal or designee shall accompany an athletic team on trips. Transportation of teams to athletic games is approved by the director of schools.
- (3) The bylaws of the Tennessee Secondary School Athletic Association or the North Central Association of Schools for the Blind shall regulate the operation and control of athletics at Tennessee School for the Blind.³ The director of schools shall develop a code of conduct for all coaches to follow in order to ensure the health and safety of athletes.⁴

II. Insurance and Physical Examinations

- (1) In the event that the Tennessee School for the Blind’s insurance provider does not extend coverage to a student athlete, the student athlete must provide proof of independently secured catastrophic coverage and liability coverage, with the Tennessee School for the Blind as a named insured, of not

¹ 34 C.F.R. § 106.41; USCA § 1681, et. seq.
² Public Acts of 2021, Chapter No. 40
³ TRR/MS 0520-01-02-.08(1)
⁴ Public Acts of 2021, Chapter No. 272

less than the limits set forth in state law.⁵ It shall be the responsibility of the parent/guardian to provide health and hospitalization insurance for all students participating in interscholastic athletics.

- (2) Every student shall complete an annual physical examination prior to participation in interscholastic athletics.⁶ The student's parent or guardian shall be responsible for covering the cost of the examination, and these records shall be on file in the director of school's office.

III. Scheduling Conflicts

- (1) Students shall not be dismissed from school for the purpose of attending the practice of any interscholastic sport during the school day without written permission from the director of schools.⁷ This does not prevent the inclusion of regular physical training lessons in the daily school program.
- (2) Students shall not be required to attend a school athletic event, or event related to participation on a school athletic team, if the event is on an official school holiday, observed day of worship, or religious holiday. The student's parent or legal guardian shall notify the coach in writing three (3) full school days prior to the event if a student will not participate in a school athletic event due to one of the aforementioned reasons.⁸
- (3) All coaches who oversee or participate in outdoor training, practice, or competition shall annually complete a heat illness prevention course approved by the Tennessee Department of Health as well as receive training on activity modifications based on environmental conditions.

IV. Prohibition Against Hazing

- (1) Coaches, employees, and volunteers shall not encourage, permit, condone, or tolerate hazing activities and must report all observed or reported instances to the director of schools within twenty-four (24) hours of observation or report.⁹

⁵ T.C.A. § 29-20-403

⁶ 20 USCA § 1232h(c); TRR/MS 0520-01-13-.01(1)(a)

⁷ T.C.A. § 49-6-1002(a)

⁸ T.C.A. § 49-6-1002(c)

⁹ T.C.A. § 49-2-120

Tennessee Schools for the Deaf	
Interscholastic Athletics	
Policy Number: 4.3010	Monitoring Review: Annually
Revised Date: August 10, 2021	Signature:
Approved by: Dr. Penny Schwinn, Commissioner	

I. General

- (1) All Tennessee Schools for the Deaf students shall have equal athletic opportunities. Students shall not, on the basis of sex, race, color, national origin, disability, or any other category protected by state or federal law, be excluded from participation in, be denied the benefits of, be treated differently, or otherwise discriminated against in any Tennessee Schools for the Deaf athletic program. Equal athletic opportunities shall be provided for members of both sexes.¹ Student athletes shall only be allowed to participate in athletic activities or events that align with the student’s sex indicated on his/her original birth certificate.² The director of schools or designee shall require the parent/guardian to provide the student’s original birth certificate prior to participation in any interscholastic athletics. If the original birth certificate is not available or does not indicate the student’s sex at the time of birth, the parent/guardian shall provide medical documentation showing evidence of the student’s sex at birth.
- (2) Interscholastic athletics shall be administered as a part of the regular school program and shall be the director of instruction’s responsibility. Principals shall ensure that school regulations regarding participation in a sport are reasonable. Athletic schedules shall be filed in each school principal’s office. The principal or designee shall accompany an athletic team on trips. Transportation of teams to athletic games is approved by the director of schools.
- (3) The bylaws of the Tennessee Secondary School Athletic Association or Tennessee Middle School Athletic Association shall regulate the operation and control of athletics at Tennessee Schools for the Deaf.³ The director of schools shall develop a code of conduct for all coaches to follow in order to ensure the health and safety of athletes.⁴

II. Insurance and Physical Examinations

- (1) In the event that the Tennessee Schools for the Deaf insurance provider does not extend coverage to a student athlete, the student athlete must provide proof of independently secured catastrophic coverage and liability coverage, with the Tennessee Schools for the Deaf as a named insured, of not

¹ 34 C.F.R. § 106.41; USCA § 1681, et. seq.
² Public Acts of 2021, Chapter No. 40
³ TRR/MS 0520-01-02-.08(1)
⁴ Public Acts of 2021, Chapter No. 272

less than the limits set forth in state law.⁵ It shall be the responsibility of the parent/guardian to provide health and hospitalization insurance for all students participating in interscholastic athletics.

- (2) Every student shall complete an annual physical examination prior to participation in interscholastic athletics.⁶ The student's parent or guardian shall be responsible for covering the cost of the examination, and these records shall be on file in the athletic director's office.

III. Scheduling Conflicts

- (1) Students shall not be dismissed from school for the purpose of attending the practice of any interscholastic sport during the school day without written permission from the director of schools or designee.⁷ This does not prevent the inclusion of regular physical training lessons in the daily school program.
- (2) Students shall not be required to attend a school athletic event, or event related to participation on a school athletic team, if the event is on an official school holiday, observed day of worship, or religious holiday. The student's parent or legal guardian shall notify the coach in writing three (3) full school days prior to the event if a student will not participate in a school athletic event due to one of the aforementioned reasons.⁸
- (3) All coaches who oversee or participate in outdoor training, practice, or competition shall annually complete a heat illness prevention course approved by the Tennessee Department of Health as well as receive training on activity modifications based on environmental conditions.

IV. Prohibition Against Hazing

- (1) Coaches, employees, and volunteers shall not encourage, permit, condone, or tolerate hazing activities and must report all observed or reported instances to the director of schools within twenty-four (24) hours of observation or report.⁹

⁵ T.C.A. § 29-20-403

⁶ 20 USCA § 1232h(c); TRR/MS 0520-01-13-.01(1)(a)

⁷ T.C.A. § 49-6-1002(a)

⁸ T.C.A. § 49-6-1002(c)

⁹ T.C.A. § 49-2-120

Alvin C. York Agricultural Institute	
Interscholastic Athletics	
Policy Number: 4.3010	Monitoring Review: Annually
Revised Date: August 2, 2021	Signature:
Approved by: Dr. Penny Schwinn, Commissioner	

I. General

- (1) All Alvin C. York Agricultural Institute students shall have equal athletic opportunities. Students shall not, on the basis of sex, race, color, national origin, disability, or any other category protected by state or federal law, be excluded from participation in, be denied the benefits of, be treated differently, or otherwise discriminated against in any Alvin C. York Agricultural Institute athletic program. Equal athletic opportunities shall be provided for members of both sexes.¹ Student athletes shall only be allowed to participate in athletic activities or events that align with the student’s sex indicated on his/her original birth certificate.² The director of schools or designee shall require the parent/guardian to provide the student’s original birth certificate prior to participation in any interscholastic athletics. If the original birth certificate is not available or does not indicate the student’s sex at the time of birth, the parent/guardian shall provide medical documentation showing evidence of the student’s sex at birth.
- (2) Interscholastic athletics shall be administered as a part of the regular school program and shall be the principal’s responsibility. Principals shall ensure that school regulations regarding participation in a sport are reasonable. Athletic schedules shall be filed in each school principal’s office. The principal or designee shall accompany an athletic team on trips. Transportation of teams to athletic games is approved by the director of schools.
- (3) The bylaws of the Tennessee Secondary School Athletic Association or Tennessee Middle School Athletic Association shall regulate the operation and control of athletics at Alvin C. York Agricultural Institute.³ The director of schools shall develop a code of conduct for all coaches to follow in order to ensure the health and safety of athletes.⁴

II. Insurance and Physical Examinations

- (1) In the event that the Alvin C. York Agricultural Institute insurance provider does not extend coverage to a student athlete, the student athlete must provide proof of independently secured catastrophic coverage and liability coverage, with the Alvin C. York Agricultural Institute as a named insured, of

¹ 34 C.F.R. § 106.41; USCA § 1681, et. seq.
² Public Acts of 2021, Chapter No. 40
³ TRR/MS 0520-01-02-.08(1)
⁴ Public Acts of 2021, Chapter No. 272

not less than the limits set forth in state law.⁵ It shall be the responsibility of the parent/guardian to provide health and hospitalization insurance for all students participating in interscholastic athletics.

- (2) Every student shall complete an annual physical examination prior to participation in interscholastic athletics.⁶ The student's parent or guardian shall be responsible for covering the cost of the examination, and these records shall be on file in the Director of School's office.

III. Scheduling Conflicts

- (1) Students shall not be dismissed from school for the purpose of attending the practice of any interscholastic sport during the school day without written permission from the director of schools.⁷ This does not prevent the inclusion of regular physical training lessons in the daily school program.
- (2) Students shall not be required to attend a school athletic event, or event related to participation on a school athletic team, if the event is on an observed day of worship, or religious holiday. The student's parent or legal guardian shall notify the coach in writing three (3) full school days prior to the event if a student will not participate in a school athletic event due to one of the aforementioned reasons.⁸
- (3) All coaches who oversee or participate in outdoor training, practice, or competition shall annually complete a heat illness prevention course approved by the Tennessee Department of Health as well as receive training on activity modifications based on environmental conditions.

IV. Prohibition Against Hazing

- (8) Coaches, employees, and volunteers shall not encourage, permit, condone, or tolerate hazing activities and must report all observed or reported instances to the Director of Schools within twenty-four (24) hours of observation or report.⁹

⁵ T.C.A. § 29-20-403

⁶ 20 USCA § 1232h(c); TRR/MS 0520-01-13-.01(1)(a)

⁷ T.C.A. § 49-6-1002(a)

⁸ T.C.A. § 49-6-1002(c).

⁹ T.C.A. § 49-2-120.



Interscholastic Athletics

Policy Number: 4.301	Monitoring Review: Annually
Effective/Revised Date: August 24, 2021	Signature: 
Approved by: Dr. Penny Schwinn, Commissioner	

General

All Achievement School District (ASD) students shall have equal athletic opportunities. Students shall not, on the basis of sex, race, color, national origin, disability, or any other category protected by state or federal law, be excluded from participation in, be denied the benefits of, be treated differently, or otherwise discriminated against in any ASD athletic program. Equal athletic opportunities shall be provided for members of both sexes.¹ Student athletes shall only be allowed to participate in athletic activities or events that align with the student's sex indicated on his/her original birth certificate.² The director of schools or designee shall require the parent/guardian to provide the student's original birth certificate prior to participation in any interscholastic athletics. If the original birth certificate is not available or does not indicate the student's sex at the time of birth, the parent/guardian shall provide medical documentation showing evidence of the student's sex at birth.

Interscholastic athletics shall be administered as a part of the regular school program and shall be the principal's responsibility. Principals shall ensure that school regulations regarding participation in a sport are reasonable. Athletic schedules shall be filed in each school principal's office. The principal or designee shall accompany an athletic team on trips. Transportation of teams to athletic games is approved by the director of schools.

The bylaws of the Tennessee Secondary School Athletic Association shall regulate the operation and control of athletics at the ASD.³ The director of schools shall develop a code of conduct for all coaches to follow in order to ensure the health and safety of athletes.⁴

Insurance and Physical Examinations

In the event that the charter management organization's insurance provider does not extend coverage to a student athlete, the student athlete must provide proof of independently secured catastrophic coverage and liability coverage, with the charter management organization as a named insured, of not less than the limits set forth in state law.⁵

¹ 34 CFR § 106.41; 20 USCA § 1681 et seq.

² Public Acts of 2021, Chapter No. 40

³ TRR/MS 0520-01-02-.08(1)

⁴ Public Acts of 2021, Chapter No. 272

⁵ Tenn. Code Ann. § 29-20-403

It shall be the responsibility of the parent/guardian to provide health and hospitalization insurance for all students participating in interscholastic athletics.

Every student shall complete an annual physical examination prior to participation in interscholastic athletics.⁶ The student's parent or guardian shall be responsible for covering the cost of the examination, and these records shall be on file in the director of school's office.

Scheduling Conflicts

Students shall not be dismissed from school for the purpose of attending the practice of any interscholastic sport during the school day without written permission from the director of schools.⁷ This does not prevent the inclusion of regular physical training lessons in the daily school program.

Students shall not be required to attend a school athletic event, or event related to participation on a school athletic team, if the event is on an official school holiday, observed day of worship, or religious holiday. The student's parent or legal guardian shall notify the coach in writing three (3) full school days prior to the event if a student will not participate in a school athletic event due to one of the aforementioned reasons.⁸

All coaches who oversee or participate in outdoor training, practice, or competition shall annually complete a heat illness prevention course approved by the Tennessee Department of Health as well as receive training on activity modifications based on environmental conditions.

Severe Weather⁴

Severe weather is any type of weather that could impede the safety of any athlete by compromising the playing conditions of the interscholastic sport. Severe weather includes, but is not limited to, thunder, lightning, and extreme temperatures. When severe weather is forecasted, suspension of play shall be discussed with all players, coaches, and officials, if applicable.

All coaches who oversee or participate in outdoor training, practice, or competition shall annually complete a heat illness prevention course approved by the Tennessee Department of Health as well as receive training on activity modifications based on environmental conditions.

Prohibition Against Hazing

Coaches, employees, and volunteers shall not encourage, permit, condone, or tolerate hazing activities⁹ and must report all observed or reported instances to the director of schools within twenty-four (24) hours of observation or report.

⁶ 20 USCA § 1232h(c); TRR/MS 0520-01-13-.01(1)(a)

⁷ Tenn. Code Ann. § 49-6-1002(a)

⁸ Tenn. Code Ann. § 49-6-1002(c)

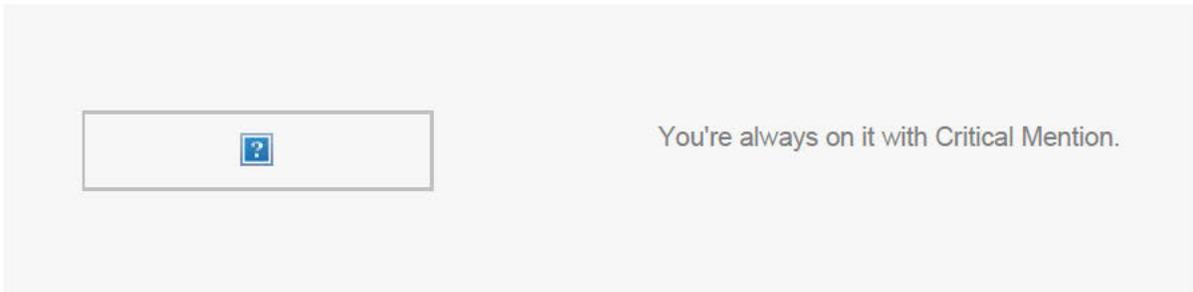
⁹ Tenn. Code Ann. § 49-2-120

Request 8

From: [Chelsey Chamberlain](#)
To: [Victoria Robinson](#); [Chelsea Crawford](#); [Miles Woodhull](#); [Emma McCallie](#); [Eve Carney](#); [Jack Powers](#); [James Paul](#); [Jay Klein](#); [Kevin Canady](#); [Jean Luna](#); [Lisa Coons](#); [Meghan McLeroy](#); [Rachael Maves](#); [Penny Schwinn](#); [Robin Yeh](#); [Sam Percy](#); [Andi Baumgartner](#); [Bill Dunn](#); [Scott Meltzer](#); [Brian Blackley](#); [Charlie Bufalino](#); [Ricki Collins](#); [Takesha Destine](#); [Grace Shelton](#); [Emily Hawthorne](#); [Gina Ponitz](#); [Christy Ballard](#)
Subject: Critical Mention - November 15
Date: Monday, November 15, 2021 10:07:47 AM
Attachments: [logo](#)

Good morning,

News and social below focuses around the public town halls, education funding, RISE awardees and more.



***Chelsey Chamberlain* has shared a report with you!**

From Chelsey Chamberlain (TDOE.Communications@tn.gov)

[**View Full Report**](#)

Critical Mention - November 15

Total Number of Clips 55

Total Radio Audience 189,128

Total Radio Publicity Value \$289

Total Online + Print Audience 16,499,685

Total Online + Print Publicity \$176,097

1 [Academic gains, new ideas and empathy: What's at stake when the books students can read are restricted](#)



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Date Collected Nov 15, 2021 9:56 AM EST

Category Local

Source [The Tennessean \(Nashville, Tennessee\)](#)

Author By, Meghan Mangrum

Market Tennessee, US

Language English

Est. Audience 95,311

Est. Publicity \$295

... young adult novels like "The Hate U Give" from school library shelves, mirroring efforts by a Texas lawmaker to investigate more than 800 titles.

A curriculum featuring nonfiction books about seahorses, sharks and school segregation - among other topics - is being challenged in at least one **Tennessee** school district and in several more across the country.

Whether a child has access to a certain book at school or a school board member loses

their seat in the next election aren't the only potential consequences of these literacy wars though.

Students' academic achievement is at stake when ... schools ban books or limit diverse literature, experts say, which can be especially troubling in a state like **Tennessee**, where only about 29% of students are reading on grade level.

When students aren't engaged with what they are reading, it affects their ability to learn to read, develop stronger language skills and grow to love reading, according to educators and academic experts.

Even whether kids learn to be ... Annie E. Casey Foundation in 2010, found that students who were not proficient in reading by the end of third grade were four times more likely to drop out of high school than proficient readers.

The books the students have read so far in Norman Binley's ocean unit aren't controversial, though a **Tennessee** parent did question whether third-graders were too young to learn about shark attacks during a Williamson County school board meeting this fall.

But the books are part of a larger curriculum, rolled out this year in Metro Nashville Public Schools, that has faced criticism in ... **Tennessee** and beyond.

Most of these books don't tackle hard topics or feature diverse perspectives or a wide array of human identities. But many of the books Fine hopes her students read do. She carefully cultivates her classroom library to include everything from books about cars and science to books about ... being caring and kind or a book about a little girl of color learning to love her hair.

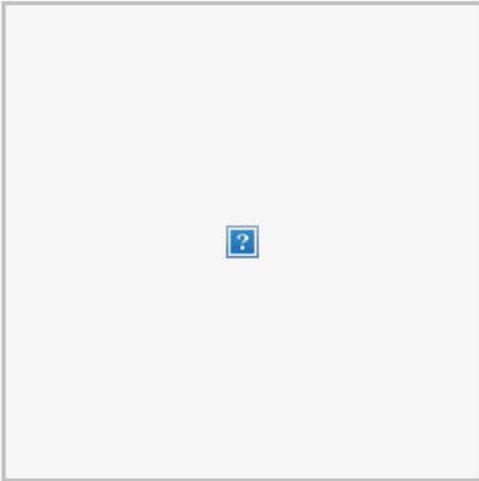
Other books in the curriculum, like "Ruby Bridges Goes to School" and a book about Latino efforts to integrate Los Angeles public schools in the 1970s, have drawn the ire of parents across **Tennessee**. In neighboring Williamson County, the school district is considering removing some of these books from their classrooms altogether.

It's part of the ongoing national culture war taking place in classrooms and school libraries, as conservative lawmakers capitalize on parent concerns that schools ...

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2 [Meet the Memphis school nurse who helped a shooting victim survive](#)





Date Collected Nov 15, 2021 8:44 AM EST

Category Local

Source [New Pittsburgh Courier](#)

Author Courier Newsroom November

Market Pittsburgh, PA

Language English

Est. Audience 2,018

Est. Publicity \$12

... that these things don't happen by happenstance," Avant added. "I'm so thankful to God that he put the right people there on the right day."

Taylor's notoriety comes as school nurses play an outsized role in keeping schools across the U.S. open amid the ongoing pandemic. In August, an influential **Tennessee** panel urged Gov. Bill Lee to prioritize more funding for school nurses to allow the state to fund 1 nurse for every 750 students next year, as recommended by the Centers for Disease Control and Prevention. The state's current ratio is 1 nurse to 3,000 students.

And yet, while discussions of ... heightened importance in fighting COVID in schools and helping students address mental health issues.

This year, Shelby County Schools officials announced they would have a nurse in every school, thanks to a nearly \$30 million grant funded by COVID federal relief funds and distributed by the **Tennessee Department of Education**. The district has yet to tell Chalkbeat if it had met that goal yet, or how many total nurses it employs or contracts.

For "Nurse Taylor," as students at Cummings affectionately call her, COVID is the reason she became a school nurse in the first place.

Since Taylor became a nurse some 54 ...

[3 Dr. Betty Jo Holladay Douglas Presented with the Albert Nelson Marquis Lifetime Achievement Award by Marquis Who's Who](#)



Date Collected Nov 15, 2021 4:48 AM EST

Category Press Wire

Source [24-7PressRelease.com](https://www.24-7pressrelease.com)

Market Canada

Language English

Est. Audience 70,647

Est. Publicity \$860

... volumes, individuals profiled are selected on the basis of current reference value. Factors such as position, noteworthy accomplishments, visibility, and prominence in a field are all taken into account during the selection process.

Dr. Douglas has accrued nearly 60 years of experience in **education**. She began her career in 1961, at which point she served as a teacher and coach. Thereafter, she held more prominent roles in the Benton County Board of **Education**, including as the supervisor of instruction, superintendent and principal. Thereafter, from 1992 to 1993, Dr. Douglas ... accepted a position as the principal of Camden Elementary School.

Dr. Douglas made strides as the coordinator of administrative evaluation for the **Tennessee State Department of Education**, during the 1994-1995 school year. She then returned to Benton County as principal of Holladay School from 1995 to 1998. Since 2006, she has acted as an elected school board member of the Benton County Board of **Education**. Over the course of her career, Dr. Douglas is most proud to ... have been the first and only female superintendent of the Benton County Board of **Education**.

Aside from her teaching roles, Dr. Douglas has been called upon as a consultant for various school systems throughout her career, including the State **Department of Education** Academies in **Tennessee** and for the E.I. DuPont Co., a manufacturing plant. From 2000 to 2017, she maintained involvement as a teacher of parenting classes for divorced parents.

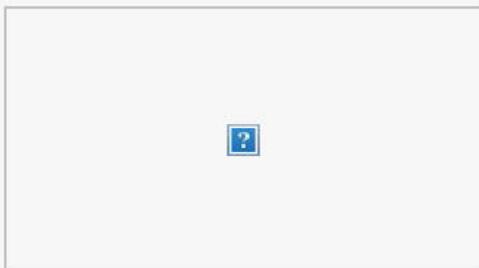
Likewise dedicated as a civic advocate, Dr. Douglas has also provided assistance to the Benton County

Before embarking on her professional journey, Dr. Douglas attended Freed-Hardeman University, from which she earned an Associate of Arts in 1959. Following this accomplishment, she received a Bachelor of Science from Lipscomb University in 1961 and a Master of Science from the University of Tennessee in 1974. Dr. Douglas concluded her education at the University of Memphis, where she graduated with a Doctor of Education in 1990. Throughout the course of her subsequent career, she has been presented with a Lifetime Achievement Award from her local Chamber of ... Commerce in 2019, having previously earned a Service to Education Award by the Freed-Hardeman Alumni Association in 1989.

About Marquis Who's Who®

Since 1899, when A. N. Marquis printed the First Edition of Who's Who in America®, Marquis Who's Who® has chronicled the lives of the most accomplished individuals and innovators from every significant field of ...

[4 Federal judge blocks school mask restriction in new Tennessee law](#)



Date Collected Nov 14, 2021 5:52 PM EST

Category Local

Source [Kingsport Times-News](#)

Author Jon Styf

Market Johnson City, TN

Language English

Est. Audience 10,092

Est. Publicity \$180

(The Center Square) – A U.S. District judge in Nashville's Middle District of Tennessee ruled Sunday school districts can continue with mask mandates despite a new law banning them.

A new lawsuit was filed Friday on behalf of eight **Tennessee** students with disabilities immediately after Gov. Bill Lee signed a sweeping COVID-19 bill into law. The plaintiffs claimed their rights under the Americans with Disabilities Act would be violated if school mask mandates were prevented.

The legislation Lee signed was passed during ... **Tennessee's** recent special session on COVID-19-related issues.

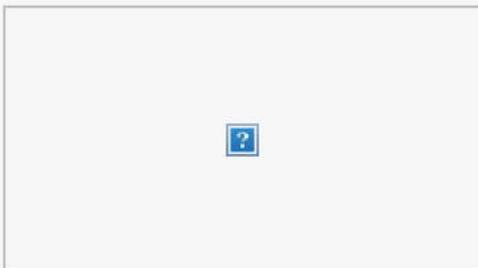
Judge Waverly Crenshaw wrote Sunday that "given the alleged conflict and the possible confusion this creates for schools in **Tennessee**, pending an expedited hearing, the parties shall maintain the STATUS QUO as it pertains to students with disabilities and their federally guaranteed rights as of Thursday, November 11, 2021."

A status conference has been set for 1 p.m Monday on the matter. Lee and ... Commissioner **Penny Schwinn** were named in the lawsuit.

Lee had issued an executive order allowing parents to opt out of school mask mandates, but that order has been blocked by judges in Shelby, Williamson and Knox counties.

The bill prevents government entities from requiring masks. Schools would need to go through an ...

5 [Federal judge issues injunction to stop mask mandate ban in Tennessee schools](#)



Date Collected Nov 14, 2021 4:20 PM EST

Category Local

Source [LocalMemphis.com](#)

Market Memphis, TN

Language English

Est. Audience 9,588

Est. Publicity \$459

NASHVILLE, Tenn. — A federal judge issued an injunction on Sunday to stop the mask mandate ban in schools across **Tennessee**.

A lawsuit was filed by eight families who each have kids with disabilities, ranging from 7 to 14 years old. They said they believe their disabilities make them at "extreme risk" for COVID-19 and potentially serious health complications.

You can read the injunction below:

The families are suing ... Gov. Lee and **Penny Schwinn**, Commissioner of the **Tennessee Department of Education**, because they believe Lee and Schwinn have the responsibility to enforce how schools in the state may or may not require people to wear/not to wear masks on school grounds.

Several school districts in Shelby County, including Millington, Germantown, and Collierville, have announced they will make ...

[6 Federal judge blocks school mask restriction in new Tennessee law](#)



Date Collected Nov 14, 2021 11:06 AM EST

Category

Source [Tulahoma News](#)

Author Jon Styf, The Center Square, Staff Writer Kyle Murphy, Sports Writer Erin Douglas, Damian Holbrook, Tv Insider, Railway Fx

Market United States

Language English

(The Center Square) – A U.S. District judge in Nashville's Middle District of **Tennessee** ruled Sunday school districts can continue with mask mandates despite a new law banning them.

A new lawsuit was filed Friday on behalf of eight **Tennessee** students with disabilities

immediately after Gov. Bill Lee signed a sweeping COVID-19 bill into law. The plaintiffs claimed their rights under the Americans with Disabilities Act would be violated if school mask mandates were prevented.

The legislation Lee signed was passed during ... **Tennessee's** recent special session on COVID-19-related issues.

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Lee had issued an executive order allowing parents to opt out of school mask mandates, but that order has been blocked by judges in Shelby, Williamson and Knox counties.

The bill prevents government entities from requiring masks. Schools would need to go through an ...

[7 Federal judge issues injunction to stop mask mandate ban in Tennessee schools](#)



Date Collected Nov 14, 2021 10:14 AM EST

Category news

Source [Local Memphis](#)

Market United States

Language English

This comes days after Gov. Bill Lee signed bills into place that ban mask and vaccine mandates in the state.

NASHVILLE, Tenn. — A federal judge issued an injunction on Sunday to stop the mask

mandate ban in schools across **Tennessee**.

This comes days after Gov. Bill Lee signed bills into place that ban mask and vaccine mandates in the state.

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You can read the injunction below:

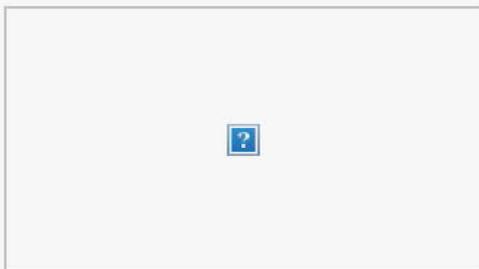
The families are suing Gov. Lee and **Penny Schwinn**, Commissioner of the **Tennessee Department of Education**, because they believe Lee and Schwinn have the responsibility to enforce how schools in the state may or may not require people to wear/not to wear masks on school grounds.

Several school districts in Shelby County, including Millington, Germantown, and Collierville, have announced they will make ...

[8 HIGH SCHOOL STUDENT SUES TO OVERTURN TENNESSEE'S TRANSGENDER SPORTS LAW](#)



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Date Collected Nov 14, 2021 8:43 AM EST

Category Local

Source [The Record \(Bergen County, NJ\)](#)

Author Isabel Lohman, Knoxville News Sentinel

Market United States

Language English

Est. Audience 144,897

Est. Publicity \$2,697

A high school student is at the center of a federal lawsuit challenging the **Tennessee** law that requires transgender students to compete in school sports according to their sex at birth.

The lawsuit was filed in the U.S. District Court for the Middle District of **Tennessee** against Gov. Bill Lee, **Tennessee Education** Commissioner **Penny Schwinn**, the state Board of **Education**, state Board of **Education** Executive Director Sara Heyburn Morrison, individual state board members, the ... Knox County Board of **Education** and Knox County Schools Superintendent Bob Thomas.

Luc Esquivel, a 14-year-old freshman from Knoxville, was excited to try out for the boys' golf team, according to a press release.

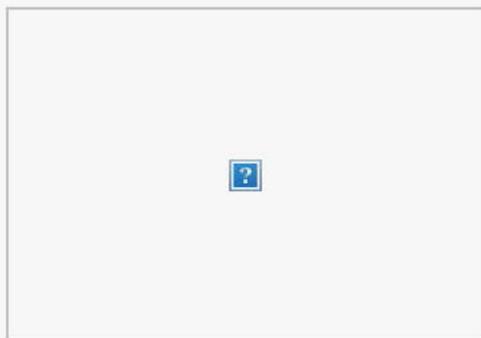
"I was really looking forward to trying out for the boys' golf team and, if I made it, training and ... students from participating in sports under their gender identity. The legislation contains no exception for kids receiving puberty blockers or treatments altering testosterone levels, a factor scientific studies associate with athletic performance. The lawsuit was filed by the ACLU, the ACLU **Tennessee** and Lambda Legal Defense and **Education** Fund, a national nonprofit that advocates for LGBTQ+ people.

The office of **Tennessee** Attorney General Herbert H. Slatery III did not immediately return a request for comment.

Tennessee's law ...

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9 [RCS Students Gain Access to STEM Opportunities Through \\$25,000 Nissan Donation](#)



Date Collected Nov 14, 2021 6:23 AM EST

Category Local
Source [Rutherford Source](#)
Market Murfreesboro, TN
Language English

Est. Audience 5,046
Est. Publicity \$91

Home News From left, Parul Bajaj with Nissan, Julie Corcoran with the Business **Education** Partnership, Science specialist Stephanie Finley and Director of Schools Bill Spurlock.

By James Evans
Rutherford County Schools

Rutherford County students will have increased access to STEM programs and materials thanks to a generous \$25,000 donation from Nissan North America.

STEM stands for ... in the communities where our employees live and work," said Parul Bajaj, senior manager of philanthropy at Nissan. "We are pleased to support STEM programs in Rutherford County and believe that this investment in our youth is an investment in our state's future."

She added: "A solid STEM **education** develops versatile skills that are in high demand in the ever-evolving, increasingly global workplace."

This gift is from Nissan's Neighbors Program, which focuses on **education**, environmental stewardship and humanitarian relief.

Rutherford County Schools will use the funding to ... support schools going through the STEM School Designation process. The **Tennessee** STEM Innovation Network provides the designation to schools who implement a STEM **education** plan, and those schools are then recognized by the **Tennessee Department of Education** and serve as model schools for others in the region.

"The money received will go towards purchasing resources for Project and Problem-Based Learning and accompanying STEM challenges," said Stephanie Finley, Science and STEM specialist for grades 6-8. "Using the funds in this way, will impact every

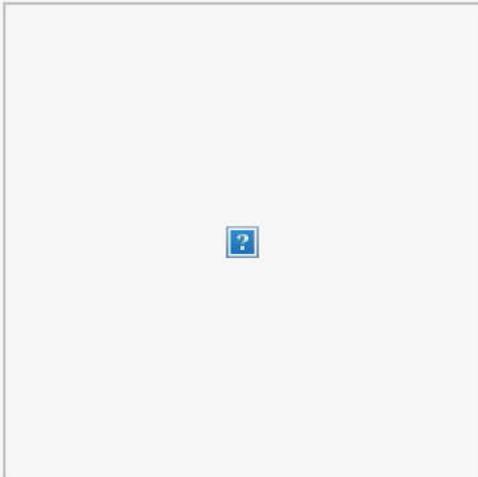
"Equitable access to resources will help expand STEM in these schools and offer motivation to other schools considering going through the STEM School Designation process and ultimately provide better quality instruction to their students," Finley said.

As part of its commitment to local **education** and STEM program, Nissan also provided a similar donation to Murfreesboro City Schools.

Presented By:

RC High Schools

10 [How afterschool reading clubs help English learners grow to love reading in Nashville schools](#)



Date Collected Nov 14, 2021 6:09 AM EST

Category National

Source [Yahoo! News](#)

Market United States

Language English

Est. Audience 14,194,998

Est. Publicity \$98,320

... wants to read next?"

Hands shoot into the air. "Me, me, me next!"

The 14 students, all fourth or fifth graders at Eagle View Elementary, are all students of color — like the majority of Eagle View Elementary and Nashville's student population as a whole.

Many of them weren't born in Nashville, **Tennessee** or even the United States and for all of them, English isn't their native language.

They speak Spanish, Arabic, Kurmanji or Northern Kurdish, Tigrinya and French in addition to English.

In an effort to bolster their language skills — in both English and their native languages — they meet after ... Public Schools in partnership with Vanderbilt University's Peabody College.

Serving multilingual students

Nashville schools serve thousands of students who speak a first language other than English. They are one of the fastest-growing student subgroups in the state, making up nearly 8% of **Tennessee's** students.

The majority of English language learners receive additional services during the school day, but their needs vary widely. Some students are bilingual or trilingual and can read and write in more than one language before they leave elementary school. Other students are recent immigrants ... in Ethiopia, another lived in the Kurdistan region of Iraq as a toddler. One boy, an advanced reader, speaks English as well as Somali. Another was born in Yemen but attended a private international school where he learned English. His father speaks four languages.

YOUR NBOX: Stay up-to-date on **Tennessee's** top **education** news by signing up for our new weekly newsletter, School Zone. Sign up here.

Language and literacy skills are vital to every student's academic success, and with only about 29% of all students on grade-level statewide, it is a priority of both Metro Schools and ... the state of **Tennessee**.

But engaging non-native English speakers in reading can be hard. For years, Vanderbilt professors and researchers have partnered with Metro Schools teachers to help them earn English language teacher endorsements and learn instructional skills that help them teach English learners.

In 2018, the ... camp. Many have been the new kid before themselves.

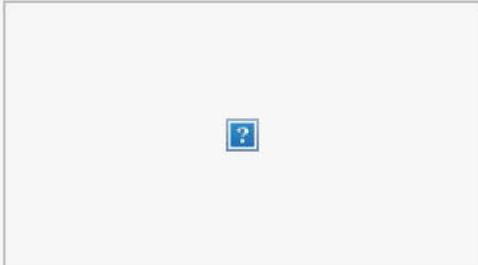
And when their classmates pause or stumble over an unfamiliar word, the joking and teasing antics stop. They gently help their peer, repeating the word or translating it into another language.

They've been there before too.

Stay up-to-date on **Tennessee's** top **education** news by signing up for our new weekly newsletter, School Zone. Sign up here.

Want to read more stories like this? A subscription to one of our **Tennessee** publications gets you unlimited access to all the latest news throughout the entire USA TODAY ...

11 [Lawsuit filed almost immediately after mask mandate ban becomes law in Tennessee](#)



Date Collected Nov 13, 2021 10:36 PM EST

Category Local

Source [Action News 5](#)

Author Parker King

Market Memphis, TN

Language English

Est. Audience 16,148

Est. Publicity \$230

MEMPHIS, Tenn. (WMC) - Shortly after the mask mandate ban was signed into law by **Tennessee** Governor Bill Lee, a lawsuit was filed against Lee and his **education** secretary **Penny Schwinn**.

These plaintiffs say the law is unconstitutional and that they represent thousands more who feel the same.

The plaintiffs are eight **Tennessee** students, ranging from ages 8-14, from across the state who have disabilities and immunodeficiencies.

The lawsuit is being filed ... from evacuating until the hurricane touches down."

What's more is school funds can only be used to purchase N-95 masks, which are more effective against the spread of COVID-19 but also more expensive.

Schools who implement mask mandates are subject to having funding pulled from the state **Department of Education**.

"You've got mixed messaging coming down to, for example, Shelby County schools," said Nelson. "You've got mixed messages in Mississippi and **Tennessee**. You've got mixed messages between the government in Washington and the government in **Tennessee**."

The ...

12 [Tennessee Lawmakers OK Historic Ford Incentive Package. Including New Trade School](#)



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Date Collected Nov 13, 2021 3:47 PM EST

Category Local

Source [The Tennessee Tribune \(Nashville\)](#)

Author Anonymous

Market Tennessee, US

Language English

Est. Audience 25,000

Est. Publicity \$432

FULL TEXT

NASHVILLE, TN - **Tennessee** lawmakers have approved a nearly \$900 million incentive package for a new Ford electric vehicle factory in West **Tennessee**, and they will reconvene in Nashville next week to debate whether schools can place COVID restrictions on students and staff.

Ford Motor Co.'s \$5.6 billion facility will have a major impact on **Tennessee education**. Along with creating nearly 6,000 new jobs, the ... project includes a new technical college to provide workforce training. The region's K-12 systems, including Memphis' Shelby County Schools, also will be expected to elevate career and technical **education** programs to help prepare future workers.

Republican lawmakers fell short in their bid to expand the special session's agenda to cover other issues, including an amendment that would bar **Tennessee** school districts and charter schools from mandating masks.

But these mandates, ... an airing next week now that lawmakers in both chambers have rallied to call a second special session, despite a lack of support from Gov. Bill Lee.

On Wednesday, the governor's focus was the massive Ford project.

"This single-largest investment in state history marks a tremendous win for rural **Tennessee** and will strengthen our workforce for generations," said Lee, a mechanical engineer and businessman who has long advocated for more work-based learning and apprenticeship programs in schools.

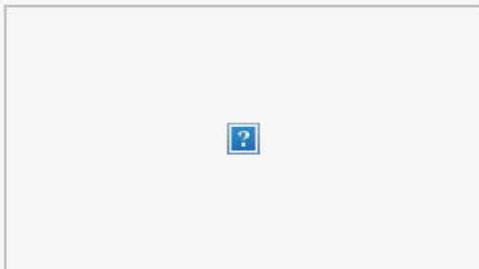
Other amendments proposed during this week's three-day special session didn't come to fruition, though. ...

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13 [All News, Traffic on the 3s, and Weather on the 10s](#)



Genre News



Program Name All News, Traffic on the 3s, and Weather on the 10s

Source WBZAM

Market DMA: 10 Boston, MA

Time Nov 13, 2021 2:56 PM EST

Clip Length 1:00

Audience 189,128

Publicity \$289

Story medicare part B. Covers doctor visits and other outpatient services such as lab tests in diagnostics screenings reasons given for the hike rising prices and health

care and the high cost of a new alzheimer's drug at the C. B. S.'s mar ruben reporting in new hampshire the first round of funding for the states new **education** freedom accounts is going out this month state **education** officials say over sixteen hundred kids have enrolled in the voucher like program is grants totaling eight million dollars can be used for prided or home school expenses proponents argue the program provides school choice to low income families opponents argue it's siphons money from public schools and provides no oversight of that private **education** a **tennessee** woman is turning young lives around with a twist of greatness britney stark was homeless a working mom with three jobs when she moved to nashville and realized her children's back to school supplies were still in storage

14 [Teacher Retirement Systems & Associations by State](#)



Date Collected Nov 13, 2021 12:26 PM EST

Category Blog

Source [Happy Teacher Mama](#)

Author Jennifer

Market United States

Language English

... Idaho Illinois Indiana Iowa Kansas Kentucky Louisiana Maine Maryland Massachusetts Michigan Minnesota Mississippi Missouri Montana Nebraska Nevada New Hampshire New Jersey New Mexico New York North Carolina North Dakota Ohio Oklahoma Oregon Pennsylvania Rhode Island South Carolina South Dakota **Tennessee** Texas Utah Vermont Virginia Washington West Virginia Wisconsin Wyoming Nationwide Associations for **Education** Alabama Retirement Systems of Alabama Alabama **Education** Association Alabama **Education** Directory Alaska Alaska Division of ... Administration Retirement and Benefits Alaska **Education** Directory Arizona Arizona State Retirement System Arizona **Education** Association Arizona **Education** Directory Arkansas Arkansas Teacher Retirement System Arkansas **Education** Association – AEA Arkansas **Education** Directory California California Public Employees' Retirement System California State Teachers' Retirement System California Retired Teachers Association California Teachers Association California **Education** Directory ... Colorado Colorado Public Employees'

Retirement Association Colorado School and Public Employees Retirement Association
Colorado **Education** Association Colorado **Education** Directory Connecticut Connecticut
Teachers' Retirement Board Connecticut **Education** Association Connecticut **Education**
Directory Delaware State of Delaware – Office of Pensions Delaware **Education**
Association Delaware **Education** Directory District of Columbia District of Columbia
Retirement Board AARP/NRTA American Federation ... of Teachers Florida Florida
Retirement System Brevard Public Schools Teacher Retirement Resources Florida
Education Association Florida **Education** Directory Georgia Teachers Retirement System
of Georgia Gwinnett Retirement System Fulton County Board of **Education** Georgia
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Retirement Fund Illinois Teachers' Retirement System Chicago Teachers' Pension Fund
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Retirement System Indiana **Education** Association Indiana **Education** Directory Iowa
Iowa Public Employees' Retirement System Iowa **Education** Directory Kansas Kansas
Public Employees Retirement System City of Wichita Retirement System Kansas
Education Association Kansas ...

15 [Federal funds paying for school building improvements](#)



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Date Collected Nov 13, 2021 10:28 AM EST

Category Local

Source [Herald-Citizen \(Cookeville, Tennessee\)](#)

Author JIM HERRIN

Market Tennessee, US

Language English

Est. Audience 7,648

Est. Publicity \$123

... said Director of Schools Corby King. "Infrastructure was one of the top items mentioned from the community's feedback."He said construction projects identified in the survey will use "funds from the various grants that we have recently received, including ESSER 2.0, 3.0, and an ELC grant from the **Tennessee** State **Department of Education**."ELC stands for Epidemiology and Laboratory Capacity.In an email to parents, King said the canopies at Cookeville High School outside the car line and the main entrance are projected to be completed by the end of the month. He also said a proposal and ...

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16 [Kelsey temporarily steps down as Senate education chair after indictment](#)



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Date Collected Nov 12, 2021 9:43 PM EST

Category Local

Source [The Daily News Journal, Murfreesboro, TN](#)

Author By, Yue Stella Yu, Nashville Tennessean

Market United States

Language English

Est. Audience 3,880

Est. Publicity \$47

Tennessee state Sen. Brian Kelsey, R-Germantown, announced Wednesday afternoon he will temporarily step down as chair of the Senate **Education** Committee following his recent indictment in a federal campaign finance conspiracy.

During his speech Wednesday, Kelsey claimed his innocence.

"I am totally innocent," he said. "I look forward to clearing my name through the judicial process."

Kelsey was charged Monday with violating several ... hearing from the Committee on Ethics to determine whether he should be suspended from his position. The senator would have 10 calendar days to do so. Otherwise, he or she would be suspended as long as the indictment is actively being pursued.

Kelsey has become an influential conservative voice on **education** issues and his decision to step down comes as the state embarks on a massive overhaul of how it funds K-12 **education**.

Kelsey sits on the steering committee appointed by the Lee administration to oversee efforts to come up with a possible replacement for the Basic ... **Education** Program funding formula.

Lt. Gov. Randy McNally, R-Oak Ridge, said he understands it is a "difficult time" for Kelsey and his family.

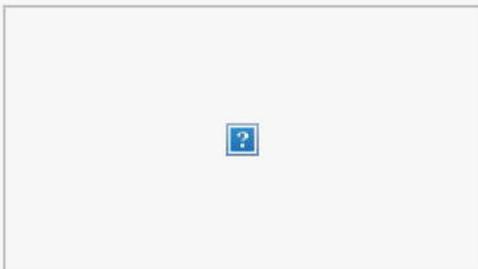
"I appreciate the action that you have taken today," McNally said. "I think this will allow you to concentrate fully on your case and not be burdened with the ...

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17 [Parents, educators weigh in at state's first school funding town hall](#)



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Date Collected Nov 12, 2021 9:43 PM EST

Category Local

Source [The Daily News Journal, Murfreesboro, TN](#)

Author By, Meghan Mangrum, Nashville Tennessean

Market United States

Language English

Est. Audience 3,880

Est. Publicity \$33

Investing more dollars into **education**, providing options for parents other than traditional public schools and funding more support staff like school counselors emerged as top concerns for the state's overhaul of its **education** funding model during a town hall Wednesday night.

The public town hall at Merrol Hyde Magnet School in Sumner County was the first of eight the **Tennessee Department of Education** will hold across the state over the next six weeks - and the only one that will be held in the

About 150 people attended the meeting including representatives from Metro Nashville and Rutherford County school boards, retired educators, members of the parent advocacy group Nashville Propel, current educators, retired teachers and homeschool families from Clarksville and Robertson County.

Education Commissioner **Penny Schwinn** said it was clear that most of the 60 people who spoke during the meeting had the same goal.

"What I heard across the board is that everyone wanted what's best for kids," Schwinn told reporters after the meeting. "That is a shared ... **Tennessee** value. What that means and what that's going to look like is part of the development process, but we all want the same thing and that is to serve children as best as we possibly can. I was surprised by how much commonality I heard."

But differing priorities quickly emerged as some educators and ... asked for the "money to follow the student."

"To be student-focused, [funding] has to follow the student, otherwise, it's not student-focused," said Frank Napolitano, a Hendersonville resident. "What's right for my two kids might not be what's right for someone else's kids. We are talking about **Tennessee** values, but not everyone has the exact same values. We're talking about public **education**, but it's public funding, but not public schools. It's public because it's funding coming from taxpayers."

The call for more funding has already dominated the conversation since Gov. Bill Lee ... announced the efforts to review and potentially overhaul Basic **Education** Program - the state's existing funding formula - earlier this month. Though **Tennessee** is set to spend \$5.6 billion in state dollars this fiscal year on K-12 **education**, some Democratic lawmakers and **education** advocates say that's not enough.

Kent Foreman, a Williamson County resident and a long-time volunteer in Metro Nashville Public Schools, said critical needs aren't being met.

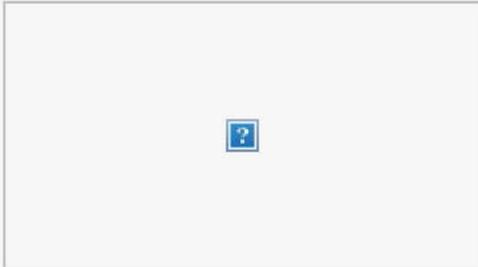
"The pie that we are talking about is just not big enough," ...

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18 [Tennessee schools chief: Vendor not responsible for delayed test results](#)



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Date Collected Nov 12, 2021 9:43 PM EST

Category Local

Source [The Daily News Journal, Murfreesboro, TN](#)

Author By, Meghan Mangrum, Nashville Tennessean

Market United States

Language English

Est. Audience 3,880

Est. Publicity \$64

Tennessee's schools chief isn't concerned about the impact delayed test results might have on school districts.

The **Tennessee Department of Education** has had to change test results for some school districts after state assessment materials arrived late to the testing company, Chalkbeat first reported.

Education Commissioner **Penny Schwinn** told The Tennessean on Wednesday that less than 1,000 tests were ... impacted.

The state **education** department told school superintendents in an email Wednesday that some testing materials from the state's spring assessments were not received in time to be included in the results released earlier this fall.

Schwinn blamed pandemic-related shipping delays, as well as some delays on the part of ... and a program that can get things late, and then immediately score them and get them out the door. That never would have been able to happen before."

The state sealed a \$40 million deal with Pearson in 2019, after a successful 2018-19 school year of exams under Questar Assessment.

Testing in **Tennessee** has been marred by problems for years before the COVID-19 pandemic.

Stemming from its inception in the spring of 2016, the state's then-testing vendor experienced server problems. The assessment ended up being canceled altogether in elementary and middle school grades. High school students were ... , but students were required to test in person in the 2020-21 school year, though districts with at least 80% participation were held harmless for the results.

This year's test results showed that student achievement plummeted in almost every tested area during the pandemic.

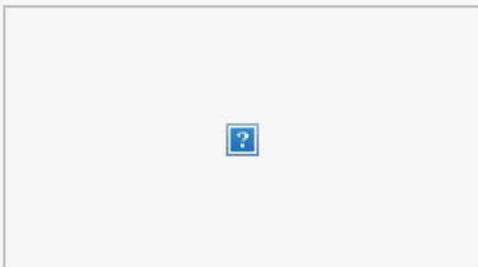
Meghan Mangrum covers **education** for the USA TODAY Network - **Tennessee**. Contact her at mmangrum@tennessean.com Follow her on Twitter @memangrum.

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19 [Legal challenge likely looming; TN's new mask law could land state, schools back in court, experts say](#)



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Category Local

Source [The Leaf-Chronicle \(Clarksville, Tennessee\)](#)

Author By, Mariah Timms, Nashville Tennessean

Market Tennessee, US

Language English

Est. Audience 4,067

Est. Publicity \$21

Tennessee's new, sweeping COVID-19 laws could be fought in court under the same federal Americans with Disabilities Act arguments that already proved successful against Gov. Bill Lee's school mask mandate opt-out order.

In fact, it's more than likely they will be, experts say.

"I would not be surprised" if ... state law on multiple fronts in the courts, said possible challenges can - and are likely to - come from several directions.

"It seems to me that the same kinds of ADA issues that precluded the governor's executive order might also preclude putting into effect this new legislation," he said.

Tennessee lawmakers last week passed a series of measures significantly limiting the authority by businesses, schools, local health departments and even the governor to determine COVID-19 restrictions.

Supporters knew the bill could end up in the courts.

"There's no doubt there will be litigation," Rep. ... Jason Zachary, R-Knoxville, who presented the bill in the House, said Thursday.

Still, **Tennessee** Republicans pushed ahead into the wee hours of Saturday morning, arguing individual liberty required hefty intervention into local authority.

Lawsuits could follow familiar path

That litigation may be along familiar lines.

"It is impossible to predict whether an individual may or may not file a ... schools to make reasonable accommodations for disabled children at the request of their parents," said Doug Kufner, spokesperson for House Speaker Cameron Sexton, R-Crossville, by email.

"Speaker Sexton has always believed parents should be the decision-maker for their child's health care and **education**, and this legislation protects these parental rights."

The comprehensive package bars government entities and public schools from requiring masks unless COVID-19 cases skyrocket.

Private schools, however, are exempted from the new legislation and may implement mask mandates whenever they choose ... with higher vulnerabilities to contracting severe cases of COVID-19, like their children with disabilities, from accessing school services. Families made similar arguments in the Shelby and Knox cases.

"We are fighting a battle for everybody's kids," said Carol Westlake, executive director at the **Tennessee** Disability Coalition. "Parents are worried. We have fought for the last 40 years to get access to schools with disabilities...to get inclusive environments so that kids are not separated from their peers simply because they have a disability.

"Whether it's race or whether it's disability, if you ...

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20 [Battle lines drawn: Tennessee begins overhaul of K-12 funding formula](#)



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Source [The Leaf-Chronicle \(Clarksville, Tennessee\)](#)

Author By, Meghan Mangrum and Yue Stella Yu, Nashville Tennessean

Market Tennessee, US

Language English

Est. Audience 4,067

Est. Publicity \$15

A push is on to more directly tie school funding to students, leading to accusations any effort to change how **Tennessee** pays for **education** will lead to a renewed effort for school vouchers.

Tennessee ranks near the bottom in the nation in **education** funding, increasing the calls for a major new investment. No new formula can work without the influx of money, some advocates say.

Meanwhile, the state's massive effort to garner feedback, with 18 subcommittees and more than 150 members, already has led to accusations that Republican Gov. Bill Lee ... is stacking the deck with supporters.

The political lines already are being drawn as **Tennessee** embarks on an ambitious plan to overhaul how the state funds K-12 **education**. At the same time, unlikely groups have found themselves on the same side of the funding conversation - but not necessarily aligned on the desired outcome.

The public input process kicks off Wednesday and the next three months are likely to set the stage for a challenging political and legislative ... battle.

Potential for a bruising political battle

Sen. Brian Kelsey, R-Germantown, who currently chairs the Senate **Education** Committee, said at a Senate Republican Caucus Retreat last week that school funding-related legislation could surface during the regular session in January.

Kelsey did not say if he supports increasing overall **education** funding before overhauling the system - an argument held by

The state is estimated to carry over \$1.2 billion in surplus into the next fiscal year, Sen. Bo Watson, R-Hixson, said Thursday.

Critics of the funding formula reform have expressed concerns the overhaul, which proposes money should follow a student, could benefit one of Lee's other hallmark **education** programs: the legally challenged **education** savings account, or school voucher, initiative.

Kelsey said he thinks the school voucher programs are a separate issue.

Senate Majority Leader Jack Johnson, R-Franklin, said he disagrees with pledging an increase in overall ... **education** funding before examining the current BEP formula.

"If we need additional funding, we need to identify what part of it needs to be funded at a higher level," he said. "You don't just throw money at a problem."

The state's schools chief, **Education** Commissioner **Penny Schwinn**, has said previously the ultimate goal is to create a new formula "from the ground up" and launched 18

committees and a central steering committee to explore just that though.

Johnson said he hopes the BEP overhaul does not become political.

"Certainly ...

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21 [Does my child still have to wear a mask to school?](#)



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Category Local

Source [The Leaf-Chronicle \(Clarksville, Tennessee\)](#)

Author By, Meghan Mangrum, Nashville Tennessean

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Language English

Est. Audience 4,067

Est. Publicity \$32

For now, students and staff must still follow their school's mask policy despite legislation passed in the early Saturday.

Tennessee lawmakers significantly rolled back COVID-19 restrictions during the late-night finale of last week's special session, including blocking government entities, including public schools, from requiring masks in all but the most dire circumstances or proof of COVID-19 vaccination.

But that doesn't ... mean students can stop masking right away and private schools may

continue to require masks even under the new law.

Here's what you need to know about the new **Tennessee** law's impact on school mask mandates.

Nothing has changed - for now

Several school districts, including some of the state's largest, were still requiring masks for all students and staff as of last week, including Shelby County Schools, Metro Nashville Public Schools and Knox County Schools.

In ... mandate subject to renewal.

Schools that receive federal funds can also petition to keep their mask and vaccine requirements if they convince the state comptroller's office that not doing so would endanger their federal dollars.

Currently, there is no federal mask requirement in public schools.

Tennessee is one of several states under federal investigation for its statewide prohibition against universal masking in schools though. The U.S. **Department of Education's** Office for Civil Rights is investigating whether the ban discriminates against students who are at a heightened risk ... for severe illness from COVID-19.

Reporters Anika Exum, Isabel Lohman, Laura Testino, Mariah Timms and Yue Stella Yu contributed to this story.

Meghan Mangrum covers **education** for the USA TODAY Network - **Tennessee**. Contact her at mmangrum@tennessean.com Follow her on Twitter @memangrum.

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22 [TN lawmakers pass bill allowing partisan school board elections](#)



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Category Local

Source [The Leaf-Chronicle \(Clarksville, Tennessee\)](#)

Author By, Meghan Mangrum, Nashville Tennessean

Market Tennessee, US

Language English

Est. Audience 4,067

Est. Publicity \$46

A bill giving local communities the ability to hold partisan school board elections passed both the **Tennessee** House and Senate on Friday, though without the full support of Republican lawmakers.

The bill passed the House in a 52-39 vote and the Senate approved the measure 20-10, just over the 17 needed to pass in the upper chamber. Several Republican lawmakers spoke out against the legislation, ultimately ... as Republicans."

Several Democratic lawmakers also spoke against the bill, questioning the reasoning and even whether the bill fell within the scope of the special called session meant to address COVID-19 restrictions.

"Do you not think that we are partisan enough? Now what we want to do is make **education** partisan? Think about that. How ridiculous does that even sound," Rep. Larry Miller, D-Memphis, asked.

Rep. Bo Mitchell, D-Nashville, worried that partisan elections would turn debates on school boards into untenable conflicts.

"Compromise becomes impossible when every potential debate turns ... and across our country how difficult some school board meetings are. It's going to be harder and harder to get good candidates to run."

One of her fellow Hamilton County Republicans, Rep. Robin Smith, R-Hixson, voted in favor of the legislation.

"Our number one budget item in Hamilton County is **education**. Our number one budget

item in the state of **Tennessee** is **education**," Smith said. "It's important to understand what the ideology is of those individuals appropriating that money."

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23 [Parents, educators weigh in on options at town hall](#)



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Category Local

Source [The Leaf-Chronicle \(Clarksville, Tennessee\)](#)

Author By, Meghan Mangrum, Nashville Tennessean

Market Tennessee, US

Language English

Est. Audience 4,067

Est. Publicity \$27

"We are talking about **Tennessee** values, but not everyone has the exact same values. We're talking about public **education**, but it's public funding, but not public schools. It's public because it's funding coming from taxpayers."

Frank Napolitano

Hendersonville resident

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The public town hall at Merrol Hyde Magnet School in Sumner County was the first of eight the **Tennessee Department of Education** will hold across the state over the next six weeks - and the only one that will be held in the Nashville area.

About 150 people attended the meeting including representatives from Metro Nashville and Rutherford County school boards, retired educators, members of the parent advocacy group Nashville ... Propel, current educators, retired teachers and homeschool families from Clarksville and Robertson County.

Education Commissioner **Penny Schwinn** said it was clear that most of the 60 people who spoke during the meeting had the same goal.

"What I heard across the board is that everyone wanted what's best for kids," Schwinn told reporters after the meeting. "That is a shared **Tennessee** value. What that means and what that's ... asked for the "money to follow the student."

"To be student-focused, [funding] has to follow the student, otherwise, it's not student-focused," said Frank Napolitano, a Hendersonville resident. "What's right for my two kids might not be what's right for someone else's kids. We are talking about **Tennessee** values, but not everyone has the exact same values. We're talking about public **education**, but it's public funding, but not public schools. It's public because it's funding coming from taxpayers."

The call for more funding has already dominated the conversation since Gov. Bill Lee ... announced the efforts to review and potentially overhaul Basic **Education** Program - the state's existing funding formula - earlier this month. Though **Tennessee** is set to spend \$5.6 billion in state dollars this fiscal year on K-12 **education**, some Democratic lawmakers and **education** advocates say that's not enough.

Kent Foreman, a Williamson County resident and a long-time volunteer in Metro Nashville Public Schools, said critical needs aren't being met.

"The pie that we are talking about is just not big enough," ...

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24 [A widespread issue: Advocates say county schools are failing special needs children](#)



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Category Local

Source [The Leaf-Chronicle \(Clarksville, Tennessee\)](#)

Author By, Jennifer Babich, Clarksville Leaf-Chronicle|USA TODAY NETWORK - TENNESSEE

Market Tennessee, US

Language English

Est. Audience 4,067

Est. Publicity \$19

... in the first place, and then implementing and maintaining those services.

Parents and advocates agree it's a process riddled with difficulties, delays and discrepancies.

"There's a huge problem with eligibility and evaluations," said Sherry Wilds, assistant legal director with Disability Rights **Tennessee**, a statewide advocacy group that filed a systemic complaint against CMCSS with the **Tennessee Department of Education** last fall based on the hundreds of complaints they've received.

Years of waiting, unkept plans

In some cases, the process of securing special services - including ... Individualized **Education** Plans (IEP's) -can drag on for years. In other cases, school officials fail to follow agreed-upon accommodations or services are cut off once a child is doing well.

That's what happened to the children of Kourtney Welch and Bob and Regina Belfiore, whose young children were doing well with their ... elementary schools before they say the schools stopped following those plans.

What ensued was a spiral of events, which ultimately led to both children being forced to endure multiple restraints and isolations.

"That's the problem here ... is following the procedures," said Disability Rights **Tennessee** Legal Director Jack Derrybery. "If the students don't have those protections, they'll get disciplined ... even if the behavior is a manifestation of the disability."

Wilds said although it's a widespread issue in many school districts, the problem seems particularly acute in Montgomery County, ... where she said school officials frequently fail to find children eligible for services in a timely manner or fail to maintain accommodations, particularly those with behavior challenges and autism. If they're not found eligible, advocates point out, children don't receive the protections of special **education** law.

This spring, **Tennessee's Department of Education** confirmed 12 administrative complaints filed against CMCSS related to special **education** since the 2018-2019 school year. They found violations in six of those cases.

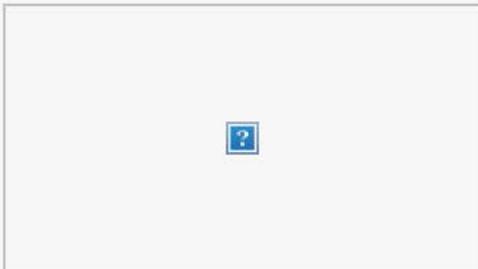
"That means 50% of the ... complaints were founded," said Heidi Haines of The Arc **Tennessee**. "There's a problem there."

"This is federal law, and you're required to comply or there's consequences."

Advocates believe the true numbers are much higher, based on the hundreds of complaints they've received. Disability Rights **Tennessee** advocates report receiving nearly 300 ...

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25 [Data Governance Automation 1 big thing: Develop automated installation, configuration, and deployment scripts using multiple automation.](#)



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Category Blog

Source [The Art of Service. Standard Requirements Self Assessments](#)

Author The Art of Service

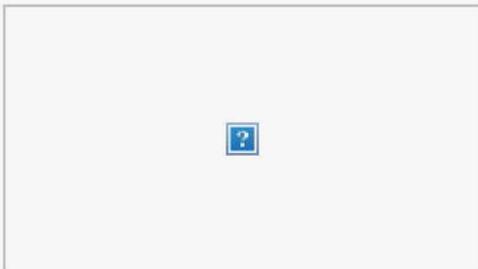
Market United States

Language English

... , Calibrate, Cummins Inc., Guidewire Software, Inc., Beckman Coulter Diagnostics, Fidelity TalentSource, TA Digital, BTI360, Flipboard, Northern Trust Corp., Convex Tech,

Cognizant Technology Solutions, Barnes, Dennig & Co., Ltd., Smithfield Foods, Guardian Life Insurance Company, Ingersoll Rand, **Tennessee Department of Education**, MSCI Inc, Employees Retirement System of Texas, Zoetis, McCain Foods USA, Inc., Quorum Health Resources, Genus PLC, Vail Resorts, Land O'Lakes, Inc., Archer Daniels Midland Company, Accenture, PepsiCo, Citi, ERM Group, Rockefeller Foundation, Ameresco, McDonald's Corporate, TARGET, Alcoa ... Edwards Lifesciences, Coca-Cola Bottling Company Consolidated, Merck, Securian Financial Group, AGT, MSD, CyberCoders, Cordia, Boomi, Bio-techne, Red Hat Software, Carpe Data, AIG, Philips, ConcertoCare, Sawdey Solution Services, Inc., Connexus Credit Union, Choice Hotels, Bind, Pennsylvania Higher **Education** Assistance Agency, BNY Mellon, VillageMD, Citizens, Datalitical, CGI Group, Inc., Sedgwick, DataLink Fund Solutions, FREEDOM CONSULTING GROUP, kraken, CapB InfoteK, Platform Science, Integrated Data Services Inc., EMMES, Weld County, CO, University of North Carolina at Chapel Hill, Smart ...

26 [New multi-million dollar program helps youngest MNPS students deal with social-emotional challenges](#)



Date Collected Nov 12, 2021 2:36 PM EST

Category National

Source [NewsBreak](#)

Author Nickelle Smith

Market United States

Language English

Est. Audience 807,400

Est. Publicity \$5,094

... matriculate to middle school and to high school as well," said Dr. Michelle Springer, MNPS Chief of Student Support Services.

This is the first year where 72 elementary schools have an advocacy center as the program is spearheaded by Dr. Mary Crnabori, MNPS Coordinator of Trauma-Informed Schools.

Tennessee receives an 'F' in a new school funding report

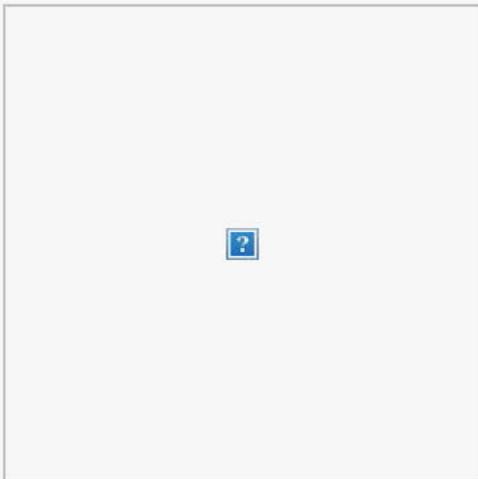
"We saw our students going through so many experiences outside of school, whether it was in the community or larger society or individual home experiences that impacted their learning and school success and their social-emotional health and well-being ... experiences that they're going through, and then really validate their feelings and help them build skills and be ready to self manage and get back to class and learn," she said.

After about 15 to 20 minutes, they get sent back to class with the hope their emotions don't get in the way of their **education** or that of their classmates.

"Think about a student who typically might experience dysregulation and perhaps there's some disruption in the classroom. The teacher has to stop, provide direct support to that student, other students must go on and continue to learn on their own, and then that ...) and Peace Centers. They said it's similar to the advocacy model, but with a stronger focus on conflict resolution and restorative circles for students and between students and staff. Additional RPAs are funded through the district's ESSER 3 application, which is still pending approval from the **Tennessee Department of Education**.

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27 [How citizens can help Tennessee revise science education standards | Opinion – Tennessean](#)



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Category National

Source [RocketNews](#)

Market Canada

Language English

Est. Audience 10,092

Est. Publicity \$500

Bob Eby is vice chair of **Tennessee's** State Board of **Education**.

At the heart of every field — medicine, **education**, and manufacturing to name a few — there is a constant need to ask questions and learn more information. Before we can seek to change anything, we must understand what it is and how it works.

This spirit of inquisitiveness is first formally taught to us all in science courses. As we learn physical ...

28 [How citizens can help Tennessee revise science education standards | Opinion](#)



Date Collected Nov 12, 2021 1:32 PM EST

Category Local

Source [DailyAdvent.com](#)

Market Singapore

Language English

Est. Audience 504,625

Est. Publicity \$59,367

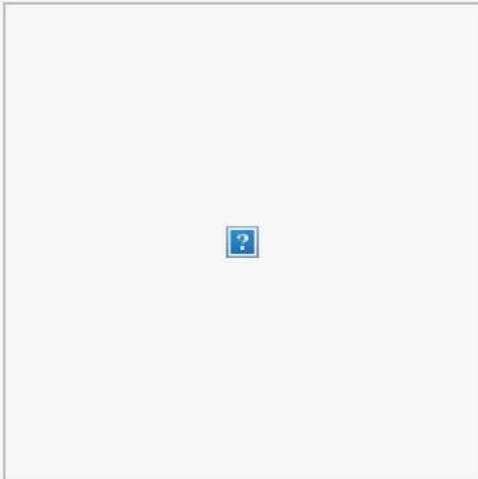
After collecting data and comments over the summer, teams of expert **Tennessee** educators will take that public feedback and work to propose revisions to the standards.

Bob Eby | Guest Columnist

Bob Eby is vice chair of **Tennessee's** State Board of **Education**.

At the heart of every field — medicine, **education**, and manufacturing...

29 [How citizens can help Tennessee revise science education standards | Opinion](#)



Date Collected Nov 12, 2021 1:12 PM EST

Category Local

Source [Tennessean](#)

Market Nashville, TN

Language English

Est. Audience 211,942

Est. Publicity \$2,314

Bob Eby is vice chair of **Tennessee's** State Board of **Education**.

At the heart of every field — medicine, **education**, and manufacturing to name a few — there is a constant need to ask questions and learn more information. Before we can seek to change anything, we must understand what it is and how it works.

This spirit of inquisitiveness is first formally taught to us all in science courses. As we learn physical ... " I am able to serve as a senior technical consultant to the National Nuclear Security Administration and work on some of our country's most important future needs in an evolving environment. Science offers our students a valuable and rewarding lifelong career.

The challenge, then, with science **education** is that the content is not stagnant. As our environment evolves, so must our educational standards and curriculum. This progression of **education** better prepares our students to enter the ever-changing workforce.

Hear more **Tennessee** Voices: Get the weekly opinion ... newsletter for insightful and thought provoking columns.

State board received more than 10,000 comments on science standards

In 2015, the State Board of **Education** was charged in law with the regular review of the English language arts and math academic standards. Academic standards are the topics and concepts a student should know and understand at the end of a course. Since then, the State Board of **Education** has been charged with ... conducting the regular review of the state's K-12 science and social studies standards as well.

Late this summer, a review of **Tennessee's** science academic standards once again got underway. This process relies on the feedback and comments from citizens of the state, as well as the review and refinement of the standards by educators and experts in the field.

At the close of the first round of public feedback this September, the ... State Board of **Education** received over 10,000 comments on the science academic standards.

Four hundred twenty-one citizens contributed to this collective mission to advance **Tennessee's** science **education**. Now, teams of expert **Tennessee** educators will take that public feedback and work to propose revisions to the standards.

Sign up for Latino **Tennessee** Voices newsletter: Read compelling stories for and with the Latino community in **Tennessee**.

Sign up for Black **Tennessee** ...

30 [Two Tennessee District Staff Nominated for National Award Recognizing Inspiring School Employees](#)



Date Collected Nov 12, 2021 12:16 PM EST

Category Government

Source [TN.gov](#)

Market United States

Language English

Est. Audience 348,191

Est. Publicity \$4,819

National Recognition of **Tennessee** Classified School Employees

Nashville, TN—Today, the **Tennessee Department of Education** announced two state finalists for the Recognizing Inspiring School Employees (RISE) Award- Joshua Hinerman, Director of Transportation for Robertson County Schools and Hal Taylor, Director of Operations for Cleveland City Schools.

The RISE Award was created by Congress in 2019 and is overseen ... by the U.S. **Department of Education** to honor classified school employees, such as administrative, food and nutrition, health and student service, transportation or custodial staff, who provide exemplary service to students and their communities.

"I'm proud to honor Mr. Hinerman and Mr. Taylor for their exemplary service to ... **Tennessee** students," said Gov. Bill Lee. "These individuals have worked hard to maintain positive learning environments for their communities, and they play a critical role in preparing students for success beyond the classroom."

"Ensuring the operations and transportation roles and responsibilities are ... maintained at the highest level has been essential as our districts and schools continue to make adjustments and provide our students with the best possible **education** in the midst of a global pandemic," said Commissioner **Penny Schwinn**. "With this nomination, we honor two of these amazing individuals who have truly gone above and beyond for students. Congratulations to Mr. Hinerman and Mr. Taylor and thank you for your commitment to students."

In coordination with the Governor's Office, the ... selected these two finalists from a pool of nominees submitted from across the state by local educational agencies, school administrators, professional associations, nonprofits, parents, and community members. The U.S. **Department of Education** will announce the national honoree and present the individual with an award in the spring.

"We are ecstatic that Mr. Hinerman has been chosen for this recognition! You will find no one else who loves 'the yellow school bus' more and who puts students first every day," said Dr. Chris Causey, ...

31 [#AskExcelinEd: What is the state of Black Education in Tennessee?](#)





Date Collected Nov 12, 2021 10:26 AM EST

Category Blog

Source [ExcelinEd](#)

Author meghan

Market United States

Language English

The late Rev. Dwight Montgomery, Senior Pastor of the Annesdale Cherokee Missionary Baptist Church, President of the Memphis Chapter of the Southern Christian Leadership Conference, and Chairman of the **Education** Committee of the Memphis Baptist Ministerial Association, dedicated his life to the cause of civil rights, including the rights of Black children to access a quality **education** in Memphis and across the state of **Tennessee**. He argued passionately and consistently ... for expanding educational opportunity writing, " School choice is creating an integrated learning environment...by providing equal opportunity to a high-quality **education** for every child, especially the minority and low-income students who have historically been the victims of racism and inequity. "

These educational opportunity and quality gaps have existed far too long between Black students and their peers. And sadly, the existed prior to Rev. Montgomery's ... work and continue to impact **Tennessee's** Black students today. To highlight this persistent disparity and what states can do to fix it, ExcelinEd has been tracking opportunities and outcomes for Black students in states where they comprise at least 25% of the student population in that state. Opportunity and outcome gaps exist in every ... state, and **Tennessee** is no different. The Volunteer State is positioning itself to close these gaps through bold leadership and an aggressive policy agenda.

Nearly 1 million students are enrolled in **Tennessee's** public schools. Almost a quarter of these students—nearly 233,000—are Black. Black students comprise the second largest student population in the state, yet they achieve at rates lower than any other student racial demographic. In reading, for example, 21 percent of Black students, 27.2 percent ... of Hispanic students and 44.2 percent of white students are proficient based on the 2019 TNReady statewide assessment. In math, similar trends persist, with only 9.5% of Black students, 17.1 percent of Hispanic students and 33 percent of white students reading with proficiency.

While **Tennessee's** high school graduation rate stands at nearly 90 percent, it differs when you look at subgroup data. Black students in particular are less likely to graduate than their peers, with a cohort graduation rate of 83 percent. White students graduate at a rate of 93 percent. This disparity translates ...

32 **@OriginalConstitutionalistVA**



[@OriginalConsti1](#)

Date Collected Nov 15, 2021 9:45 AM EST

Followers 397

I am demanding that the **Tennessee Education** Commissioner, **Penny Schwinn** [@SchwinnTeach](#) immediately purge our school... <https://t.co/D2gLIzIwr>

33 **Skylady**



[@Skylady1963](#)

Date Collected Nov 15, 2021 8:47 AM EST

User Location United States

Followers 2,272

I am demanding that the **Tennessee Education** Commissioner, **Penny Schwinn** [@SchwinnTeach](#) immediately purge our school... <https://t.co/D2gLIzIwr>

34 **Liz Radochonski**



[@LizRadochonski](#)

Date Collected Nov 15, 2021 8:44 AM EST

User Location Chicago

Followers 165

I am demanding that the **Tennessee Education** Commissioner, **Penny Schwinn** [@SchwinnTeach](#) immediately purge our school... <https://t.co/D2gLIzIwr>

35 **Trump is still our President - RickB26 - USAF vet.**

[@B26Rick](#)

Date Collected Nov 15, 2021 8:42 AM EST
User Location The greatest country - USA
Followers 679

I am demanding that the **Tennessee Education** Commissioner, **Penny Schwinn** [@SchwinnTeach](#) immediately purge our school... <https://t.co/D2gLIzIwr>

36 **Deborah** **Deplorable**

[@takincarobiz](#)

Date Collected Nov 15, 2021 8:28 AM EST
User Location Basket of Deplorables/USA
Followers 11,495

I am demanding that the **Tennessee Education** Commissioner, **Penny Schwinn** [@SchwinnTeach](#) immediately purge our school... <https://t.co/D2gLIzIwr>

37 **WKNO-TV**

[@WKNO_TV](#)



Date Collected Nov 15, 2021 7:08 AM EST
User Location Memphis, TN
Followers 4,043

[#WKNOChannel10](#) and all TN PBS Stations support [@TNedu](#) w/programming during our

PBS Kids lineup.

Mon, 11/15:

9am –... <https://t.co/t05OXQvXof>

38 Start School Later - Nashville



[@SSL8R_Nashville](#)



Date Collected Nov 14, 2021 9:43 PM EST

Followers 93

It is especially hard for young high school teachers in [@MetroSchools](#)"
><http://twitter.com/ProEdTN/statuses/1460072585631342594>">[@MetroSchools](#) who have
to wake at 5:30am for a 7am... <https://t.co/kBSLJaK87a>

39 Overly Underqualified



[@i_justLiveHere](#)

Date Collected Nov 14, 2021 6:54 PM EST

Followers 111

Next week is American **Education** week. Teachers and school staff need to be paid more.
They don't want a jean day. [@TNedu](#)

40 Michael Cass



[@tnmetro](#)

Date Collected Nov 14, 2021 4:49 PM EST
User Location Nashville
Followers 6,613

Academic gains, new ideas and empathy: What's at stake when the books students can read are restricted... <https://t.co/ysPo3345vM>

41 **The Hunt Institute** 

[@Hunt_Institute](#)

Date Collected Nov 14, 2021 12:05 PM EST
User Location Cary, NC
Followers 8,645

We're excited to be back with our partners [@SCORE4Schools](#) this week to talk [#HigherEd](#) at Complete **Tennessee** Leaders... <https://t.co/JRZAqKCSYg>

42 **L Nicole** 

[@LnJaChris](#)

Date Collected Nov 14, 2021 8:44 AM EST
User Location Tennessee, USA
Followers 19

[@GovBillLee](#) [@TNedu](#) [@FOXNashville](#) please know [@MetroSchools](#) has officially let it be KNOWN they won't comply with L... <https://t.co/oEz1YxgUNX>

43 **Kathy Moore** 

[@kiemoore15](#)

Date Collected Nov 13, 2021 8:09 PM EST
User Location New York, NY

Followers 944

In [@The74](#), [@beth_hawkins](#) writes about K-12 systems that are giving students high-quality [#CTE](#) pathways tied to good... <https://t.co/qzcAgxnqJJ>

44 **Cindy Cliche**



[@CindyCliche1](#)

Date Collected Nov 13, 2021 5:35 PM EST

User Location Murfreesboro, TN

Followers 1,063

Love this!!

45 **Chiefs for Change**



[@chiefsforchange](#)



Date Collected Nov 13, 2021 3:07 PM EST

User Location United States

Followers 17,250

In [@The74](#), [@beth_hawkins](#) writes about K-12 systems that are giving students high-quality [#CTE](#) pathways tied to good... <https://t.co/qzcAgxnqJJ>

46 **L Nicole**



[@LnJaChris](#)

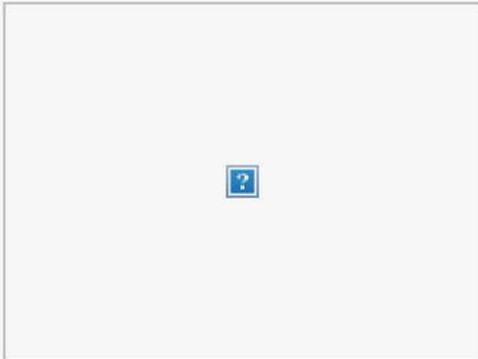
Date Collected Nov 13, 2021 2:02 PM EST
User Location Tennessee, USA
Followers 18

[@MetroSchools](#) Are y'all still ordering schools to keep parents locked out of their kids schools? [@TNedu](#) [@GovBillLee](#)... <https://t.co/hiiTDsleeG>

47 **Molly Plyler**



[@Ms_Plyler](#)



Date Collected Nov 13, 2021 1:29 PM EST
User Location Jackson, TN
Followers 449

Great cohort of West TN teachers at today's [@codeorg](#) training! Thankful to co-facilitate with [@jennybrandon](#). Thank... <https://t.co/9AKWfv89JA>

48 **John Luke Bell**



[@johnlukebell](#)

Date Collected Nov 13, 2021 1:04 PM EST
User Location Cosby, Tennessee, USA
Followers 1,148

It's been a pleasure coordinating learning opportunities this summer and these past four Saturdays for... <https://t.co/TnqYYpIGzE>

49 Robin McClellan



[@robin_mcclellan](#)

Date Collected Nov 13, 2021 1:04 PM EST

User Location Tennessee, USA

Followers 2,339

Saturday learning! Foundational skills instruction for the win! [#TNteachers](#) [#allin](#)

50 Linda Bolt



[@LindaBolt1](#)

Date Collected Nov 13, 2021 12:43 PM EST

User Location Blountville, TN

Followers 83

"I think this governor knows that masks are helpful in preventing the spread of COVID. He also knows that this new... <https://t.co/yEVJLWWudF>

51 John Luke Bell



[@johnlukebell](#)

Date Collected Nov 13, 2021 12:28 PM EST

User Location Cosby, Tennessee, USA

Followers 1,148

As we finish up our final day with our final cohort in [@CockeCoSchools](#), I can say with confidence our students will... <https://t.co/OTPz3IFPwE>

52 Cassidy Lovelace



[@cassidylovelace](#)



Date Collected Nov 13, 2021 11:14 AM EST
User Location Nashville
Followers 167

Full house on this chilly Saturday morning learning about the importance of [#soundsfirst](#) and decodable readers for... https://t.co/vl_R4HRq6UP

53 Russell Dyer



[@drrusselldyer](#)

Date Collected Nov 13, 2021 6:18 AM EST
User Location Cleveland, TN
Followers 3,502

Today, we announced 2 state finalists for the Recognizing Inspirational School Employees (RISE) Award. The RISE Awa... <https://t.co/w777q2sCTI>

54 #LiteracyMatters Tennessee



[@TN_Literacy](#)

Date Collected Nov 13, 2021 1:42 AM EST
User Location Tennessee
Followers 821

[#WKNOChannel10](#) and all TN PBS Stations support [@TNedu](#) with programming during our PBS Kids lineup.

Fri, 11/12:
9am... <https://t.co/HCHKWSt7P>

55 Parent, Christian, former GOP, friend of seahorses



[@dontlikebigots](#)



Date Collected Nov 13, 2021 12:13 AM EST
User Location Williamson County, TN
Followers 47

If you're so happy in the public schools, why do you actively work to degrade, defund, and separate t... <https://t.co/lp4y0FDV6M>

[View Full Report](#)

Critical Mention allows users to search global TV, Radio, Online News & Social from the United States, Canada, and Europe, watch video, edit and share coverage, receive real-time email alerts, build reports, and analyze coverage through word clouds and graphs.

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19 W 44th Street
New York, NY 10036

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

L.E., by his next friends and parents,
SHELLEY ESQUIVEL and MARIO
ESQUIVEL,

Plaintiff,

v.

BILL LEE, et al.,

Defendants.

Case No. 3:21-cv-00835

Chief Judge Waverly D. Crenshaw Jr.
Magistrate Judge Alistair E. Newbern

**PLAINTIFF’S FIRST SET OF
INTERROGATORIES TO
DEFENDANTS PENNY SCHWINN,
TENNESSEE STATE BOARD OF
EDUCATION, SARA HEYBURN
MORRISON, and the INDIVIDUAL
MEMBERS OF THE TENNESSEE
STATE BOARD OF EDUCATION
(NOS. 1 - 8)**

RESPONSE OF THE TENNESSEE STATE BOARD OF EDUCATION

The Tennessee State Board of Education, its Executive Director, in her official capacity, and Members, in their official capacity, (“the Board”) objects and responds to Plaintiff’s First Set of Interrogatories as follows. The Board objects to the definition of “interscholastic sports” as overbroad because it (1) includes elementary schools and colleges, schools to which Tenn. Code Ann. § 49-6-310 does not apply, and (2) is not limited to public middle school or high school interscholastic athletic activities or events, to which Tenn. Code Ann. § 49-6-310 applies, because it also includes athletic competitions simply among students who attend public schools. Additionally, it objects to the use of masculine pronouns to refer to L.E. because the gender-classification of student athletes is at issue in this case. Accordingly, this response refers to Plaintiff without the use of pronouns.

The Board also objects to the definition of “Board Director” and “State Board” as overbroad and unduly burdensome to the extent it would require a response by each Board employee to the interrogatories below. In addition to the Executive Director and Board Member Defendants, the following persons have been identified as persons who may have information relevant to this lawsuit: Nathan James, Deputy Executive Director for Legislative and External Affairs; Amy Owen, Deputy Executive Director of Policy and Research; and Angela Sanders, General Counsel. The Executive Director, Board Member Defendants, and above-named officials respond to the information available to them as provided by Fed. R. Civ. P. 33.

INTERROGATORY NO. 1: Identify all PERSONS who provided information in preparation of YOUR Answer to the Complaint, and for each such PERSON, state the following:

- (a) Their name, address, and telephone number;
- (b) Their relationship to YOU and/or L.E.; and
- (c) A detailed description of such information.

RESPONSE:

Angela Sanders, General Counsel, 500 James Robertson Parkway, Nashville, Tennessee 37243, (615) 253-5707. The Board objects to providing a detailed description of such information to the extent it is privileged as attorney-client communication or attorney-work product. Notwithstanding that objection, Ms. Sanders provided information as to the allegations about the Board.

INTERROGATORY NO. 2: Identify all COMMUNICATIONS, including but not limited to, any complaints or concerns YOU have received from students, teachers, parents, school officials, or school coaches, CONCERNING students who are transgender participating in INTERSCHOLASTIC SPORTS in Tennessee.

RESPONSE: In compliance with Fed. R. Civ. P. 33, the Board responds with information available; because the Board helps administer education statewide, it is not a party or person likely to have available information as to particular students. General Counsel Angela Sanders received a phone call from Kenneth Walker, General Counsel, Shelby County Schools on July 7, 2021.

INTERROGATORY NO. 3: Identify the number of students who are transgender that YOU are aware of who play or have played INTERSCHOLASTIC SPORTS in Tennessee, and for each student, please specify the sport(s) played by the student and, if applicable, the current grade of that student.

RESPONSE: In compliance with Fed. R. Civ. P. 33, the Board responds with information available; because the Board helps administer education statewide, it is not a party or person likely to have available information as to particular students. The Board does not know the identity of transgender students except for Plaintiff L.E.

INTERROGATORY NO. 4: Identify all students who participated in or are participating in INTERSCHOLASTIC SPORTS in Tennessee who have been denied the opportunity to advance in their respective sports, including by obtaining college scholarships, as a result of students who are transgender participating on sports teams.

RESPONSE: In compliance with Fed. R. Civ. P. 33, the Board responds with information available; because the Board helps administer education statewide, it is not a party or person likely to have available information as to particular students. The Board does not know the identity of those students.

INTERROGATORY NO. 5: Identify all PERSONS responsible for promulgating POLICIES or rules to implement S.B. 228.

RESPONSE:

The entities governing the public schools are responsible for adopting policies.

INTERROGATORY NO. 6: Identify all the governmental interests advanced by S.B. 228 and how they are advanced by S.B. 228.

RESPONSE:

The Board objects that this interrogatory seeks legal determinations and to the extent it seeks information privileged by attorney-work product. Notwithstanding these objections and subject to them, the legislature provided some governmental interests in the whereas clauses of Senate Bill 228 and those interests are advanced by safe and orderly participation in interscholastic athletic activity as provided for in the law.

INTERROGATORY NO. 7: Identify all steps YOU have taken to develop POLICIES CONCERNING the implementation and enforcement of S.B. 228, including rulemaking.

RESPONSE:

None.

INTERROGATORY NO. 8: Describe any impacts the participation of students who are transgender in INTERSCHOLASTIC SPORTS has or had on cisgender students, including the opportunities for cisgender students to participate in school sports, advance in their respective sports, obtain college scholarships, and the safety of cisgender students who participate in INTERSCHOLASTIC SPORTS.

RESPONSE: In compliance with Fed. R. Civ. P. 33, the Board responds with information available; because the Board helps administer education statewide, it is not a party or person likely to have available information as to particular students. The Board will rely on experts and disclose them pursuant to Fed. R. Civ. P. 26 and the case management order entered in this lawsuit.

Respectfully Submitted,

HERBERT H. SLATERY III
Attorney General and Reporter

s/ Stephanie A. Bergmeyer
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*Attorney for Governor Lee, Commissioner
Schwinn, Dr. Morrison, the individual
members of the Tennessee State Board of
Education, in their official capacities, and
the Tennessee State Board of Education*

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Response has been served by agreement through e-mail on May 13, 2022, to:

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s/ Stephanie A. Bergmeyer
Stephanie A. Bergmeyer

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
TENNESSEE NASHVILLE DIVISION**

L.E., by his next friends and parents,
SHELLEY ESQUIVEL and MARIO
ESQUIVEL,

Plaintiff,

v.

BILL LEE, et al.,

Defendants.

Case No. 3:21-cv-00835

Chief Judge Waverly D. Crenshaw Jr.
Magistrate Judge Alistair E. Newbern

**PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION
TO DEFENDANTS PENNY
SCHWINN, TENNESSEE STATE
BOARD OF EDUCATION, SARA
HEYBURN MORRISON, and the
INDIVIDUAL MEMBERS OF THE
TENNESSEE STATE BOARD OF
EDUCATION (NOS. 1 - 15)**

RESPONSE OF THE TENNESSEE STATE BOARD OF EDUCATION

The Tennessee State Board of Education, its Executive Director, in her official capacity, and Members, in their official capacity, (“the Board”) objects and responds to Plaintiff’s First Set of Requests for Production as follows. The Board objects to the definition of “interscholastic sports” as overbroad because it (1) includes elementary schools and colleges, schools to which Tenn. Code Ann. § 49-6-310 does not apply, and (2) is not limited to public middle school or high school interscholastic athletic activities or events, to which Tenn. Code Ann. § 49-6-310 applies, because it also includes athletic competitions simply among students who attend public schools. Additionally, it objects to the use of masculine pronouns to refer to L.E. because the gender-classification of student athletes is at issue in this case. Accordingly, this response refers to Plaintiff without the use of pronouns.

The Board also objects to the definition of “Board Director” and “State Board” as overbroad and unduly burdensome to the extent it would require a response by each Board employee to the interrogatories below. In addition to the Executive Director and Board Member Defendants, the following persons have been identified as persons who may have information relevant to this lawsuit: Nathan James, Deputy Executive Director for Legislative and External Affairs; Amy Owen, Deputy Executive Director of Policy and Research; and Angela Sanders, General Counsel.

The Board objects to the instructions that materials dated from January 1, 2019, to the present be produced and thus corresponding scope of these requests because approximately 3.5 years of communications is overbroad and unduly burdensome. Notwithstanding these objections and subject to the agreement between counsel of certain search terms to narrow the potentially responsive documents, the Board responds and will supplement these responses pursuant to the Fed. R. Civ. P.

REQUEST NO. 1:

All DOCUMENTS and COMMUNICATIONS, internal or external, CONCERNING the participation of students who are transgender in INTERSCHOLASTIC SPORTS in Tennessee, including but not limited to COMMUNICATIONS between YOU and any school district; complaints or concerns YOU have received from students, teachers, parents, school officials, or school coaches; and briefing materials provided to YOU.

RESPONSE:

The Board objects that this request is overbroad and unduly vague. Notwithstanding this objection and subject to it, none that the Board recalls except for e-mails of new stories regarding this lawsuit, communications which will be produced in a supplement upon request.

REQUEST NO. 2:

All POLICIES CONCERNING the participation of students who are transgender in INTERSCHOLASTIC SPORTS in Tennessee, including but not limited to POLICIES issued by State agencies or local school boards.

RESPONSE:

The Board objects to this request to the extent it requests policies of local school boards that are not in the Board's possession, custody, or control. Not waiving this objection and subject to it, none.

REQUEST NO. 3:

All DOCUMENTS and COMMUNICATIONS CONCERNING the POLICIES identified in Request No. 2, including but not limited to drafts of POLICIES.

RESPONSE:

Not applicable.

REQUEST NO. 4:

All DOCUMENTS, POLICIES, and COMMUNICATIONS CONCERNING sex-separated sports teams in INTERSCHOLASTIC SPORTS in Tennessee.

RESPONSE:

None that the Board can recall.

REQUEST NO. 5:

All DOCUMENTS, POLICIES, and COMMUNICATIONS CONCERNING the implementation and/or enforcement of S.B. 228, including with respect to L.E. or to any other student.

RESPONSE:

The Board objects to this request to the extent it seeks communications or documents privileged as attorney-client communication or attorney-work product. Notwithstanding these objections and subject to them, none.

REQUEST NO. 6:

All DOCUMENTS and COMMUNICATIONS CONCERNING any impact the participation of students who are transgender in INTERSCHOLASTIC SPORTS has or had on cisgender students, including with respect to:

- a) the opportunities for cisgender students to participate in INTERSCHOLASTIC SPORTS;
- b) the opportunities for cisgender students to advance in their respective INTERSCHOLASTIC SPORTS, including by obtaining college scholarships; or
- c) the safety of cisgender students who participate in INTERSCHOLASTIC SPORTS.

RESPONSE:

The Board objects to this request to the extent it seeks communications privileged as attorney-work product. Notwithstanding this objection and subject to it, the Board will rely on experts and any documents they identify and disclose such information pursuant to the Fed. R. Civ. P. and case management order entered in this lawsuit.

REQUEST NO. 7:

All DOCUMENTS, POLICIES, and COMMUNICATIONS CONCERNING any alleged violation of S.B. 228.

RESPONSE:

None that the Board can recall.

REQUEST NO. 8:

All DOCUMENTS and COMMUNICATIONS, internal or external, CONCERNING L.E., including but not limited to COMMUNICATIONS YOU have received from students, teachers, parents, school officials, school coaches, legislators, members of Tennessee county boards of education, or other PERSONS.

RESPONSE:

The Board objects to this request to the extent it seeks documents and communications privileged as attorney-client communication or attorney-work product. Notwithstanding this objection and subject to it, none that the Board recalls except for e-mails of new stories regarding this lawsuit, communications which will be produced in a supplement upon request.

REQUEST NO. 9:

All DOCUMENTS from or exchanged between, and COMMUNICATIONS with, any representative of any advocacy organization, including but not limited to the Alliance Defending Freedom, the Heritage Foundation, and the Family Research Council, CONCERNING S.B. 228 or the participation of students who are transgender in INTERSCHOLASTIC SPORTS in Tennessee.

RESPONSE:

None that the Board can recall.

REQUEST NO. 10:

All DOCUMENTS, POLICIES, and COMMUNICATIONS reflected in YOUR Fed. R. Civ. P. Rule 26(a) initial disclosures.

RESPONSE:

None.

REQUEST NO. 11:

All DOCUMENTS YOU relied upon, referenced in, or identified in answering L.E.'s interrogatories.

RESPONSE:

None.

REQUEST NO. 12:

All DOCUMENTS, POLICIES, and COMMUNICATIONS CONCERNING girls who participated in INTERSCHOLASTIC SPORTS in Tennessee on teams primarily made up of boys, or boys who participated in INTERSCHOLASTIC SPORTS in Tennessee on teams primarily made up of girls.

RESPONSE:

None that the Board can recall.

REQUEST NO. 13:

All DOCUMENTS, POLICIES, and COMMUNICATIONS considered by YOU CONCERNING the implementation, enforcement, elimination, modification, or amendment of S.B. 228, including but not limited to all DOCUMENTS reflecting data, reports, research, or studies that YOU contend support continued implementation and enforcement of S.B. 228.

RESPONSE:

The Board objects to this request to the extent it seeks documents or communications privileged as attorney-work product or as deliberative process. Notwithstanding this objection and subject to it, as to support for the law, the Board will rely on experts and any documents they identify and disclose such information pursuant to the Fed. R. Civ. P. and case management order entered in this lawsuit.

REQUEST NO. 14:

All DOCUMENTS and POLICIES CONCERNING YOUR delegation of authority over secondary school athletics to the Tennessee Secondary School Athletic Association and the Tennessee Middle School Athletic Association.

RESPONSE:

None that the Board can recall.

REQUEST NO. 15:

All DOCUMENTS and POLICIES CONCERNING YOUR duty to supervise schools in Tennessee, including, but not limited to, any supervision over Tennessee county boards of education and county superintendents or directors.

RESPONSE:

OBJECTION. This request is overbroad and unduly vague. Notwithstanding these objections and subject to them, the Board's policies can be accessed here:

[Policies \(tn.gov\)](#).

Respectfully Submitted,

HERBERT H. SLATERY III
Attorney General and Reporter

s/ Stephanie A. Bergmeyer
Stephanie A. Bergmeyer, BPR # 27096
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*Attorney for Governor Lee, Commissioner
Schwinn, Dr. Morrison, the individual
members of the Tennessee State Board of
Education, in their official capacities, and the
Tennessee State Board of Education*

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Response has been served by agreement through e-mail on May 13, 2022, to:

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s/ Stephanie A. Bergmeyer
Stephanie A. Bergmeyer

Exhibit J

Li Nowlin-Sohl

From: Li Nowlin-Sohl
Sent: Thursday, May 26, 2022 10:54 AM
To: Stephanie A. Bergmeyer
Cc: Sasha Buchert; Stella Yarbrough; Strongin, Samuel M.; External - Tara Borelli
Subject: RE: L.E.: Discovery Issues

Stephanie,

My apologies for the delay in getting back to you on the question of narrowing down the TSSAA search. Our understanding is that this search is in response to RFP 14: "All DOCUMENTS and POLICIES CONCERNING YOUR delegation of authority over secondary school athletics to the Tennessee Secondary School Athletic Association and the Tennessee Middle School Athletic Association." We are willing to narrow this request to relevant policies, memoranda, and the like, and to exclude a search-term search for communications.

We have received no update from you regarding production of documents or Defendant Lee's responses, despite your assurances that we would receive such information a week ago. We will be contacting Magistrate Judge Newbern's chambers today to set up a discovery dispute telephone conference.

I am also confirming that we received your expert disclosures.

Regards,
Li

From: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Sent: Wednesday, May 18, 2022 9:53 PM
To: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>
Cc: Sasha Buchert <sbuchert@lambdalegal.org>; Stella Yarbrough <syarbrough@aclu-tn.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>; External - Tara Borelli <Tborelli@lambdalegal.org>
Subject: RE: L.E.: Discovery Issues

This Message Is From an External Sender

This message came from outside your organization.

Hi, Li:

We started with the broadest search for the athletic associations by just searching "TSSAA" or "Tennessee Secondary School Athletic Association" and that is what came up with the large number of hits. I'm open to suggestions on how to best narrow it down.

Attached is the search term document hits screenshot. We are transferring the documents into a review database. Our plan is run the second batch of production on Friday morning for receipt by you early Friday afternoon. I believe that it will be transferred through a FTP site.

You have identified the custodians for the Department and Board. With regard to which requests that we may be supplementing, it will be to the extent you asked for communications, and this search provides responsive documents (RFP 1, 3-10, 12-14). I will be happy to report to you the number of documents reviewed and

prepped for production at end of day tomorrow. I will also be able to provide tomorrow more information on the status of the responses on behalf of Governor Lee.

Thank you,

Stephanie

Stephanie Bergmeyer | Senior Assistant Attorney General
Office of Tennessee Attorney General
p. 615.741.6828



From: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>
Sent: Wednesday, May 18, 2022 11:13 AM
To: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Cc: Sasha Buchert <sbuchert@lambdalegal.org>; Stella Yarbrough <syarbrough@aclu-tn.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>; External - Tara Borelli <Tborelli@lambdalegal.org>
Subject: RE: L.E.: Discovery Issues

Stephanie,

Can you share with me what the current search is for the school athletic associations? We are happy to work with you from there on narrowing it down.

The documents resulting from the “trans or transgender” search are manageable – please go ahead and produce those.

On our call, you had mentioned that there are 23 custodians being searched. The people listed or referred to at the beginning of the interrogatory responses are:

- The 8 people listed in the opening to Defendant Schwinn’s response to the interrogatories (Chelsea Crawford, Charlie Bufalino, Jack Powers, Jay Klein, Robin Yeh, Rachel Suppe, Shaundraya Hersey, Victoria Robinson)
- The 3 people named opening to the State Board of Education’s response to the interrogatories (Nathan James, Amy Owen, Angela Sanders)
- The 10 individual board members of the TN State Board of Education (Nick Darnell, Mike Edwards, Robert Eby, Gordon Ferguson, Elissa Kim, Lillian Hartgrove, Nate Morrow, Larry Jensen, Darrell Cobbins, and Emily House)

Are the above people all custodians? If so, who are the other two, and if not, can you clarify who is and who is not, and who is missing from the list? Is Christy Ballard (named in Schwinn Rog #1 response) one, though she is General Counsel?

You notably did not acknowledge Defendant Lee’s missing responses. Are those something that we can expect today?

Regards,
Li

From: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Sent: Wednesday, May 18, 2022 8:14 AM
To: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>
Cc: Sasha Buchert <sbuchert@lambdalegal.org>; Stella Yarbrough <syarbrough@aclu-tn.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>; External - Tara Borelli <Tborelli@lambdalegal.org>
Subject: RE: L.E.: Discovery Issues

Li,

I apologize that you were not on the recipient list. I will make sure to update my certificate of service for the future. I am working my way through the Everlaw production. There are some search terms we will need to narrow down, as suspected, such as the school athletic associations—a search of their name returned 48,210 documents, and with attachments 59,456. Do you have any suggestions/requests to narrow down to find any communications that would be relevant to this case?

The search of trans or transgender returned 864 document, and with attachments 1629 documents; I can produce these documents but so far my review has shown mostly e-mails with receipt of the complaint in this case and news articles.

The custodians being searched were listed in the beginning of the interrogatory responses.

I have a meeting with my litigation specialist this morning to further work out the timing of production and will get back to you in more detail afterwards.

Thank you,

Stephanie

Stephanie Bergmeyer | Senior Assistant Attorney General
Office of Tennessee Attorney General
p. 615.741.6828



From: Li Nowlin-Sohl <lnowlin-sohl@aclu.org>
Sent: Monday, May 16, 2022 8:03 PM
To: Stephanie A. Bergmeyer <STEPHANIE.BERGMEYER@ag.tn.gov>
Cc: Sasha Buchert <sbuchert@lambdalegal.org>; Stella Yarbrough <syarbrough@aclu-tn.org>; Strongin, Samuel M. <Samuel.Strongin@wilmerhale.com>; External - Tara Borelli <Tborelli@lambdalegal.org>
Subject: L.E.: Discovery Issues

Stephanie,

I am confirming receipt of Friday's update on the search terms and the production of discovery responses (FYI for future productions, I was not included on the recipients list), and am following up on both fronts.

Your production on Friday includes responses from Penny Schwinn to Plaintiff's First Set of Interrogatories and First Requests for Production, as well as the Tennessee State Board of Education's responses to Plaintiff's First Set of Interrogatories and First Set of Requests for Production, but notably did not include any responses from Defendant Bill Lee. We ask that Defendant Lee's responses be produced by Wednesday, May 18.

We are still reviewing your discovery responses and will likely have additional follow-up, but in the meantime, it is not clear to us which RFPs you are planning to supplement and are running searches to identify documents for. Would you mind clarifying? Could you also provide us with a list of the 23 custodians that are being searched?

As a refresher on where things stand, I emailed you on Monday, May 2, 2022, letting you know that it had been 10 weeks since we served our discovery requests and that if we did not receive anything from you by Friday, May 6, we

would file a motion to compel the following week. You did not respond to that email until 4:52pm CT on Friday, May 6 – the deadline – and said that you would not be able to produce discovery responses that day, but would by the next Friday, May 13. We spoke on the phone on Wednesday, May 11 to try to work with you to resolve this, and you reiterated your plan to produce responses to Plaintiff’s Interrogatories by Friday, May 13, as well as any documents you currently had. You also said that you anticipated the transfer of documents to be completed that day or the next, but then later followed up by email that it would be the end of last week. Lastly, you said on the call that you would start running search terms on the documents and let us know what the yields were, and would promptly follow up with us regarding results. You emailed at 5:01 CT on Friday to say that search terms were being run on one (out of 23) custodian’s files, and that you would follow up on the specific hits today – Monday. We have not heard anything from you today regarding the searches or what progress has been made, if any.

As of today, the State Defendants have produced a total of *three* documents in response to Plaintiff’s RFPs and we still have not seen any initial results from the search terms, let alone documents. We are no longer confident that, absent the Court’s involvement, the discovery responses will be produced without further unnecessary delays. If we do not have Defendant Lee’s discovery responses and significant progress on document production – including the actual production of documents – by this Wednesday, May 18, we will be contacting the Magistrate Judge to request a discovery conference as soon as possible, per the Case Management Order. We are happy to continue working with you on search terms or any other way we can be off assistance in the meantime, but given the repeated ignored deadlines and the fact that we have almost nothing 13 weeks after serving our discovery requests – and two weeks before the deadline to serve any follow-up discovery requests – we can no longer refrain from involving the Court.

Regards,
Li

Li Nowlin-Sohl

Pronouns: she, her, hers

Senior Staff Attorney

Jon L. Stryker and Slobodan Randjelović LGBTQ & HIV Project

American Civil Liberties Union Foundation

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