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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA  
TUCSON DIVISION**

Jane Doe, by her next friend and parents  
Helen Doe and James Doe; and Megan Roe,  
by her next friend and parents, Kate Roe and  
Robert Roe,

Plaintiffs,

v.

Thomas C. Horne in his official capacity as  
State Superintendent of Public Instruction;  
Laura Toenjes, in her official capacity as  
Superintendent of the Kyrene School  
District; Kyrene School District; The  
Gregory School; and Arizona Interscholastic  
Association Inc.,

Defendants.

Case No. 4:23-cv-00185-JGZ

**[PROPOSED]  
CASE MANAGEMENT PLAN**

**CASE MANAGEMENT PLAN**

**1. Nature of the Case**

Plaintiffs are two transgender girls who want to play on girls’ volleyball, basketball, cross-country, and soccer teams at their schools. Ariz. Rev. Stat. § 15-120.02 (the “Act”) categorically bars all transgender girls in all grades from playing on girls sports teams regardless of their individual circumstances. Plaintiffs allege that this exclusion, as applied to Plaintiffs, violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (“Title IX”), the Americans with Disabilities Act, 42 U.S.C. § 12101 (“ADA”), and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (“Rehabilitation Act”). Plaintiffs seek declaratory and injunctive relief to permanently enjoin the Act’s enforcement as applied to them.

Defendant Horne alleges that the Act does not violate Title IX because Title IX exists in large part to protect women’s and girls’ rights to fairness and equality in sports competition, and because the regulations under Title IX expressly permit separation of athletes by sex. Defendant Horne alleges that the Act does not violate the Equal Protection Clause because the sex-based classifications in the Act are permissible because they serve important government purposes and are substantially related to those purposes, and because the Act treats all males identically regardless of their gender identity. Defendant Horne alleges that the Act does not violate the ADA or the Rehabilitation Act because the ADA and the Rehabilitation Act excludes gender identity disorders not resulting from physical impairments.

Defendant AIA denies that it applied or enforced the Act in any way that prevented Plaintiffs from participating on sports teams designed as being for females. The responsibility for determining whether students are eligible to participate on a team designated as being for females lies with the principals of each respective school. Defendant AIA denies that any act by the AIA violated the Fourteenth Amendment to the

1 Constitution, Title IX, the ADA, or the Rehabilitation Act. Defendant AIA seeks  
2 recovery of its attorneys’ fees and costs incurred in defending against Plaintiffs’ claims.

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4 **2. Elements of the Claims**

5 *A. Plaintiffs’ Claims*

6 Equal Protection

7 (a) The challenged law discriminates against individuals on the basis of  
8 sex, *see Craig v. Boren*, 429 U.S. 190, 197 (1976)—including  
9 transgender identity, *see Karnoski v. Trump*, 926 F.3d 1180, 1201  
10 (9th Cir. 2019).

11 (b) Defendants must demonstrate that the law “serve[s] important  
12 governmental objectives.” *Craig*, 429 U.S. at 197.

13 (c) Defendants must demonstrate that the law is “substantially related to  
14 [the] achievement of those objectives.” *Craig*, 429 U.S. at 197; *see*  
15 *also Latta v. Otter*, 771 F.3d 456, (9th Cir. 2014) (“The burden of  
16 justification the state shoulders under this intermediate level of  
17 scrutiny is demanding: the state must convince the reviewing court  
18 that the law’s proffered justification for the gender classification is  
19 exceedingly persuasive.” (quoting *United States v. Virginia*, 518  
20 U.S. 515, 533 (1996) (cleaned up))).

21 (d) The burden of justification rests entirely on the State. *See*  
22 *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982)  
23 The State must show “at least that the [challenged] classification  
24 serves important governmental objectives and that the discriminatory  
25 means employed are substantially related to the achievement of  
26 those objectives.” *United States v. Virginia*, 518 U.S. at 533.

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Title IX

- (a) Defendants receive federal financial assistance. *Schwake v. Ariz. Bd. of Regents*, 967 F.3d 940, 946 (9th Cir. 2020); *see also* 20 U.S.C. § 1681(a).
- (b) Plaintiffs are excluded from participation in, denied the benefits of, or subjected to discrimination under an education program. *Schwake*, 967 F.3d at 946; 20 U.S.C. § 1681(a).
- (c) This exclusion, denial, or discrimination is on the basis of sex, *see* 20 U.S.C. § 1681(a); *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1741 (2020); *Grabowski v. Ariz. Bd. of Regents*, 69 F.4th 1110, 1116 (9th Cir. 2023); *Doe v Snyder*, 28 F.4th 103, 114 (9th Cir. 2022); *Schwake*, 967 F.3d at 946.

ADA

- (a) The plaintiff is an individual with a disability. *O’Guinn v. Lovelock Correctional Ctr.*, 502 F.3d 1056, 1060 (9th Cir. 2007).
- (b) The plaintiff is “otherwise qualified to participate in or receive the benefit of some public entity’s services, programs, or activities.” *O’Guinn*, 502 F.3d at 1060 (cleaned up).
- (c) The plaintiff was “excluded from participation in or denied the benefits of the public entity’s services, programs, or activities, or was otherwise discriminated against by the public entity.” *O’Guinn*, 502 F.3d at 1060 (cleaned up); *see also* 42 U.S.C. § 12132.
- (d) The exclusion, denial, or discrimination was “by reason of” the plaintiff’s disability. *O’Guinn*, 502 F.3d at 1060 (cleaned up); *K.M. ex rel. Bright v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1099 (9th Cir. 2013) (explaining that the ADA “establishes a ‘motivating factor’ causal standard of liability”); *see also* 42 U.S.C. § 12132.

1                    ADA – Title III

- 2                    (a)     The plaintiff is an individual with a disability, within the meaning of  
3                    the ADA. *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 730 (9th Cir.  
4                    2007).
- 5                    (b)     The defendant “is a private entity that owns, leases, or operates a  
6                    place of public accommodation.” *Molski*, 481 F.3d at 730.
- 7                    (c)     The plaintiff was denied public accommodations by the defendant  
8                    because of her disability.” *Molski*, 481 F.3d at 730.

9                    Rehabilitation Act

- 10                    (a)     The plaintiff is an individual with a disability. *O’Guinn*, 502 F.3d at  
11                    1060 (9th Cir. 2007).
- 12                    (b)     The plaintiff is “otherwise qualified” to participate in or receive the  
13                    benefit of some public entity’s programs or activities. *O’Guinn*, 502  
14                    F.3d at 1060; 29 U.S.C. § 794.
- 15                    (c)     The plaintiff was denied participation or benefit “solely by reason of  
16                    [her] disability.” *O’Guinn*, 502 F.3d at 1060 (cleaned up); *see also*  
17                    29 U.S.C. § 794.
- 18                    (d)     The program or activity receives federal financial assistance.  
19                    *O’Guinn*, 502 F.3d at 1060; *see also* 29 U.S.C. § 794.

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21                    *B. Defendants’ Affirmative Defenses*<sup>1</sup>

22                    Defendant Horne

23                    Defendant Horne does not intend to pursue affirmative defenses, but will defend  
24                    the claims on the bases he generally describes *supra* in the Nature of the Case section.

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28                    <sup>1</sup> Defendant The Gregory School (“TGS”) reserves the right to supplement or amend its  
defenses when it files its Answer, which it will do after the Court’s decision on its partial  
Motion to Dismiss. TGS also reserves the right to supplement the discovery section  
below following the Court’s decision on TGS’s Motion to Dismiss.

1 AIA

2 No denial of access to, participation in or benefit of playing sports. Defendant  
3 AIA never prevented or otherwise denied Plaintiffs access to, or otherwise prevented  
4 Plaintiffs from participating in or receiving the benefits of, any school sport that is  
5 designated for females. Accordingly, all of Plaintiffs' claims against the AIA fail as a  
6 matter of law.

7 No ownership, lease or operation of a place of public accommodation. Defendant  
8 AIA did not (and still does not) own, lease or operate a place of public accommodation  
9 that denied Plaintiffs from participating it or receiving the benefits of playing female  
10 sports, so Plaintiffs' claims for breach of title III of the ADA fail as a matter of law.  
11

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13 **3. The factual and legal issues genuinely in dispute**

14 Plaintiffs believe that there are few, if any, factual and legal issues genuinely in  
15 dispute and that the Court will be able to resolve the case on summary judgment at the  
16 close of discovery.

17 Defendant Horne asserts that there are fundamental factual disputes regarding  
18 whether prepubertal biological males have a competitive advantage over biological  
19 females in sports competition, and whether puberty-blocking medication and cross-  
20 hormone therapies reverse those pre-existing competitive advantages, and whether  
21 biological males undergoing puberty suppression and cross-sex hormone therapy  
22 nevertheless continue to develop physiological male advantages such as height and lean  
23 muscle mass. The parties dispute whether participation of transgender females against  
24 natal females places the natal females at an unfair competitive disadvantage, and poses an  
25 unfair risk of physical injury to the natal females. Regarding legal issues in dispute,  
26 Defendant Horne also disputes that the Act violates the Equal Protection Clause, Title IX,  
27 the ADA, or the Rehabilitation Act.

28 Defendant AIA agrees that there are no factual disputes as to Plaintiffs' claims  
against the AIA, such that summary judgment should resolve such claims.

1 **4. The jurisdictional basis for the case**

2 This Court has original jurisdiction over the subject matter of this action pursuant  
3 to 28 U.S.C. §§ 1331 and 1343 because the controversy arises under the laws of the  
4 United States, including laws providing for the protection of civil rights, and because this  
5 suit seeks redress for the deprivation, under color of state law, of rights secured by the  
6 United States Constitution.

7 The parties agree that there are no issues regarding jurisdiction.

8  
9 **5. Parties that have not been served and/or not appeared**

10 All parties have been served.

11  
12 **6. The names of parties not subject to the Court's jurisdiction**

13 There are no parties not subject to Court's jurisdiction.

14  
15 **7. Dispositive or partially dispositive issues to be decided by pretrial motions**

16 There is a pending motion to dismiss by TGS on whether TGS is subject to Title  
17 IX and Section 504 of the Rehabilitation Act.

18 Plaintiffs currently intend to file for summary judgment at the close of discovery  
19 on all of their claims, which would be dispositive of the issues to be determined in this  
20 case.

21 Defendant Horne currently intends to file a motion for summary judgment that  
22 would dispose of all claims in the lawsuit after the close of discovery.

23  
24 **8. Cross-motions for Summary Judgment**

25 The parties would prefer simultaneous briefing. The parties propose 30 pages for  
26 the initial briefs and opposition briefs and 15 pages for the reply briefs. Briefs will be  
27 filed according to the attached schedule:

28 a. Summary Judgment Motions: **August 16, 2024**

1           b.     Oppositions: **September 16, 2024**

2           c.     Replies: **October 15, 2024**

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4     **9.     Deadline for Initial Disclosures**

5           Per Rule 26(a)(1), the parties stipulate to provide initial disclosures by  
6     **September 29, 2023.**

7  
8     **10.    Changes in the limitations on discovery imposed by Rule 26(b)(2)**

9           The parties do not have any suggested changes/limitations on discovery at this  
10    time.

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12    **11.    Scope of Discovery**

13           *A. Plaintiffs*

14           Plaintiffs will need to conduct discovery on all defenses raised by Defendant. For  
15    example, Plaintiffs will need to conduct discovery on the origins of, as well as any  
16    justifications or governmental interests, for the Ban and Defendants' enforcement of the  
17    Ban. Plaintiffs also plan to disclose expert witnesses. Because Plaintiffs anticipate  
18    substantial expert discovery (potentially involving at least seven expert witnesses  
19    between the parties), Plaintiffs believe it is most efficient for discovery to be broken  
20    down into two phases: (1) Fact Discovery; and (2) Expert Discovery. Fact Discovery  
21    will conclude on **March 8, 2024** and Expert Discovery will conclude on **July 19, 2024.**

22           *B. Defendants*

23           Defendant Horne currently intends to disclose expert witnesses and take expert  
24    discovery, including depositions. Defendant Horne currently intends to take discovery  
25    related to the harms resulting from biological males competing in sports against  
26    biological females. Defendant Horne agrees that discovery should be separated into fact  
27    and expert discovery phases and agrees with the discovery cut-off dates identified by  
28    Plaintiffs above.

1 Defendant AIA agrees with Plaintiffs’ proposal to split discovery between fact and  
2 expert discovery. Defendant AIA anticipates propounding some written discovery and  
3 attending the aforementioned depositions.  
4

5 **12. A discussion of any issues relating to disclosure or discovery of electronically**  
6 **stored information**

7 The Parties will negotiate an ESI Protocol no later than **September 15, 2023**.  
8

9 **13. A discussion of any issues relating to claims of privilege or work product**

10 The Parties will negotiate a Protective Order that addresses the issues of  
11 inadvertent disclosure of confidential or privileged information by **September 15, 2023**.  
12 The parties will produce a privilege log 30 days after the substantial completion of a  
13 document production.  
14

15 **14. Proposed deadlines**

16 Defendant Horne believes that proceedings in this matter should be stayed pending  
17 the outcome of the current appeals of the Court’s preliminary-injunction ruling. The  
18 Ninth Circuit’s ruling on those appeals may affect the scope of the litigation and a  
19 schedule should be set in light of that ruling. However, if the Court determines that the  
20 case should proceed at the trial-court level during the pendency of the appeal, Defendant  
21 Horne agrees to the proposed deadlines below. Plaintiffs oppose any stay of discovery  
22 pending appeal of the preliminary injunction.

23 a. Initial disclosures required by Rule 26(a)(1), Fed. R. Civ. P. (*see*  
24 paragraph A.6. of this Order) – **September 29, 2023**

25 b. Addition of parties or amending complaint – **October 23, 2023**

26 c. Disclosure of witnesses pursuant to Rule 26(a)(3)(A)(i), Fed. R. Civ. P. –  
27 Parties will disclose the names of trial witnesses **at least 30 days before**  
28 **trial** in accordance with Rule 26(a)(3)(B).

- 1 d. Disclosure of initial expert testimony and rebuttal expert testimony
- 2 pursuant to Rule 26(a)(2), Fed. R. Civ. P.:
- 3 i. Plaintiffs' Expert Disclosures and Reports: **March 1, 2024**
- 4 ii. Defendants' Expert Disclosures and Rebuttal Reports: **April 1, 2024**
- 5 iii. Plaintiffs' Expert Rebuttal Reports: **May 15, 2024**
- 6 e. Discovery deadlines:
- 7 i. Fact discovery: **March 8, 2024**
- 8 ii. Expert discovery: **July 19, 2024**
- 9 f. Filing dispositive motions: **August 16, 2024.**
- 10 g. Filing of the joint proposed pretrial order:
- 11 Deadline to be set following decision on the motion for summary judgment.
- 12 h. Filing of joint settlement status reports: **January 22, 2024**

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#### 14 **15. Evidentiary Hearings**

15 The parties anticipate filing fully dispositive motions for summary judgment and  
16 defer any pre-trial evidentiary motions until after the Court's decision on summary  
17 judgment. To the extent that the parties intend to submit *Daubert* or other evidentiary  
18 motions with their motions for summary judgment, the deadline for such motions would  
19 be **August 16, 2024.**

#### 20

#### 21 **16. Estimated Date and Length of Trial**

22 At this time, Plaintiffs believe a trial will not be necessary as they believe the case  
23 can be resolved at summary judgment. However, if the case is not resolved on summary  
24 judgment, then Plaintiffs will be in a better position to determine an estimated length and  
25 any suggestions for shortening the trial at that time. The date for the trial can also be  
26 determined after the Court rules on summary judgment motion(s).

27 Defendant Horne agrees the parties will be in a better position to anticipate the  
28 length of trial after discovery and rulings on dispositive motions. Based on Defendant

1 Horne's current knowledge and the current status of that case, Defendant Horne estimates  
2 that a four or five-day trial would be appropriate.

3 Defendant AIA believes a trial will not be necessary with respect to the claims  
4 asserted against the AIA because summary judgment should resolve the same.

5  
6 **17. Whether a jury trial has been requested and whether the request for jury  
7 trial is contested**

8 Although Defendant Horne has filed a request for jury trial, Plaintiffs believe there  
9 is no right to a jury trial in this case because Plaintiffs do not seek damages and instead  
10 seek only equitable relief. *See City of Monterey v. Del Monte Dunes at Monterey, Ltd.*,  
11 526 U.S. 687, 719 (1999). Accordingly, Plaintiffs contest the request.

12  
13 **18. Prospects for Settlement**

14 At this time, the Parties do not believe that settlement of this matter is likely and  
15 therefore do not believe a settlement conference would be a prudent use of the parties'  
16 time and resources.

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18 **19. Placement on the Complex Track for Case Management Purposes**

19 This case does not involve any unusual, difficult, or complex problems that require  
20 placement on the complex track for case management purposes.

21  
22 **20. Any Suggestions to Expedite the Disposition of this Matter**

23 No.  
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1 Respectfully submitted this 21st day of August, 2023.

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 21, 2023, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

I hereby certify that on August 21, 2023, I transmitted the attached document via U.S. mail to the following CM/ECF non-registrants:

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