



September 12, 2022

Submitted via regulations.gov

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington DC, 20202

The Honorable Catherine Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

RE: Nondiscrimination on the Basis of Sex (including Sexual Orientation, Gender Identity, Sex Characteristics, and Sex Stereotypes) in Federally Funded Education Programs or Activities (87 FR 41390)

We the undersigned 257 education, civil rights, and youth-serving organizations are pleased to submit this comment in response to the proposed rulemaking on Title IX of the Education Amendments of 1972 (Title IX).¹ Students who are lesbian, gay, bisexual, transgender, queer, nonbinary, Two-Spirit², intersex³, or who otherwise identify as LGBTQI+ commonly face barriers to equal access and opportunity in our K-12 schools and education systems. These barriers include discriminatory policies, discriminatory practices (including unfair and disproportionate discipline), harassment, bullying, and other forms of victimization. LGBTQI+ students who are transgender; nonbinary; Black, Indigenous, and people of color (BIPOC); and people with disabilities experience the most hostile school climates and compounded marginalization in education systems.

In recent years, these barriers have been exacerbated, encouraged, and even mandated by policy proposals at both the federal and state levels that are symptomatic of a coordinated effort to denigrate, erase, and further stigmatize LGBTQI+ people and their families, particularly transgender children

¹ U.S. Department of Education, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” *Federal Register* 87, no. 132 (July 12, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-07-12/pdf/2022-13734.pdf>.

² “Two-Spirit” is a contemporary umbrella term used by Native American LGBTQI+ communities that refers to the historical and current First Nations people whose individual spirits were and are a blend of female and male spirits. Se-ah-dom Edmo and Aaron Ridings, editors, “Tribal Equity Toolkit 3.0: Tribal Resolutions and Codes to Support Two Spirit & LGBT Justice in Indian Country,” 2017, <https://www.thetaskforce.org/tribal-equity-toolkit-3-0/> (Accessed May 3, 2022).

³ “Intersex” is an umbrella term describing individuals with innate variations in physical sex characteristics. For example, an intersex person may be born with variations in their chromosomes, genitals, internal organs, or hormone function (or may naturally develop these variations later in life), causing their body not to conform with stereotypes about male or female bodies. interACT: Advocates for Intersex Youth, Intersex Definitions, <https://interactadvocates.org/intersex-definitions/> (Accessed July 20, 2022).

and youth and those who are BIPOC.⁴ Teachers, administrators, school mental health professionals, and other school staff who have stood up for LGBTQI+ students, armed with the knowledge of education and medical experts, have been discouraged, harassed, and pushed out of schools.⁵ LGBTQI+ parents and guardians have expressed fears that their children will have to hide who their parents are at school.⁶ Some parents and guardians have made the difficult decision to uproot their families and move out of their homes and communities to protect their children from the impacts of anti-LGBTQI+ policies,⁷ including a policy that requires teachers to report the parents of transgender children for potential child abuse if the child is believed to be receiving gender-affirming care.⁸

In this extraordinary context, the Department's clear affirmation of the following in its proposed Title IX rule is critical to protecting LGBTQI+ students' equal access and opportunities to educational programs and activities:

- Prohibited discrimination on the basis of sex includes discrimination on the basis of sexual orientation, gender identity, sex characteristics (including intersex traits), and sex stereotypes;
- Separate gender programs and activities are not a safe harbor for discrimination on the basis of gender identity; and
- Any sex-based harassment that creates a hostile school environment is prohibited under Title IX, including harassment or bullying on the basis of sexual orientation, gender identity, sex characteristics (including intersex traits), and sex stereotypes.

These and other proposed revisions will help ensure Title IX is given “a sweep as broad as its language” and “origins dictate,” consistent with case law⁹ and President Biden's Executive Orders on

⁴ Three states have passed laws and one state has taken executive action banning, restricting, or criminalizing best practice medical care for transgender youth. Movement Advancement Project, “Equality Maps: Healthcare Laws and Policies,” <https://www.lgbtmap.org/equality-maps/healthcare-laws-and-policies>; Movement Advancement Project, April 2021, LGBTQ Policy Spotlight: Efforts to Ban Health Care for Transgender Youth. www.lgbtmap.org/2021-spotlight-health-care-bans. In two years, eighteen states have passed laws barring transgender students from participating in school sports teams in correspondence with their gender identities. GLSEN and TransAthlete.com (2022), “Navigator: Trans and Nonbinary Athletic Inclusion Policies,” <https://maps.glsen.org/trans-and-nonbinary-athletic-inclusion-policies/>. Curriculum censorship laws have targeted the LGBTQ+ community and communities of color. GLSEN, Inclusive Curricular Standards, <https://www.glsen.org/activity/inclusive-curricular-standards/>; Movement Advancement Project, “Policy Spotlight: Curriculum Censorship & Hostile School Climate Bills, March 2022,” www.lgbtmap.org/2022-spotlight-school-bills-report. GLSEN has previously shown that curriculum censorship laws are associated with more hostile school climates for LGBTQ+ students, including a greater likelihood of experiencing anti-LGBTQ+ harassment and assault. GLSEN, “Laws that Prohibit the ‘Promotion of Homosexuality’: Impacts and Implications (Research Brief),” 2018, <https://www.glsen.org/research/laws-prohibit-promotion-homosexuality-impacts-and-implicatio>.

⁵ See, e.g., Laura Meckler and Hannah Natanson, “New critical race theory laws have teachers scared, confused and self-censoring,” *The Washington Post*, February 14, 2022, <https://www.washingtonpost.com/education/2022/02/14/critical-race-theory-teachers-fear-laws/>; Jo Yurbaba, “Missouri teacher resigns after school tells him to remove Pride flag,” *NBC News*, September 9, 2021, <https://www.nbcnews.com/nbc-out/out-news/missouri-teacher-resigns-school-tells-remove-pride-flag-rcna1959>.

⁶ See, e.g., “LGBTQ+ parents fear their children will have to hide their families at school under Florida's ‘Don't Say Gay’ bill,” *PBS NewsHour*, March 28, 2022, <https://www.pbs.org/newshour/education/lgbtq-parents-fear-their-children-will-have-to-hide-their-families-at-school-under-floridas-dont-say-gay-bill>.

⁷ See, e.g., Allie Spillyards, “Mother Moves Family Away from Texas to Protect Transgender Son,” *NDC 5 Dallas Fort Worth*, <https://www.nbcdfw.com/news/local/mother-moves-family-away-from-texas-to-protect-transgender-son/2913635/>.

⁸ See, Mark Walsh, “Texas Educators Say They Don't Want to Be ‘Transgender Police,’” *EducationWeek*, March 10, 2022, <https://www.edweek.org/policy-politics/texas-educators-say-they-dont-want-to-be-transgender-police/2022/03>.

⁹ *Bostock v. Clayton County*, Georgia, 140 S.Ct. 1731, 1742 (2020); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 608 (4th Cir. 2020); *Back v. Hastings on Hudson Union Free Sch. Dist.*, 365 F.3d 107 (2d Cir. 2004); *Kahan v. Slippery Rock Univ. of Pa.*, 50 F. Supp. 3d 667 (W.D. Pa. 2014); *Tingley-Kelley v. Trs. of Univ. of Pa.*, 677 F. Supp. 2d 764 (E.D. Pa. 2010); *Doe v. Brimfield Grade Sch.*, 552 F. Supp. 2d 816 (C.D. Ill. 2008); *Montgomery v. Independent Sch. Dist. No. 709 F.Supp.2d 1081* (D. Minn. 2000); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1048 (7th Cir. 2017).

implementing the landmark *Bostock v. Clayton County, Georgia* ruling and advancing equity for LGBTQI+ and other communities that experience marginalization.¹⁰

I. Ensuring an Educational Environment Free from Discrimination on the Basis of Sexual Orientation, Gender Identity, Sex Stereotypes, or Sex Characteristics (including Intersex Traits)

Anti-LGBTQI+ discrimination is a common and harmful barrier to equal access and opportunity in K-12 learning communities that is associated with adverse education and wellbeing outcomes.¹¹ GLSEN’s National School Climate Survey found that nearly three in five LGBTQ+ students—and more than three in four transgender students—report experiencing anti-LGBTQ+ discrimination at school, including being prevented from using the bathroom or locker room that corresponds with their gender identity, being prevented from forming or promoting a Gender-Sexuality Alliance (GSA) or another LGBTQ+ affirming student club, and being disciplined because they identify as LGBTQI+.¹²

The Department’s proposed new regulation at §106.10, affirming that prohibited sex discrimination on the basis of sex encompasses discrimination on the basis of sexual orientation, gender identity, sex characteristics (including intersex traits), and sex stereotypes is an important and necessary revision to the Title IX regulations.¹³

¹⁰ Executive Order 13985 of January 20, 2021, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” 86 Fed. Reg. §14 (January 25, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf>; Executive Order 13988 of January 20, 2021 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation). 86 Fed. Reg. §14 (January 25, 2021) <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf>; Executive Order 14021 of March 8, 2021, “Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity,” 86 Fed. Reg. §46 (March 11, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-03-11/pdf/2021-05200.pdf>; Executive Order 14075 of June 15, 2022, “Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals,” 87 Fed. Reg. §118 (June 21, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-06-21/pdf/2022-13391.pdf>.

¹¹ Compared to LGBTQ+ students who did not experience LGBTQ+-related discrimination at school, those who experienced such discrimination at school are almost three times as likely to have missed school in the past month because they felt unsafe or uncomfortable, report lower GPAs, lower self-esteem, higher levels of depression, and higher rates of school discipline that are indicative of anti-LGBTQ+ policies that, intentionally or unintentionally, make it effectively “against the rules” to be themselves. Joseph G. Kosciw, Caitlin M. Clark, Nhan L. Truong, and Adrian D. Zongrone, *The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools* (New York: GLSEN, 2020), 49 – 51, <https://www.glsen.org/research/2019-national-school-climate-survey>.

Intersex people are “vulnerable to discriminatory practices in a range of settings, including access to health services, education... and sports.” United Nations Office of the High Commissioner for Human Rights, “Free & Equal: UN for LGBT Equality, Fact Sheet: Intersex,” 2015, https://www.unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf. See also interACT: Advocates for Intersex Youth, “What We Wish Our Teachers Knew,” <https://interactadvocates.org/wp-content/uploads/2018/07/BROCHURE-interACT-Teachers-final.pdf> (Accessed August 18, 2022).

In addition to students, anti-LGBTQI+ discrimination in schools harms LGBTQI+ parents and caregivers, who may be discouraged from active, visible participation in their child’s education. See, e.g., Joseph G. Kosciw and Elizabeth M. Diaz, *Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual and Transgender Parents and Their Children in Our Nation's K–12 Schools* (New York: GLSEN, 2008), <https://www.glsen.org/research/involved-invisible-ignored-lgbtq-parents-and-their-children>.

¹² 59.1% of all LGBTQ+ students reported anti-LGBTQ+ discriminatory policies and practices at school. 77.3% of transgender students, including trans nonbinary students, reported anti-LGBTQ+ discrimination. Kosciw, et al., *The 2019 National School Climate Survey*, 40, 95, 99. When referencing studies that do not include disaggregated data on the experiences of intersex students, we use “LGBTQ+.”

¹³ §106.10 also enumerates “pregnancy or related conditions,” which we support.

The Department should ensure nondiscrimination policies and related notifications include prohibited sex-based discrimination enumerated in §106.10

The Department proposes to revise §106.8(b) and (c) to improve clarity and dispel confusion regarding a school's responsibility to publish a nondiscrimination policy and notify students, families, educators, and other staff of the nondiscrimination policy it has adopted. We urge the Department to fully enumerate sexual orientation, gender identity, sex characteristics (including intersex traits), sex stereotypes, and pregnancy or related conditions within the nondiscrimination policy detailed in §106.8(b)(1), as well as within the contents of a notice of nondiscrimination described in §106.8(c)(1)(i).

As proposed, a student or parent seeking recourse after an incident of discrimination on one of these bases—sexual orientation, gender identity, sex characteristics (including intersex traits), sex stereotypes, and pregnancy or related conditions—may be confused and could mistakenly conclude that there is no recourse available to them. Similarly, coordinators and other school personnel may misunderstand their obligations when policies and notifications lack clarity.

Studies have consistently found that explicitly enumerating these protections in school policies matters and is associated with less hostile school climates for LGBTQI+ students.¹⁴ For example, GLSEN found that LGBTQ+ students who reported having an anti-bullying policy at their school that specifically enumerates sexual orientation and gender identity experienced less anti-LGBTQ+ victimization, were more likely to report bullying they experienced to school staff, and were far more likely to say that staff responses were effective, compared to LGBTQ+ students who reported having no anti-bullying policy or a policy that did not enumerate sexual orientation or gender identity.¹⁵ For the much-needed clarification of Title IX's broad scope under §106.10 to reach those who need it most, the Department should require full enumeration of the forms of prohibited sex-based discrimination enumerated in proposed §106.10 in recipients' nondiscrimination policies.

The Department should clarify that separate gender dress or appearance codes have violated Title IX and that students must be permitted to dress in accordance with their gender identities.

The Department includes plain language examples of prohibited sex discrimination in cases where an individual is harassed because their dress, appearance, and/or gender expression are perceived as gender nonconforming in its discussion of proposed §106.10.¹⁶ However, the Department does not

¹⁴ William J. Hall, "The effectiveness of policy interventions for school bullying: A systematic review," *Journal of the Society for Social Work and Research* 8, no. 1: 45-69. <https://pubmed.ncbi.nlm.nih.gov/28344750/>.

Mark L. Hatzenbuehler and Katherine M. Keyes, "Inclusive Anti-bullying Policies and Reduced Risk of Suicide Attempts in Lesbian and Gay Youth," *Journal of Adolescent Health* 53, no. 1 (2021): S21-S26, <https://www.sciencedirect.com/science/article/pii/S1054139X12003540>; Ryan M. Kull, Emily A. Greytak, Joseph G. Kosciw, and Christian Villenas, "Effectiveness of school district antibullying policies in improving LGBT youths' school climate," *Psychology of Sexual Orientation and Gender Diversity* 3, no. 4 (2016): 407; Phoenix, Terri, Will Hall, Melissa Weiss, Jana Kemp, Robert Wells, and Andrew Chan, "Homophobic Language and Verbal Harassment in North Carolina High Schools," *Safe Schools North Carolina*, 2006, <https://eric.ed.gov/?id=ED491454>.

¹⁵ Kosciw, et al., *The 2019 National School Climate Survey*, 79-81.

¹⁶ For example, the Department includes the following plain language examples: "...if a complainant is taunted repeatedly by one or more students about not conforming to sex stereotypes because he wears nail polish and has long hair, the complainant may experience a hostile environment based on sex..." and "if a student's peers repeatedly denigrate a student as "girly" over a period of weeks and the student reports that the treatment is causing him distress and interfering with his ability to concentrate in class, the recipient would have an obligation to determine whether a hostile environment based on sex exists." U.S. Department of Education, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," *Federal Register* 87, no. 132, 41417-18 (July 12, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-07-12/pdf/2022-13734.pdf>.

include a plain language discussion or examples of how school dress and appearance codes that impose different rules for boys and girls have facilitated sex discrimination in violation of Title IX, as case law has demonstrated.¹⁷

Transgender, nonbinary, and intersex students are particularly vulnerable to discrimination on the basis of gender identity or sex characteristics where a dress or appearance code imposes separate rules based on binary gender categories. For example, a transgender girl may be disciplined for dressing in conformance with her gender identity and a school dress code that permits girls to wear skirts due to a discriminatory belief that she should be subject to dress code rules for boys instead. GLSEN's National School Climate Survey has found that one in five transgender students and nearly one in four nonbinary students report being prevented from wearing clothing deemed inappropriate based on gender.¹⁸

The Department should clearly communicate that, where a dress or appearance code is in use, a gender-neutral code best supports all students' wellbeing and compliance with Title IX. A gender-neutral dress or appearance code like that recommended in the GLSEN and the National Center for Transgender Equality (NCTE) *Model Local Education Agency Policy on Transgender and Nonbinary Students* allows all students to choose amongst the same set of approved articles of clothing.¹⁹ If a school uses a dress or appearance code with separate rules based on gender, transgender, nonbinary, and intersex students must be permitted to dress in accordance with their gender identities and school staff must not enforce a dress or appearance code more strictly against any group of students, including transgender, nonbinary, and intersex students.

Even where a school ensures a separate gender dress or appearance code permits transgender, nonbinary, and intersex students to dress in accordance with their gender identities, the Department should make clear that a school nonetheless risks violating Title IX. For example, an appearance code that requires boys to keep their hair short while permitting girls to have long hair may result in more than de minimis harm, including emotional or dignity harm,²⁰ especially where maintaining long hair is culturally meaningful to boys and men.²¹

¹⁷ Rehearing En Banc Brief for the United States as Amicus Curiae at 28 n.5, *Peltier v. Charter Day School, Inc.*, No. 20-1001(L), 20-1023 (4th Cir. Nov. 18, 2021); *Hayden v. Greensburg Cmty. Sch. Corp.*, 743 F.3d 569, 583 (7th Cir. 2014). See also, *Peltier v. Charter Day School, Inc.*, Brief of National Women's Law Center and Coalition of Civil Rights and Public Interest Organizations as Amici Curiae in Support of Plaintiff-Appellees, July 13, 2020, <https://nwlc.org/resource/challenge-to-skirts-required-dress-code-policy-peltier-et-al-v-charter-day-school-inc-et-al/>.

¹⁸ 20.5% of transgender students, including trans-nonbinary students, 24.1% of genderqueer and other nonbinary students who do not also identify as transgender, and 15.1% of cisgender LGBTQ students reported being prevented from wearing clothing deemed inappropriate based on gender. Kosciw, et al., *The 2019 National School Climate Survey*, 100.

¹⁹ GLSEN and NCTE, "Model Local Education Agency Policy on Transgender and Nonbinary Students," October 2020, <https://www.glsen.org/activity/model-local-education-agency-policy-on-transgender-nonbinary-students>.

In a similar vein, the National Association of School Psychologists (NASP) affirms school administrative policies that expressly prohibit discrimination on the basis of gender expression and gender presentation (in addition to sexual orientation and gender identity) and includes affirming clothing in a list of needs for the physical and psychological safety of transgender and gender diverse students. NASP, "Safe and Supportive Schools for Transgender and Gender Diverse Students," 2022, <https://www.nasponline.org/resources-and-publications/resources-and-podcasts/diversity-and-social-justice/lgbtq-youth/transgender-youth>, (Accessed August 11, 2022).

²⁰ U.S. Department of Education, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 41535 (July 12, 2022).

²¹ Brice Helms, "ACLU Texas files Civil Rights complaint against Sharyland ISD for 5-year-old boy told to cut hair," *CBS 4 / NBC 23 Valley Central News*, November 15, 2021, <https://www.valleycentral.com/news/local-news/aclu-texas-files-civil-rights-complaint-against-sharyland-isd-for-5-year-old-boy-told-to-cut-hair/>.

The Department should provide further clarity regarding prohibited sex-based discrimination in the context of separate gender facilities, programs, and activities

We strongly support the Department clarifying through revisions to proposed §106.31(a)(2) that exceptions under Title IX that permit sex-segregated programs or activities in certain narrow contexts²² do not permit discrimination on the basis of gender identity.²³ We thank the Department for its discussion in broad terms of the case law and prior Departmental actions and interpretations that clarify, support, and necessitate this provision, and clearly communicating that the “preferences or discomfort of some” do not “justify otherwise unconstitutional discrimination against others.”²⁴

We do however ask the Department to clarify the broad scope of the proposed §106.31(a)(2). In addition to clarifying its application to dress or appearance codes (discussed above), the Department should clearly communicate it is a violation of Title IX to prevent access or participation consistent with a student’s gender identity in the context of separate gender classes, school restrooms and locker rooms, housing, and overnight accommodations for school trips.

The Department may do this by communicating in plain language common examples of discrimination on the basis of gender identity that this provision precludes, as it does in its discussion of prohibited discrimination on the basis of sex stereotypes.²⁵ For example, GLSEN’s National School Climate Survey found that more than one in two transgender students report being prevented from using the school restroom and locker room that corresponds with their gender identity,²⁶ which can include requiring a student to use a gender neutral restroom *instead of* using a separate gender restroom in correspondence with their gender identity. Two states have enacted laws barring transgender students from using the bathroom and locker room consistent with their gender identity and others have recently considered legislating discrimination in this area.²⁷

School sports is a critical area where clarity is needed in the Title IX rule to combat “overbroad generalizations about the different talents, capacities, or preferences”²⁸ of individuals based on sex

²² 20 U.S.C. § 1681(a)(6)-(9); 34 CFR § 106.15, 106.32-106.34, 106.41.

²³ Proposed §106.31(a)(2) states: “In the limited circumstances in which Title IX or this part permits different treatment or separation on the basis of sex, a recipient must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, unless otherwise permitted by Title IX or this part. Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person’s gender identity subjects a person to more than de minimis harm on the basis of sex.”

²⁴ U.S. Department of Education, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” Federal Register 87, no. 132, 41536 (July 12, 2022).

²⁵ For example, the Department includes the following plain language case summaries: “As the Supreme Court explained in *Price Waterhouse v. Hopkins*, the assumption that persons must act and dress in a particular way based on expectations related to a person’s sex is a form of discrimination on the basis of sex. See 490 U.S. at 235 (plurality opinion) ([T]he man who . . . bore responsibility for explaining to Hopkins the reasons for the Policy Board’s decision to place her candidacy on hold [advised her that] in order to improve her chances for partnership . . . Hopkins should ‘walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.’ . . .” and “*Pederson v. La. State Univ.*, 213 F.3d 858, 880 (5th Cir. 2000) (recognizing that a university violated Title IX when its funding decisions in athletics were based on ‘paternalism and stereotypical assumptions about [women’s] interests and abilities,’ and a ‘remarkably outdated view of women and athletics.’)” U.S. Department of Education, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” Federal Register 87, no. 132, 41533 (July 12, 2022).

²⁶ 58.1% of transgender students, including trans nonbinary students, reported being prevented from using the bathroom that corresponds with their gender identity. 55.5% of transgender students, including trans nonbinary students, reported being prevented from using the locker room that corresponds with their gender identity. Kosciw, et al., *The 2019 National School Climate Survey*, 100.

²⁷ Alabama (H.B. 322, 2022) and Oklahoma (S.B. 615, 2022) have enacted anti-trans school bathroom laws. Arizona (H.B.2314, 2022), South Dakota (H.B. 1005, 2002), and West Virginia (H.B. 3199, 2021) recently considered similar bills.

²⁸ *Virginia*, 518 U.S. at 533.

upon which discriminatory policies have flourished in the past two years.²⁹ In addition to harming their intended target—transgender students, and particularly transgender women and girls—policies that effectively bar participation in separate gender sports consistent with a student’s gender identity harm students who do not conform to sex stereotypes and intersex students (who may be transgender or cisgender),³⁰ and are likely to disproportionately harm BIPOC women and girls owing to racist and sexist stereotypes associating “femininity” with whiteness.³¹

The Department proposes a separate rulemaking on athletics. We urge the Department to revise §106.41 to ensure all students have equal access and opportunities to participate in separate gender school athletics in accord with their gender identity. The Department should move forward with the separate rulemaking with urgency so a single, consolidated final rule can be issued at the beginning of 2023. We further note that the Department’s current discussion of Title IX athletics regulations includes worrying language that could be misinterpreted as authorizing schools to inflict “more than de minimis harm” on transgender students by *categorically* excluding them from participating in sports consistent with their gender identity.³² We urge the Department to remove this confusing and potentially harmful language from this rulemaking.

II. Ensuring an Educational Environment Free from Discrimination in the form of Sex-Based Harassment

Anti-LGBTQI+ discrimination includes the failure of a school to respond effectively to harassment, bullying, and other forms of peer-to-peer victimization related to actual or perceived sexual orientation, gender identity, sex characteristics (including intersex traits), and sex stereotypes, including by denying such victimization occurred at all, telling victims to “ignore it,” or otherwise fostering a hostile environment in which anti-LGBTQI+ victimization is effectively condoned. According to GLSEN’s National School Climate Survey, the overwhelming majority of LGBTQ+ students report

²⁹ Eighteen states have passed laws barring transgender students from participating in school sports teams in correspondence with their gender identities. Many others impose burdensome and discriminatory barriers to participation. GLSEN and TransAthlete.com, “Navigator: Trans and Nonbinary Athletic Inclusion Policies, 2022,” <https://maps.glsen.org/trans-and-nonbinary-athletic-inclusion-policies/>; GLSEN, “Gender Affirming and Inclusive Athletics Participation,” 2022, <https://www.glsen.org/activity/gender-affirming-inclusive-athletics-participation>.

³⁰ These policies lean on harmful and prohibited sex stereotypes and sanction inappropriate scrutiny of students’ bodies and particularly women and girls. See, e.g., Morgan Trau, “Ohio GOP passes bill aiming to root out ‘suspected’ transgender female athletes through genital inspection,” ABC News 5 Cleveland, <https://www.news5cleveland.com/news/politics/ohio-politics/ohio-gop-passes-bill-aiming-to-root-out-suspected-transgender-female-athletes-through-genital-inspection>; Anne Branigin, “Intersex youths are also hurt by anti-trans laws, advocates say,” *Washington Post*, July 16, 2022, <https://www.washingtonpost.com/nation/2022/07/16/intersex-anti-trans-bills/>.

³¹ *Hecox vs. Little*, Brief for Amicus Curiae National Women’s Law Center, Lawyers’ Committee for Civil Rights Under Law and 60 Additional Organizations in Support of Appellees and Affirmance, December 20, 2021, <https://nwlc.org/resource/hecox-v-little/> (“Black and brown women and girls are routinely targeted, shamed, and dehumanized for not conforming to society’s expectations of femininity.”); National Women’s Law Center, “Fulfilling Title IX’s Promise: Let Transgender and Intersex Students Play,” June 2022, https://nwlc.org/wp-content/uploads/2019/09/NWLC_Trans50th_FactSheet.pdf.

³² For example, the proposed rule states that “the exclusion from a particular male or female athletics team may cause some students more than de minimis harm, and yet that possibility is allowed under current § 106.41(b).” This language could allow for a misinterpretation that the categorical exclusion of transgender students from participating on sports teams consistent with their gender identity is equivalent to other forms of exclusion that may impact individual students, but not an entire student subgroup. See, e.g., *Hecox v. Little*, 479 F. Supp. 3d 930, 977 (D. Idaho 2020) (discussing how a law or policy that excludes transgender students from participating on teams consistent with their gender identity “entirely eliminates their opportunity to participate in school sports.”)

harassment or assault based on their sexual orientation, gender identity, and/or gender expression,³³ and at least two in five LGBTQ+ students who are BIPOC report bullying based on both their sexual orientation and their race.³⁴

CDC data show that LGBTQ+ secondary students are more likely to report bullying than their non-LGBTQ+ peers³⁵ and a national survey of elementary school students found that gender nonconforming students report higher rates of bullying than their peers who did not identify as gender nonconforming.³⁶ Among students with an LGBTQ+ parent or parents, 42% reported verbal harassment and 12% reported physical harassment or assault in the past year because they have an LGBTQ+ parent or parents.³⁷

GLSEN has found that anti-LGBTQ+ victimization is associated with a range of harmful educational and wellbeing outcomes, including increased absences, lower GPAs, decreased likelihood of pursuing post-secondary education, lower self-esteem, higher levels of depression, and suicidality.³⁸ LGBTQ+ students of color who experience both racist and anti-LGBTQ+ victimization were most likely to skip school due to feeling unsafe, report the lowest levels of school belonging, and experience the

³³ 81.0% of LGBTQ+ youth reported being verbally harassed because of their sexual orientation, gender identity, or gender expression; 35.1% reported they were verbally harassed often or frequently. Additionally, 34.2% of LGBTQ+ students reported being physically harassed (e.g., shoved or pushed), and 14.8% reported being physically assaulted, in the past year based on their sexual orientation, gender expression, and/or gender identity. Kosciw, et al., *The 2019 National School Climate Survey*, 28.

³⁴ 40.0% of both Black and Asian American/Pacific Islander students, 41.2% of Indigenous students, and 41.6% of Latinx students reported experiencing harassment or assault at school based on both their sexual orientation and their race. Nhan L. Truong, Adrian D. Zongrone, and Joseph G. Kosciw, *Erasure and Resilience: The Experiences of LGBTQ Students of Color. Black LGBTQ Youth in US Schools*, 16 (New York: GLSEN, 2020), <https://www.glsen.org/research/black-lgbtq-students>; Nhan L. Truong, Adrian D. Zongrone, and Joseph G. Kosciw, *Erasure and Resilience: The Experiences of LGBTQ Students of Color. Asian American and Pacific Islander LGBTQ Youth in US Schools*, 17 (New York: GLSEN, 2020), <https://www.glsen.org/research/aapi-lgbtq-students>; Adrian D. Zongrone, Nhan L. Truong, and Joseph G. Kosciw, *Erasure and Resilience: The Experiences of LGBTQ Students of Color. Latinx LGBTQ youth in U.S. Schools*, 17 (New York: GLSEN, 2020), <https://www.glsen.org/research/latinx-lgbtq-students>; Adrian D. Zongrone, Nhan L. Truong, and Joseph G. Kosciw, *Erasure and Resilience: The Experiences of LGBTQ Students of Color. Native and Indigenous LGBTQ youth in U.S. Schools*, 18 (New York: GLSEN, 2020), <https://www.glsen.org/research/native-and-indigenous-lgbtq-students>.

³⁵ Michelle M. Johns, Richard Lowry, Laura T. Haderxhanaj, Catherine N. Rasberry, Leah Robin, Lamont Scales, Deborah Stone, and Nicolas A. Suarez, “Trends in violence victimization and suicide risk by sexual identity among high school students—Youth Risk Behavior Survey, United States, 2015–2019,” *MMWR supplements* 69, no. 1 (2020): 19–27, <https://doi.org/10.15585/mmwr.su6901a3>; Michelle M. Johns, Richard Lowry, Jack Andrzejewski, Lisa C. Barrios, Zewditu Demissie, Timothy McManus, Catherine N. Rasberry, Leah Robin, and J. Michael Underwood, “Transgender identity and experiences of violence victimization, substance use, suicide risk, and sexual risk behaviors among high school students—19 states and large urban school districts, 2017,” *Morbidity and Mortality Weekly Report* 68, no. 3 (2019): 67–71, <http://dx.doi.org/10.15585/mmwr.mm6803a3>.

³⁶ In this study, “gender nonconforming students” refers to students who said that they are a boy who others sometimes say acts or looks like a girl or who say that they are a girl who others sometimes say acts or looks like a boy.

GLSEN and Harris Interactive, *Playgrounds and Prejudice: Elementary School Climate in the United States, A Survey of Students and Teachers*, 24, 27 (New York: GLSEN, 2012), <https://www.glsen.org/research/playgrounds-and-prejudice-lgbtq-issues-elementary-schools>.

³⁷ Kosciw and Diaz, *Involved, Invisible, Ignored*, 52, 56.

³⁸ Kosciw, et al., *The 2019 National School Climate Survey*, 46-54; Johns, et al., “Trends in violence victimization and suicide risk by sexual identity among high school students”; Johns, et al., “Transgender identity and experiences of violence victimization, substance use, suicide risk, and sexual risk behaviors among high school students.”

The impact of bullying and harassment on mental health is especially alarming. The Trevor Project’s 2022 national survey found that 45% of LGBTQ youth seriously considered attempting suicide in the past year, including more than half (53%) of transgender and nonbinary youth. The Trevor Project. *2022 National Survey on LGBTQ Youth Mental Health* (West Hollywood, California: The Trevor Project, 2022). <https://www.thetrevorproject.org/survey-2022/>.

highest levels of depression, compared to those who experience one or neither form of victimization.³⁹

LGBTQ+ people also experience elevated rates of sexual harassment and violence across the lifespan, including in K-12 and post-secondary educational settings.⁴⁰ GLSEN’s National School Climate Survey found that a majority of LGBTQ+ students reported experiencing sexual harassment at school in the past year.⁴¹

We thank the Department for returning to the broader definition of “hostile environment” harassment that was used prior to the 2020 rule, and for clarifying that any sex-based harassment that creates a hostile environment—including harassment based on sexual orientation, gender identity, sex characteristics (including intersex traits), and sex stereotypes as well as harassment that takes place off-campus—is prohibited. These proposed revisions are necessary to send a clear message that anti-LGBTQ+ victimization is unacceptable and to ensure students who are victims of anti-LGBTQ+ harassment or bullying have recourse.

The Department should clarify that the persistent, intentional misuse of a name, personal pronoun, or gendered title constitutes prohibited sex-based harassment

Several times throughout the proposed rule, the Department uses plain language to clarify what prohibited sex-based harassment encompasses in the proposed rule, including by summarizing relevant case law and providing easy-to-understand examples. We urge the Department to include similar language clarifying how mocking, taunting, ridiculing, or otherwise intentionally misusing a name, personal pronoun, or title can create a hostile environment for transgender, nonbinary, intersex, and gender nonconforming students. Education and mental health organizations, including the National Association for Secondary School Principals, National Association of School Psychologists, American School Counselors Associations, and National Education Association, recognize the importance of using a student’s name and pronouns.⁴²

³⁹ Truong, et al., *Erasure and resilience: The experiences of LGBTQ students of color. Asian American and Pacific Islander LGBTQ youth in U.S. Schools*, 17; Truong, et al., *Erasure and resilience: The experiences of LGBTQ students of color. Black LGBTQ youth in U.S. Schools*, 16; Zongrone, et al., *Erasure and resilience: The experiences of LGBTQ students of color. Latinx LGBTQ youth in U.S. Schools*, 17.

In a similar vein, Trevor Project found that LGBTQ+ youth who are BIPOC are more likely to report attempted suicide than their white LGBTQ+ peers. The Trevor Project, *2022 National Survey on LGBTQ Youth Mental Health* (West Hollywood, California: The Trevor Project, 2022), <https://www.thetrevorproject.org/survey-2022/>.

⁴⁰ Jieru Chen, Mikel L. Walters, Leah K. Gilbert, and Nimesh Patel, “Sexual violence, stalking, and intimate partner violence by sexual orientation, United States,” *Psychology of violence* 10, no. 1 (2020): 110–119; Johns, et al., “Trends in violence victimization and suicide risk by sexual identity among high school students”; Johns, et al., “Transgender identity and experiences of violence victimization, substance use, suicide risk, and sexual risk behaviors among high school students”; Laura Kann, Emily O’Malley Olsen, Tim McManus, William A. Harris, Shari L. Shanklin, Katherine H. Flint, Barbara Queen, et al., “Sexual identity, sex of sexual contacts, and health-related behaviors among students in grades 9–12—United States and selected sites, 2015,” *Morbidity and Mortality Weekly Report: Surveillance Summaries* 65, no. 9 (2016): 1-202.

⁴¹ 58.3% of LGBTQ+ students reported being sexually harassed. Kosciw, et al., *The 2019 National School Climate Survey*, 30.

⁴² National Association for Secondary School Principals, “Position Statement: LGBTQ+ Students and Educators,” <https://www.nassp.org/top-issues-in-education/position-statements/lgbtq-students-and-educators/> (Accessed August 11, 2022); NEA, “Bostock and Students Rights,” https://neadjustice.org/wp-content/uploads/2020/10/27418-Bostock-and-Student-Rights-Doc2_Final.pdf (Accessed August 11, 2022); NASP, “Safe and Supportive Schools for Transgender and Gender Diverse Students,” 2022, <https://www.nasponline.org/resources-and-publications/resources-and-podcasts/diversity-and-social-justice/lgbtq-youth/transgender-youth>, (Accessed August 11, 2022); American School Counselors Association, “Position Statement: The School

To clarify how the persistent, intentional misuse of a name, personal pronoun, or title can constitute prohibited sex-based harassment, the Department should consider summarizing its recent resolution finding that a school district violated Title IX when it failed to effectively respond to a transgender student being repeatedly harassed by another student “about... her name... and her pronouns.”⁴³ Additionally, the Department should consider referencing the U.S. Equal Employment Opportunity Commission’s guidance stating that “intentionally and repeatedly using the wrong name and pronouns to refer to a transgender employee could contribute to an unlawful hostile work environment.”⁴⁴

III. Ensuring a Fair, Prompt, and Effective Process for All Complaints of Sex-Based Discrimination, including anti-LGBTQI+ Harassment

Many schools fail to respond effectively to complaints of discrimination on the basis of sex, including anti-LGBTQI+ discrimination, harassment, and bullying. For example, among LGBTQ+ students who told school staff that they had been harassed or bullied, three in five said school staff did nothing or told them to ignore it, one in five said they were told to change their behavior, and 7.3% were themselves disciplined.⁴⁵ LGBTQI+ youth of color and LGBTQI+ youth with disabilities may be more likely to be disciplined for reporting victimization given disparities in disciplinary action.⁴⁶

We therefore strongly support proposed revisions that would ensure all meritorious complaints are handled fairly, promptly, and effectively, including:

- Proposed revisions to §106.44 clarifying that schools must “take prompt and effective action to end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects” and ensuring complainants are informed of the wide range of supportive measures, remedies, and protections against retaliation, including specific measures responsive to the needs of students with disabilities⁴⁷;
- Proposed revisions to §106.45 requiring the use of the “preponderance of the evidence” evidence standard where the standard is used in comparable investigations.

Counselor and Transgender and Nonbinary Youth,” 2022, <https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-Transgender-Gender-noncon> (Accessed August 11, 2022).

⁴³ U.S. Department of Education, Office for Civil Rights, “Office for Civil Rights Announces Resolution of Sex-Based Harassment Investigation of Tamalpais Union High School District,” June 24, 2022, <https://www.ed.gov/news/press-releases/us-department-educations-office-civil-rights-announces-resolution-sex-based-harassment-investigation-tamalpais-union-high-school-district>.

⁴⁴ U.S. Equal Employment Opportunity Commission, “Sexual Orientation and Gender Identity (SOGI) Discrimination,” <https://www.eeoc.gov/sexual-orientation-and-gender-identity-sogi-discrimination> (Accessed August 11, 2022).

⁴⁵ 60.5% of LGBTQ+ students said that school staff did nothing, 20.8% said they were told to change their behavior (e.g., by changing the way they dressed). Kosciw, et al., *The 2019 National School Climate Survey*, 35.

⁴⁶ LGBTQ+ students who are Black, Indigenous, Latinx, and Middle Eastern or North Africa report higher levels of disciplinary action than their white LGBTQ+ peers. Kosciw, et al., *The 2019 National School Climate Survey*, 112. LGBTQ+ youth with disabilities are more likely to experience disciplinary action than LGBTQ+ youth without disabilities and are more likely to be referred to law enforcement as a result of school discipline. Neal A. Palmer, Emily A. Greytak, and Joseph G. Kosciw, *Educational exclusion: Drop out, push out, and the school-to-prison pipeline among LGBTQ youth*, (New York: GLSEN, 2016), <https://www.glsen.org/research/educational-exclusion-drop-out-push-out-school-prison-pipeline>. See also, NCWGE, Title IX At 50: A Report by the National Coalition for Women and Girls in Education (Washington, DC: NCWGE), available at <https://www.glsen.org/title-ix-at-50>.

⁴⁷ Proposed revisions to §106.2 and 106.44(g)(7) ensure that any effort to provide supportive services or investigate a claim of harassment that involves an elementary or secondary student with a disability is done in coordination with the student’s Individualized Education Program team and authorizes similar coordination for postsecondary students.

We do however urge the Department to consider requiring the preponderance of evidence standard in all Title IX investigations, as it is the only standard that recognizes complainants and respondents have equal stakes in the outcome of an investigation,⁴⁸ and it is the same standard used by courts in all civil rights and other civil proceedings.⁴⁹ If the Department chooses not to require the preponderance standard in all investigations, it should provide further clarification to ensure schools do not adopt an inappropriately stringent standard by, for example, using the preponderance standard to investigate physical assault and the clear and convincing evidence standard to investigate sexual assault, other forms of sex-based harassment, and other bias-related harassment or discrimination (e.g., based on race, national origin, disability, etc.).

IV. Ensuring Appropriate Implementation of Title IX's Religious Exemption

Title IX's prohibition of discrimination on the basis of sex, including discrimination on the basis of sexual orientation, gender identity, sex characteristics (including intersex traits), and sex stereotypes applies to all schools receiving federal funds, including private religious schools. Private religious schools controlled by a religious organization may claim an exemption to the extent that the application of Title IX would be inconsistent with the religious tenets of the controlling organization.⁵⁰

Two 2020 rulemakings introduced new and harmful regulations that enable, if not, outright encourage lack of clarity regarding whether a school claims religious exemptions to Title IX and intends to discriminate based on sex, while enlarging the pool of schools that may consider themselves eligible for religious exemptions, inconsistent with the intent of Title IX and relevant case law.⁵¹ First, the 2020 Title IX rulemaking expressly assured schools that they need not inform the Department of exemptions claimed.⁵² A separate 2020 rule authorized an expansive, extra-statutory interpretation of what it means to be “controlled by a religious organization.”⁵³

⁴⁸ Letter from National Women's Law Center to Kenneth L. Marcus, Ass't Sec'y for Civil Rights, Dep't of Educ., at 33 (Jan. 30, 2019), <https://nwlc.org/wp-content/uploads/2019/02/NWLC-Title-IX-NPRM-Comment.pdf>.

⁴⁹ Letter from Leadership Conference on Civil and Human Rights to Kenneth L. Marcus, Ass't Sec'y for Civil Rights, Dep't of Educ., at 7 (Jan. 30, 2019), <https://civilrights.org/resource/civil-and-human-rights-community-joint-comment-on-title-ix-nprm>.

⁵⁰ 20 U.S.C. § 1681(a)(3).

⁵¹ *N. Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 521 (1982) (Supreme Court decision stating that “to give Title IX the scope that its origins dictate, we must accord it a sweep as broad as its language”); *Haffer v. Temple Univ. of Com. System of Higher Ed.*, 524 F.Supp. 531, 537 (E.D. Pa. 1981), *aff'd and remanded sub nom. Haffer v. Temple Univ.*, 688 F.2d 14 (3d Cir. 1982) (stating that “[c]ivil rights statutes such as Title IX generally are entitled to broad interpretation to facilitate their remedial purposes.” See also *Gonyo v. Drake Univ.*, 837 F. Supp. 989, 995 (S.D. Iowa 1993).

⁵² U.S. Department of Education, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 85 FR § 97, 30573 (May 19, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf#page=548>.

⁵³ The extra-statutory expansion is breathtaking in its scope, sweeping in institutions that merely have a published institutional mission that includes or refers to religious tenets or beliefs, have a statement of religious practices even absent a relevant religious organization, or that claim to be controlled by a religious organization even without a formal relationship. U.S. Department of Education, “Direct Grant Programs, State-Administered Formula Grant Programs, Non Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, Developing Hispanic-Serving Institutions Program, Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, and Strengthening Historically Black Graduate Institutions Program; Final rule,” 85 FR § 185, 59980-81 (Sept. 23, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-09-23/pdf/2020-20152.pdf#page=65>.

Many LGBTQI+ people are people of faith, and seek out a religiously affiliated education.⁵⁴ Because all denominations and faith traditions have internally varied views on gender and sexuality, knowing a school's denomination or faith tradition does not provide adequate notice to students and families of a school's intention to discriminate based on sex, including sexual orientation and gender identity.

We urge the Department to swiftly issue proposed Title IX regulations that rescind the extra-statutory interpretation of “controlled by a religious organization” in §106.12(c) and require prior submission of religious exemption claims. At a minimum, we urge the Department to require that schools publish claimed exemptions within the nondiscrimination policy detailed in §106.8(b)(1), as well as within the contents of a notice of nondiscrimination described in §106.8(c)(1)(i). These requirements would impose negligible burdens compared with the potential for fundamentally unfair surprises and harms to students who may be disciplined, expelled, pushed out, or denied a degree on the basis of sex.⁵⁵ Moreover, allowing schools to not disclose that they claim a religious exemption undermines the Department's efforts to improve clarity regarding school's nondiscrimination policies and notice thereof in proposed revisions to §106.8(b) and (c).⁵⁶

V. Ensuring Strong Implementation of Title IX's Nondiscrimination Protections

While this rulemaking is essential, it must be part of a comprehensive approach to strengthening awareness of Title IX's protections, as well as compliance and enforcement. To that end, the Department should take the following steps:

- **Supplement the final rule with technical assistance resources that further clarify particular applications of the rule's core principles**, including by addressing interactions and intersections with the Family Educational Rights and Privacy Act (FERPA), the Equal Access Act, Title VI of the Civil Rights Act, Individuals with Disabilities Education Act, and Section 504 of the Rehabilitation Act.

⁵⁴ Nearly half (46.7%) of LGBT adults are religious and nearly one in five (19.7%) are highly religious. Kerith J. Conron, Shoshana K. Goldberg, and Kathryn Kay O'Neill, *Religiosity Among LGBT Adults in the US* (Los Angeles, CA: The Williams Institute, 2020), 5 <https://williamsinstitute.law.ucla.edu/publications/lgbt-religiosity-us/>.

63% of transgender adults reported that they had a spiritual or religious identity and nearly one in five (19%) reported that they had been part of a faith community in the past year. Sandy E. James, Jody L. Herman, Susan Rankin, Mara Keisling, Lisa Mottet, and Ma'ayan Anafi, *The report of the 2015 US transgender survey* (Washington, DC: National Center for Transgender Equality, 2016), 54, 77-78, <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

⁵⁵ See, e.g., Mary Grace Granados, “Student expelled from Colleyville school for being gay has hired a civil rights attorney,” *The Dallas Morning News*, November 11, 2020, <https://www.dallasnews.com/news/2020/11/11/student-expelled-from-colleyville-school-for-being-gay-has-hired-a-civil-rights-attorney/> (discussing the experience of a student who was expelled for being gay).

GLSEN found that LGBTQ+ students in private religious schools report far more anti-LGBTQ+ discriminatory school policies and practices, compared to LGBTQ+ students in public, charter, and private non-religious schools (83.5% vs. 58.5%, 62.3%, 51.2%). Kosciw, et al., *The 2019 National School Climate Survey*, 119. Experiencing anti-LGBTQ+ discrimination and victimization at school is associated with higher rates of school discipline and can push a student to change schools because they feel unsafe or uncomfortable. GLSEN found that 17.1% of LGBTQ+ students, including 23.6% of transgender students, reported changing schools for this reason. Kosciw, et al., *The 2019 National School Climate Survey*, 18-19, 49-51, 95, 98. In a similar vein, NCTE found that 17% of transgender adults who were out or perceived as transgender left a school because the mistreatment at school was so bad; transgender women were most likely to report leaving a school because of mistreatment, with 22% reporting this experience. James, et al., *The report of the 2015 US transgender survey*, 135.

⁵⁶ 34 CFR § 106.8(b).

- **Annually report disaggregated OCR complaint data**, including disaggregated data on claims involving discrimination based on sexual orientation, gender identity, sex characteristics (including intersex traits), and sex stereotypes or anti-LGBTQI+ harassment.
- **Publicize key case resolutions** for complaints involving anti-LGBTQI+ discrimination or harassment.
- **Strengthen the Civil Rights Data Collection**, including by collecting and publishing demographic data on students who report, or are disciplined for, anti-LGBTQI+ harassment or bullying and by publishing local education agency’s policies for preventing bias-related bullying.⁵⁷
- **Engage and promote affirming visibility for LGBTQI+ students and educators**, including their voices, stories, and achievements in Department events and publications.
- Work with the Office of Elementary and Secondary Education (OESE) to **publish best practice resources** on supporting LGBTQI+ students,⁵⁸ and preventing and effectively responding to anti-LGBTQI+ bullying and harassment,⁵⁹ in consultation with relevant stakeholder organizations, those with lived experience, and the Working Group on LGBTQI+ Students and Families established by Executive Order 14075.⁶⁰
- Work with OESE to **advance intersectional equity under the Every Student Succeeds Act (ESSA) and other federal funding programs**, including through updated guidance on authorized uses of funds for state and local education agencies.⁶¹
- **Work with the Department of Justice and other agencies to amend the Title IX common rule**, adopted more than two decades ago, to make clear that the same prohibitions on sexual harassment and anti-LGBTQI+ discrimination, including anti-LGBTQI+ harassment, apply.⁶²

VI. Conclusion

The Department’s proposed Title IX rule restores and strengthens federal civil rights protections, drawing us closer to the promise of educational environments free from discrimination on the basis

⁵⁷ GLSEN, “Comment on Mandatory Civil Rights Data Collection,” February 11, 2022, <https://www.glsen.org/activity/civil-rights-data-collection-and-lgbtq-young-people>.

⁵⁸ See, e.g., GLSEN, “Four Supports,” <https://www.glsen.org/four-supports> (Accessed August 18, 2022); GLSEN, “Improving School Climate for Transgender and Nonbinary Youth (Research Brief),” 2021, <https://www.glsen.org/research/improving-school-climate-transgender-and-nonbinary-youth>.

⁵⁹ See, e.g., GLSEN, “Model Local Education Agency Bullying and Harassment Prevention Policy, Sept. 2020, <https://www.glsen.org/activity/model-district-anti-bullying-harassment-policy>; GLSEN, “Civil Rights Principles For Safe, Healthy, & Inclusive School Climates,” 2021, <https://www.glsen.org/activity/civil-rights-school-climate-principles>.

⁶⁰ Executive Order 14075 of June 15, 2022, “Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals.”

⁶¹ See, e.g., Bonnie Washick, Harper Jean Tobin, Aaron Ridings, and Tessa Juste, *States’ Use of the Every Student Succeeds Act to Advance LGBTQ+ Equity: Assessment of State Plans and Recommendations* (Washington, DC: GLSEN, 2021), <https://www.glsen.org/essa-implementation>; GLSEN, “Advancing LGBTQ+ Inclusive Equity through COVID-19 Relief Funds, <https://www.glsen.org/covid-19-relief-funds> (Accessed August 16, 2022).

⁶² While the Department is the primary agency responsible for enforcing Title IX, more than twenty other agencies share this responsibility with respect to programs that they fund or administer. Nuclear Regulatory Commission; Small Business Administration; National Aeronautics and Space Administration; Department of Commerce; Tennessee Valley Authority; Department of State; Agency for International Development; Department of Housing and Urban Development; Department of Justice; Department of Labor; et al., “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance; Final Rule,” 65 FR 52857 (Aug. 30, 2000); U.S. Department of Energy, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 66 FR 4627 (Jan. 18, 2001).

of sex. For transgender, nonbinary, and other LGBTQI+ students who have been bullied, barred from school facilities and activities, and blamed for their victimization, the proposed rule clearly communicates that anti-LGBTQI+ discrimination is unlawful and that they have recourse should it occur. The clarifications detailed within the proposed rule are incredibly helpful for students, families, educators, school staff, administrators, and all who are part of K-12 learning communities to understand their rights and responsibilities under Title IX and support their efforts to create safe, supportive, and inclusive schools and a positive school climate for all young people who are at risk of experiencing sex-based discrimination.

We thank the Department for its continued commitment to ensuring that every student, including those who are LGBTQI+ and otherwise experience marginalization, is safe and has equal opportunities to thrive and reach their full potential in our schools. We look forward to continuing to work with the Department to fully implement the final Title IX rule. If you would like to discuss these recommendations, please contact GLSEN's Chief of Staff and Deputy Executive Director for Public Policy and Research, Aaron Ridings, at aaron.ridings@glsen.org. Thank you for your consideration.

Sincerely,

GLSEN
American School Counselor Association
Human Rights Campaign
interACT: Advocates for Intersex Youth
National Association of School Psychologists
National Association for Secondary School Principals
National Center for Transgender Equality
National PTA
National Women's Law Center
PFLAG National

Joined By:

National Organizations

All4Ed
American Association of Colleges for Teacher Education
American Association of University Women
American Atheists
American Library Association
Arkansas Black Gay Men's Forum
Asian Americans Advancing Justice | AAJC
Athlete Ally
Autistic Self Advocacy Network
Believe Out Loud
Black and Pink National
Breaking the Math Ceiling
California State PTA
Campaign for Our Shared Future

Campus Pride
Center for American Progress
Center for Applied Transgender Studies
Center for Disability Rights
Center for Law and Social Policy (CLASP)
Center for LGBTQ Economic Advancement & Research (CLEAR)
CenterLink: The Community of LGBT Centers
Children's Defense Fund
Clearinghouse on Women's Issues
COLAGE
Committee for Children
Council of Administrators of Special Education
EducateUS: SIECUS In Action
Education Law Center
Educators for Excellence
Equal Rights Advocates
Equality Federation
Family Equality
Feminist Majority Foundation
FORGE, Inc.
Gender Spectrum
Generation Ratify
Girls Inc.
GLAAD
Healthy Teen Network
IDRA (Intercultural Development Research Association)
International Transgender Education Organization
Juvenile Law Center
Lawyers' Committee for Civil Rights Under Law
Legal Momentum, the Women's Legal Defense and Education Fund
Minority Veterans of America
Movement Advancement Project (MAP)
My Life My Choice
NAACP
National Association of Social Workers
National Black Justice Coalition
National Center for Learning Disabilities
National Center for Lesbian Rights
National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE)
National Coalition for Women and Girls in Education⁶³
National Council of Jewish Women
National Council of Teachers of English
National Disability Rights Network (NDRN)
National Education Association

⁶³ NCWGE joins these comments based on a majority vote of its membership.

National LGBTQ Task Force
National Organization for Women
National Partnership for Women & Families
National Queer Asian Pacific Islander Alliance (NQAPIA)
National Urban Alliance for Effective Education
Parents Across America
Point of Pride
Positive Women's Network-USA
Public Advocacy for Kids (PAK)
School Social Work Association of America
SIECUS: Sex Ed for Social Change
Southern Poverty Law Center
Stand with Trans
Stop Sexual Assault in Schools
The Advocacy Institute
The Arc of the United States
The Education Trust
The Inclusion Playbook
The Queer Mathematics Teacher
The TransLatin@ Coalition
The Trevor Project
Trans Lifeline
Trans Youth Equality Foundation
TransAthlete
TransFamily Support Services
Transgender Legal Defense & Education Fund (TLDEF)
Union for Reform Judaism
URGE: Unite for Reproductive & Gender Equity
Women of Reform Judaism

State & Local Organizations

ACCESS Community Health Network
ACCESS Reproductive Justice
Arizona Association of School Psychologists
Association of School Psychologists of Pennsylvania
California Association of School Counselors
Carolina Jews for Justice
Chattanooga Trans Liberation Collective
Christian Athlete Circles
City of Bridges High School
Colorado Children's Campaign
Colorado School Counselor Association
Colorado Society of School Psychologists
Columbus Communities Coalition for Diversity, Equity, and Inclusion
Compass LGBTQ Community Center
Delaware PTA

Duke OutLaw
East Tennessee Equality Council
East Texas PFLAG
Eastern PA Trans Equity Project
Education Law Center PA
Equal Upper Arlington
Equality California
Equality Illinois
Equality Kansas
Family Voices of NJ
Fannie Lou Hamer Center For Change
Fiesta Youth
First Congregational Church of Glen Ellyn
First Congregational Church, UCC
First United Methodist Church of Downers Grove - Missions, Justice, and Community Work Area
Florida Association of School Psychologists
Florida School Counselor Association
Freedom Oklahoma
Gender Justice
Georgia Association of School Psychologists (GASP)
Georgia School Counselor Association (GSCA)
Glenbard Voices of Equity
Hawai'i Association of School Psychologists
Healthy and Free Tennessee
Illinois Safe Schools Alliance at Public Health Institute of Metropolitan Chicago
Illinois School Counselor Association
Indiana Association of School Psychologists
Indiana School Counselor Association
JASMYN
Joliet Pride Network
Kansas Association of School Psychologists
Kansas School Counseling Association
Kentucky School Counseling Association
Kentucky Youth Law Project, Inc.
Kumukahi Health + Wellness
LGBTQ Community Center Fund
LGBTQ+ Allies Lake County
Lila LGBTQ Inc.
Los Angeles LGBT Center
Louisiana School Psychological Association
Marysville PFLAG (Kansas)
Massachusetts School Counselors Association
Massachusetts School Psychology Association
Massachusetts Transgender Political Coalition
Mazzoni Center
Michigan Education Justice Coalition

Michigan PTA
Minnesota School Counselor Association
Missouri Association of School Psychologists (MASP)
Missouri School Counselor Association
Montana Association of School Psychologists (MASP)
Nevada School Counselor Association (NvSCA)
New Hampshire Association of School Psychologists
NEW Pride Agenda
New York Association of School Psychologists
New York State School Counselor Association
NO/AIDS Task Force d.b.a. CrescentCare
North Dakota Association of School Psychologists
North Dakota Human Rights Coalition
Ohio Psychological Association
Ohio School Counselor Association
Ohio School Psychologists Association
Oklahoma School Psychological Association
Oregon School Psychologists Association
oSTEM at Binghamton University-SUNY
Out in the Open
Outright Vermont
OutSupport
Palmetto State School Counselor Association
Parents Organized for Public Education
Peacock Rebellion
Pegasus Legal Services for Children
Pennsylvania Association of School Social Worker Personnel
Pennsylvania PTA
Pennsylvania School Counselors Association (PSCA)
Persad Center
PFLAG Ann Arbor Chapter, Michigan
PFLAG Athens Area, Georgia
PFLAG Cape Girardeau, Missouri
PFLAG Charlotte, North Carolina
PFLAG Collinswood, New Jersey
PFLAG Evanston Chapter, Illinois
PFLAG Greater St. Louis, Missouri
PFLAG Greensboro, North Carolina
PFLAG Greensburg, Pennsylvania
PFLAG Homer Glen Lockport, Illinois
PFLAG Kansas City, Kansas and Missouri
PFLAG Laramie, Wyoming
PFLAG Leonardtown, Maryland
PFLAG Los Angeles, California
PFLAG New Orleans, Louisiana
PFLAG Oak Park Area, Illinois

PFLAG Oakland/East Bay, California
PFLAG PTI-Chicago (Parents of Trans, Nonbinary, and Gender Non-conforming Individuals)
PFLAG San Marcos, Texas
PFLAG Santa Barbara, California
PFLAG Sauk Valley, Illinois
PFLAG Seattle, Washington
PFLAG Skagit, Washington
PFLAG South Hampton Roads, Virginia
PFLAG Southwest Washington State
PFLAG Springfield, Missouri
PFLAG Sturgeon Bay, Wisconsin
PFLAG Wilmington/North Delaware
PFLAG Woodstock, Virginia
Pride Action Tank
PROMO (Missouri)
Queer Advocacy Coalition
Radical Pedagogy Institute
Rainbow Speakers and Friends
Reproductive Freedom Fund of New Hampshire
Rochester PFLAG (New York)
San Diego Pride
SBTAN-SB Transgender Advocacy Network
Silver State Equality-Nevada
SisTers PGH
SMYAL
South Dakota Association of School Psychologists
SPAN Parent Advocacy Network
St. Louis Queer+ Support Helpline
Sussex Pride
Talk and Thrive Education, LLC
Texas Association of School Psychologists
The Children's Agenda
The GLO Center
The LIAM Foundation
The Mahogany Project
The Rainbow Bridge Community Center
Trans Community of New England (TCNE)
Trans Pride Initiative
TransCentralPA
Transgender Assistance Program Virginia
Transgender Awareness Alliance
TransLiance
TransOhio
TransSOCIAL, Inc.
TransVisible Montana
Tri-States Transgender

Uniting Pride of Champaign County
Vermont School Counselor Association
Virginia Council on LGBTQ+
Virginia School Counselor Association
Wellness Services, Inc.
West Virginia School Psychologists Association
Women's Law Project

GLSEN State & Local Chapters

GLSEN Albuquerque
GLSEN Arkansas
GLSEN Austin
GLSEN Bluegrass
GLSEN Bucks County
GLSEN Central New Jersey
GLSEN Central Ohio
GLSEN Collier County
GLSEN Connecticut
GLSEN Greater Cincinnati
GLSEN Greater Fort Wayne
GLSEN Greater Huntsville
GLSEN Greater Kansas City
GLSEN Green Bay
GLSEN Kansas
GLSEN Lower Hudson Valley
GLSEN Los Angeles
GLSEN Maryland
GLSEN Massachusetts
GLSEN Merced
GLSEN Mid-Hudson
GLSEN New Hampshire
GLSEN Northeast Ohio
GLSEN Northern New Jersey
GLSEN Northern Utah
GLSEN Northern Virginia
GLSEN Northwest Ohio
GLSEN Omaha
GLSEN Oregon
GLSEN Philly
GLSEN Phoenix
GLSEN Richmond
GLSEN San Diego County
GLSEN Southeast Michigan
GLSEN Southern New Jersey
GLSEN Tampa Bay
GLSEN Tennessee

GLSEN Upstate New York
GLSEN Washington State