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May 15, 2023

The Honorable Miguel Cardona
Secretary of Education
U.S Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100

RE: Comment on “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams,” Agency/Docket Number: Docket ID ED-2022-OCR-0143, RIN:1870-AA19, Document Number: 2023-07601

Dear Secretary Cardona:

Thank you for the opportunity to comment on the United States Department of Education’s proposed regulation governing sex-related eligibility criteria for male and female athletic teams under Title IX of the Education Amendments of 1972. (April 13, 2023 Federal Register Notice, *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 88 FR 22860, Docket ID ED-2022-OCR-0143). I am writing to you in my capacity as the Secretary of Education for the Commonwealth of Massachusetts and to express support for this proposed regulation on behalf of the administration of Governor Maura T. Healey and Lt. Governor Kimberley L. Driscoll.

I appreciate the Department’s effort to update and formally codify in regulation schools’ obligations to provide equal athletic opportunities for all students regardless of gender identity and to allow students to participate on athletic teams consistent with their gender identity. It is essential that the Department should make clear through this rule that animus towards transgender people is not a valid justification for denying participation in school sports under Title IX.

All students need a safe and supportive school environment to progress academically and developmentally. It is incumbent on schools and school administrators to create a culture in which transgender and gender nonconforming students feel safe, supported, and fully included, particularly in athletics. According to recent survey data collected by the Trevor Project in 2022, 83% of transgender and nonbinary youth surveyed said that they worried about transgender people being denied the ability to play sports due to state or local laws. School-based athletics are an important part of many students' lives. Where there are sex-segregated athletic activities, students must be allowed to participate in a manner consistent with their gender identity.

As such, I appreciate the extensive work that has gone into developing the proposed regulation and support the proposed changes, particularly because existing Massachusetts laws provide critical protections to transgender students in Massachusetts. Since 2012, Massachusetts has prohibited discrimination on the basis of gender identity in public schools and in public school-based athletics. Critically, these laws provide that “[n]o person shall be excluded from or discriminated against in admission to a public school of any town, or in obtaining the advantages, privileges and courses of study of such public school on account of ... gender identity.” Mass. Gen. Laws c. 76, § 5; 603 Code Mass. Regs 26.00. These important laws have helped ensure that transgender students in Massachusetts can thrive in a safe and supportive school environment and reflect our state's strong commitment to promoting the academic growth of all students. Indeed, we have found that our laws and our policy of inclusion and access have allowed students to participate in school athletics fairly and without any issues.

The Department's proposed change better aligns with our state's support for student access to public school-based athletics for transgender students and would prohibit the damaging practice of instituting categorical bans preventing transgender students from participating on teams consistent with their gender identity. We appreciate this enhancement to the federal regulations, as it will help support the good work that is already underway in Massachusetts.

I thank you for your consideration of this comment and for your attention to this critical issue. I strongly urge you to advance these positions in the Department's draft regulations because this proposed rule serves a critical need: making clear that blanket bans on transgender student participation in school sports is not allowed under Title IX.

Sincerely,

A handwritten signature in black ink, appearing to read 'PAT' followed by a large, sweeping flourish that extends to the right.

Patrick A. Tutwiler, Ph D.
Secretary of Education
One Ashburton Place, Room 1403, Boston, MA 02108