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May 15, 2023

Alejandro Reyes  
U.S. Department of Education  
400 Maryland Ave. SW  
PCP-6125  
Washington, DC 20202  
202-245-7705

Re: 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, Docket ID ED-2022-OCR-0143, RIN 1870-AA19

Dear Mr. Reyes,

On behalf of the Union for Reform Judaism, whose nearly 850 congregations across North America encompass 1.8 million Reform Jews, and the Central Conference of American Rabbis, whose membership includes more than 2,000 Reform rabbis, I am writing in response to the Proposed Rule by the Department of Education entitled “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” (Docket ID ED-2022-OCR-0143 and RIN 1870-AA19). We support the Department of Education’s (further referred to as “the Department”) goal of ensuring equal opportunity for transgender students in athletics but believe the rule must be strengthened to fully protect transgender, gender expansive, and non-binary student athletes.

We support the proposed rule’s prohibition on policies that categorically ban transgender students from playing on sports teams consistent with their gender identity. Twenty-one states have already enacted such categorical bans that would be in violation in Title IX if the proposed rule is finalized.<sup>1</sup> These bans perpetuate a false narrative that transgender athletes threaten women’s sports. There is no evidence to suggest that that transgender athletes possess systemic advantages over cisgender athletes. Rather, every athlete is unique, and multiple factors

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<sup>1</sup> [https://www.lgbtmap.org/equality-maps/youth/sports\\_participation\\_bans](https://www.lgbtmap.org/equality-maps/youth/sports_participation_bans)



*The Religious Action Center of Reform Judaism is the Washington office of the Union for Reform Judaism, whose more than 800 congregations across North America encompass 1.5 million Reform Jews, and the Central Conference of American Rabbis, whose membership includes more than 2,000 Reform rabbis.*



contribute to athletic success. Transgender women are women and deserve to participate in sports and receive the benefits of athletics in accordance with their gender identity.

Furthermore, categorical athletic bans based on gender identity actively harm and detract from real issues facing LGBTQ+ youth. According to GLSEN, experiencing anti-LGBTQ+ discrimination (including policies that prohibit students from participating in school athletics consistent with gender identity) is associated with lower academic achievement, higher absence rates, and increased levels of depression and suicidal ideation.<sup>2</sup> The Trevor Project reports that 83 percent of transgender and nonbinary youth have worried about being denied the ability to play sports due to anti-transgender legislation.<sup>3</sup> These students already face significant mental health challenges compared to their cisgender peers: more than half of transgender youth seriously considered suicide, and one in five transgender and nonbinary young people attempted suicide in the past year.<sup>4</sup> By contrast, suicide rates drop significantly when students are part of communities – such as sports teams – that affirm their identities.<sup>5</sup> Allowing transgender, nonbinary, intersex, and gender expansive young people to participate in athletics can help make their schools more inclusive and affirming, thereby improving their health and well-being.

Prohibiting categorical anti-transgender sports bans is a step in the right direction, but the Department must strengthen the rule to guarantee transgender students' ability to participate in school sports free from discrimination. The rule should specifically affirm a presumption of participation consistent with gender identity. The burden must be on the school – not the student athlete – to overcome this presumption of inclusion. The Department must also clarify the standard for allowing schools to “limit or deny a student’s eligibility to participate on a male or female team consistent with their gender identity,” particularly as it relates to achievement of important educational objectives, injury prevention, and fairness in competition. Restrictions should be narrow and address substantial concerns without relying on overbroad generalizations, myths, and sex-based stereotypes. Finally, the Department must explicitly prohibit sex verification testing, which subjects athletes (including cisgender women athletes) to invasive medical inspections and is disproportionately enforced against athletes of color.<sup>6</sup>

As Reform Jews, we believe that all human beings are created *b'tzelem Elohim*, in the Divine image, and deserve dignity and respect (Genesis 1:27). For centuries, Judaism has recognized a diverse spectrum of sex and gender identities. Across Jewish legal codes and rabbinic commentary, there are hundreds of references to at least six different sex and gender identities.<sup>7</sup> Many of our texts proudly affirm the existence of transgender, non-binary, intersex, and gender expansive individuals. In 2015, the Union for Reform Judaism and Central Conference of American Rabbis passed historic resolutions affirming the rights of transgender and gender non-confirming people – the farthest-reaching transgender rights resolutions of any major religious

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<sup>2</sup> <https://www.glsen.org/research/2021-national-school-climate-survey>

<sup>3</sup> <https://www.thetrevorproject.org/survey-2022/>

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> <https://nwlc.org/resource/trans-and-intersex-inclusion-in-athletics/>

<sup>7</sup> [http://www.transtorah.org/PDFs/Classical\\_Jewish\\_Terms\\_for\\_Gender\\_Diversity.pdf](http://www.transtorah.org/PDFs/Classical_Jewish_Terms_for_Gender_Diversity.pdf)

denomination at the time.<sup>8</sup> As Reform Jews, we know that deep faith and a commitment to transgender equality are not mutually exclusive.

Transgender, non-binary, intersex, and gender-expansive students deserve to participate in athletics without fear of harassment or discrimination. The proposed rule is an important first step in providing critical civil rights protections for these students, and we urge you to further strengthen and clarify the rule before it is finalized.

Sincerely,  
Rabbi Jonah Dov Pesner  
Director, Religious Action Center of Reform Judaism

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<sup>8</sup> <https://urj.org/what-we-believe/resolutions/resolution-rights-transgender-and-gender-non-conforming-people> and <https://www.ccarnet.org/ccar-resolutions/rights-transgender-and-gender-non-conforming-indiv/>