

No. 24-38

IN THE
Supreme Court of the United States

BRADLEY LITTLE, in his official capacity as Governor
of the State of Idaho, et al.,
Petitioners,

v.

LINDSAY HECOX, et al.
Respondents.

**JOINT APPENDIX
VOLUME 1**

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*Petition for Writ of Certiorari filed July 11, 2024
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

LINDSAY HECOX, and
JANE DOE with her next
friends JEAN DOE and
JOHN DOE,

Plaintiffs,

v.

BRADLEY LITTLE, in
his official capacity as
Governor of the State of
Idaho; SHERRI YBARRA,
in her official capacity as
the Superintendent of
Public Instruction of the
State of Idaho and as a
member of the Idaho
State Board of Education;
THE INDIVIDUAL
MEMBERS OF THE
STATE BOARD OF
EDUCATION, in their
official capacities; BOISE
STATE UNIVERSITY;
MARLENE TROMP, in
her official capacity as
President of Boise State
University;
INDEPENDENT
SCHOOL DISTRICT OF
BOISE CITY #1; COBY
DENNIS, in his official
capacity as

No.

**COMPLAINT FOR
DECLARATORY
AND
INJUNCTIVE
RELIEF**

superintendent of the
 Independent School
 District of Boise City #1;;
 THE INDIVIDUAL
 MEMBERS OF THE
 BOARD OF TRUSTEES
 OF THE INDEPENDENT
 SCHOOL DISTRICT OF
 BOISE CITY #1, in their
 official capacities; THE
 INDIVIDUAL MEMBERS
 OF THE IDAHO CODE
 COMMISSION, in their
 official capacities,

Defendants.

NATURE OF ACTION

1. Idaho's recently enacted H.B. 500a, to be codified at Idaho Code, Title 33, Chapter 62 ("H.B. 500"), categorically bars women and girls who are transgender,¹ and many who are intersex,² from participation in school sports consistent with their gender identity. It does so by requiring proof of "biological sex" based on criteria that intentionally disqualify all women and girls who are transgender and many who are intersex, and which threaten to

¹ A transgender individual is someone who has a gender identity that does not align with the sex they were assigned at birth.

² Intersex is an umbrella term for unique variations in a person's chromosomes, genitals, hormone function, or internal organs like testes or ovaries. Some intersex traits are identified at birth, while others may not be discovered until puberty or later in life, if ever.

intrude upon the privacy and bodily autonomy of all women and girls engaged in student athletics. This law is not just out of step with science and prevailing norms of inclusion adopted by athletic associations across the country and around the world, it is unconstitutional and violates federal law.

2. Idaho is the first and only state in the United States to categorically bar the participation of a subset of women in women's student athletics because they are transgender and/or intersex. Not only does no other state have a categorical bar to girls and women who are transgender playing sports, but also no elite athletic body regulating sports nationally or globally – such as the National Collegiate Athletic Association (“NCAA”) or the Olympics – has such a categorical bar. Nor do any arbitrarily restrict the participation of women and girls with intersex traits to the same extent as H.B. 500. Likewise, no other state or sports regulatory body with a policy addressing the participation of transgender and intersex athletes utilizes (as Idaho now will) intrusive genital examinations or chromosomal testing to restrict participation in women's sports. Idaho now stands alone in imposing the threat of unwanted, medically unnecessary invasions to bar and chill participation in women's and girls' athletics.

3. Excluding women and girls who are transgender from participation in women's athletics is not just the *result* of H.B. 500: it was the very purpose of the law. According to bill sponsors, it was written to prevent even girls with female-typical hormone levels from participating in girls' sports if they are transgender. Prior to the passage of H.B. 500, the existing rules in Idaho already required girls

who are transgender to “complete one year of hormone treatment related to the gender transition before competing on a girls team.” There were no reported issues with the administration of that rule or its effect on athletics in Idaho. In fact, no transgender athlete had even availed herself of Idaho’s preexisting rule.³ Unfounded stereotypes and false scientific claims led to the passage of H.B. 500 and are embodied within it. Idaho also enacted H.B. 500 amidst a global pandemic, in conjunction with a law barring the state from accurately reflecting the sex of transgender and some intersex individuals on birth certificates (after such a policy in Idaho had already been adjudicated unconstitutional). In short, H.B. 500 is entirely unnecessary, was prompted by a campaign targeting transgender and intersex persons, and can be explained only as impermissible and baseless discrimination.

4. In addition to precluding women and girls who are transgender and many who are intersex from participating in women’s sports, H.B. 500 opens the door to severe privacy violations and the forced disclosure of women’s and girls’ sensitive medical information (including those who are neither transgender nor intersex, among others). H.B. 500 requires women and girls, upon a “dispute regarding” their sex, to submit to invasive physical examinations and genetic testing in order to “verify” a vague and

³ Scott McIntosh, *Idaho is about to join national debate over transgender student-athletes*, Idaho Statesman (Jan. 12, 2020, 6:00 AM), <https://www.idahostatesman.com/opinion/from-the-opinion-editor/article239121313.html>.

indeterminate notion of “biological sex.” Idaho Code § 33-6203(3) (engrossment), attached as Exhibit A.

5. By barring women and girls who are transgender, and many who are intersex, from student athletic participation, H.B. 500 impermissibly discriminates on the basis of sex and transgender status and invades fundamental privacy rights. It will cause severe and entirely unnecessary harms and distress, including to a subset of women and girls who already face exceedingly high rates of suicidality due to ongoing societal inequities caused by discrimination of the sort H.B. 500 perpetuates.

PARTIES

Plaintiffs

6. Lindsay Hecox is an adult woman and athlete in Idaho. She will soon finish her freshman year at Boise State University, and she plans to try out for the Boise State cross country team in August 2020. Lindsay is transgender.

7. Jane Doe is a 17-year old girl and athlete in Idaho. She appears in this case through her mother and next friend, Jean Doe, and her father and next friend, John Doe. She will soon finish her junior year at Boise High School, and she plans to try out for soccer in August 2020. Jane is not transgender.

Defendants

8. Defendant Bradley Little (“Governor Little”) is Governor of the State of Idaho. Article VI, section 5 of the Idaho Constitution states: “The supreme executive power of the state is vested in the governor, who shall see that the laws are faithfully executed.” Idaho Const. art. IV, § 5. Governor Little is

responsible for upholding and ensuring compliance with state statutes prescribed by the legislature, including H.B. 500. He also bears the authority and responsibility for the formulation and implementation of policies of the executive branch. In addition, he appoints all members of the eight-person State Board of Education other than the Superintendent of Public Instruction. Idaho Code § 33-102. The Governor's appointees serve for five-year terms. *Id.* Governor Little is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law as to the allegations in this complaint. Governor Little's official residence is in Ada County, Idaho, within the District of Idaho. He is sued in his official capacity.

9. Defendant Sherri Ybarra is Superintendent of Public Instruction in Idaho. She is responsible for carrying out policies, procedures, and duties authorized by law regarding secondary school matters. She is also a member of the Idaho State Board of Education. She is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law as to the allegations in this complaint. Superintendent Ybarra resides in Idaho. She is sued in her official capacity.

10. The individual members of the Idaho State Board of Education (Defendants Debbie Critchfield, David Hill, Emma Atchley, Linda Clark, Shawn Keough, Kurt Liebich, and Andrew Scoggin) have responsibility for the general supervision of Idaho's state educational institutions and its public school system. The Board of Education is required, under H.B. 500, to promulgate rules for schools and institutions to follow to comply with the law. Idaho

Code § 33-6203(3) (engrossment). The Board of Education also acts as the board of trustees for Boise State University, and is responsible for the university's supervision, government, and control. Idaho Code § 33-4002. As the university's board of trustees, the Board of Education is responsible for supervising students at the university, including Plaintiff Hecox. Idaho Code § 33-4005. The Board of Education's members are each persons within the meaning of 42 U.S.C. § 1983 and act under color of state law as to the allegations in this complaint. All reside in Idaho. They are sued in their official capacities. Idaho's state educational institutions, including Boise State University, and Idaho's public school system are education programs receiving Federal financial assistance. These Defendants are referred to in this Complaint collectively as the "State Board of Education Defendants."

11. Defendant Boise State University is a public research university located in Boise, Idaho. Its intercollegiate athletic teams are classified as NCAA Division 1. Boise State University is an education program receiving Federal financial assistance.

12. Defendant Dr. Marlene Tromp is the President of Boise State University. She is responsible for carrying out the policies of Boise State University and reports to the State Board of Education. She is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law as to the allegations in this complaint. She resides in Idaho and is sued in her official capacity.

13. Defendant Independent School District of Boise City #1 ("Boise School District") is a public

school district located in Boise, Idaho. It is an education program receiving Federal financial assistance.

14. Defendant Coby Dennis is the superintendent of the Boise School District. He is responsible for carrying out the policies of the Boise School District, recommending policies to the District's board of trustees, and making decisions for the District when the board of trustees is in recess. He is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law as to the allegations in this complaint. He resides in Idaho and is sued in his official capacity.

15. The individual members of the Boise School District's board of trustees (Defendants Nancy Gregory, Maria Greeley, Dennis Doan, Alicia Estey, Dave Wagers, Troy Rohn, and Beth Oppenheimer) are responsible for governing the District in compliance with state law and rules of the State Board of Education. Idaho Code § 33-512(13). The District's board of trustees adopts and oversees the District's policies regarding student athletics and students' participation in interscholastic athletic programs. The board of trustees' members are each persons within the meaning of 42 U.S.C. § 1983 and act under color of state law as to the allegations in this complaint. The board of trustees' members all reside in Idaho and they are all sued in their official capacity. Boise High School, where Plaintiff Jane Doe is a student, is a part of the Boise School District. The Boise School District and Boise High School are education programs receiving Federal financial assistance. Defendant Dennis and the individual members of the Boise School District's board of

trustees are referred to in this Complaint collectively as the “Boise School District Defendants.”

16. The individual members of the Idaho Code Commission (Defendants Daniel Bowen, Andrew Doman, and Jill Holinka) are also sued in their official capacity and all reside in Idaho. The Code Commission’s members are each persons within the meaning of 42 U.S.C. § 1983 and act under color of state law as to the allegations in this complaint. The Idaho Code Commission is an office of the Secretary of State established by statute. Idaho Code §§ 73-201–73-221. The Commission’s purpose is to keep the Idaho Code up to date by indicating changes to laws, including constitutional changes, and providing annotations, and the Commission has all power and authority necessary to accomplish that purpose. It has the specific power to keep the Idaho Code up to date, to provide annotations to the Code, and to provide references in the Code to decisions of the federal courts. Idaho Code § 73-205. These Defendants are referred to in this Complaint collectively as the “Idaho Code Commission Defendants.”

JURISDICTION AND VENUE

17. This action arises under 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights secured by the United States Constitution and under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.* (“Title IX”).

18. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under laws of the United States, including laws

providing for the protection of civil rights, and because this suit seeks redress for the deprivation, under color of state law, for rights secured by the United States Constitution.

19. Venue is proper in the District of Idaho under 28 U.S.C. § 1391(b)(1) and (2) because the Defendants reside in the District and because a substantial part of the events or omissions giving rise to the claims occurred in the District.

20. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

21. This Court has personal jurisdiction over Defendants because they are domiciled in Idaho and because their denial of Plaintiffs' rights under the United States Constitution and the laws of the United States occurred within Idaho.

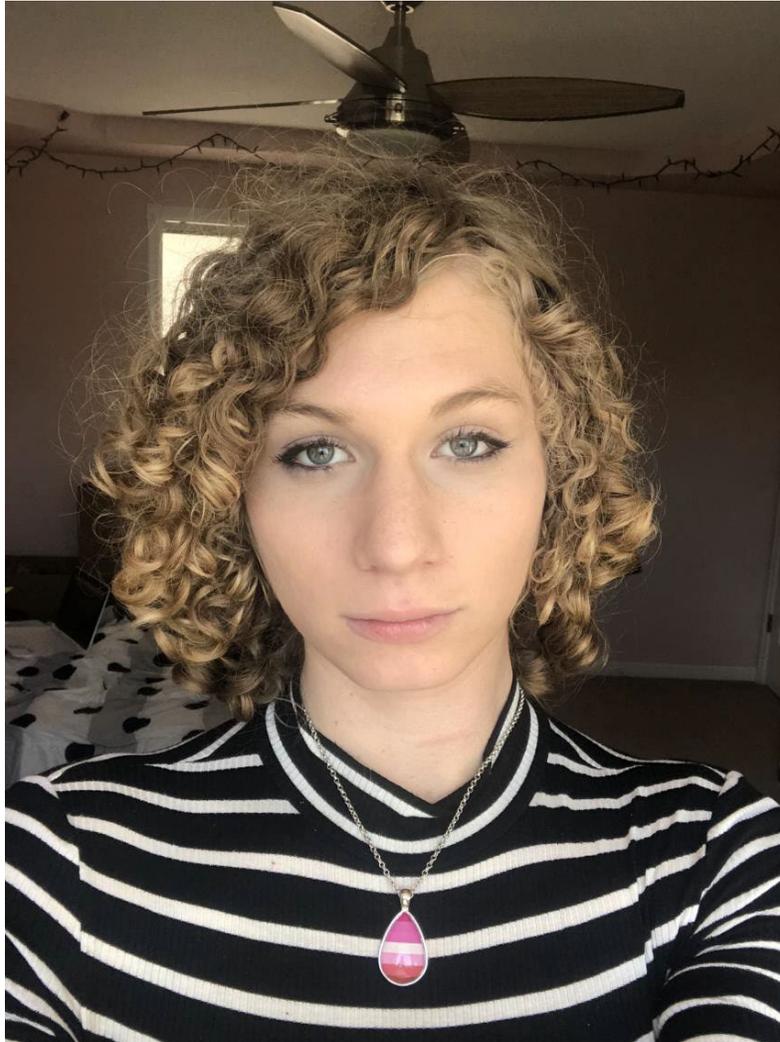
FACTUAL ALLEGATIONS

A. Plaintiffs' Participation in Student Athletics

Lindsay Hecox

22. Lindsay Hecox is a nineteen-year-old woman currently attending Boise State University.

23. A recent photo of Lindsay:



24. Lindsay loves to run. It helps her stay fit and motivated. It helps her feel alive.

25. Lindsay ran track and cross-country on co-ed teams in high school. She loved being on the teams. She is shy, and being on sports teams gave her a way to make friends. She bonded with her teammates.

26. Lindsay chose to go to Boise State University because she fell in love with the running trails and natural beauty around Boise State. She also knew Boise State had strong track and cross country teams. She was excited at the idea of participating in college athletics.

27. Lindsay is transgender. She is a woman who was assigned the sex of male at birth.

28. Lindsay didn't join the track or cross-country teams her first year at Boise State because she wanted to focus on her medical gender transition.

29. As part of her treatment for gender dysphoria, a medical condition caused by the disconnect between her assigned sex at birth and her female gender identity, Lindsay is treated with both testosterone suppression and estrogen. This treatment lowers her circulating testosterone levels and affects her bodily systems and secondary sex characteristics. For example, her hormone treatment redistributes fat to her hips and breasts, softens her skin, and decreases her muscle mass and size.

30. Lindsay's health and well-being depends on being able to live and express herself as a woman.

31. While beginning her hormone treatment, Lindsay started a coed running club at Boise State. The club was just for people to run together for fun and exercise. The club has not participated in competitions. She enjoyed the club experience, but she really missed the camaraderie and motivation that comes with being on a team. Running with people every now and then is not the same feeling as competing together as a team with regular practices,

uniforms, and a coach. Being an athlete and on a sports team is important to Lindsay.

32. Under existing NCAA rules for inclusion of transgender athletes, Lindsay will be eligible to compete in women's sports this fall.

33. Lindsay has been training, and she intends to train all summer. She plans to try out for the women's cross-country team at Boise State in fall 2020. She also plans to try out for track in the spring.

34. Under NCAA eligibility rules, Lindsay only has five potential years to participate in athletics. If she is barred by H.B. 500 from competing in the Fall 2020 season, she will lose a season of NCAA eligibility, which she will never be able to get back.

35. Lindsay was crushed when she learned about H.B. 500 and how it could impact her. The tests for "biological sex" set out in H.B. 500 would exclude her from joining a team with other women. Idaho Code § 33-6203(3) (engrossment).

36. Running on a men's team is not an option for Lindsay. She is not a man, and as a woman who is transgender, it would be painful and humiliating to be forced to be the only woman on a men's team. It would also be contrary to her medical treatment plan for her gender dysphoria, which requires that she live her life in all respects as the woman she is. She is also worried that she would face harassment from other members of the men's team or people who attend meets. In the past, she has seen runners physically jostle or push each other at meets. She has not met any other women athletes at Boise State who are transgender.

37. Lindsay also feels that H.B. 500, particularly combined with the other bills targeting transgender people that were introduced and passed, has sent a message that it is okay to discriminate against transgender people. She is afraid that she will face more harassment, discrimination, or even violence because of it in her daily life.

38. If H.B. 500 were in effect at the start of the Fall 2020 athletic season, Lindsay would not be able to participate in college athletics at all. She would miss the opportunities to make friends with other women running on the team, and the motivation, challenge, camaraderie, and joy that sport has brought her in the past.

Jane Doe

39. Jane Doe is a 17-year-old girl currently attending Boise High School as a junior.

40. Jane has played sports since she was four years old. She plays soccer and runs track.

41. Jane believes sports have shaped her into the person she is today. She has learned about pushing her limits and tolerating discomfort from challenging track events. She has learned grace and found perseverance from losing to the same team over and over again in soccer. She has felt the satisfaction of her hard work and effort paying off from winning tournaments at the national level with her club soccer team. She has learned what community and family are from her high school soccer team, where they not only share their love for the game but their love for uniting the school.

42. Jane is cisgender.⁴ She is a girl who was assigned the sex of female at birth.

43. Jane has never had any problems with girls who are transgender or intersex being allowed to play sports. She would welcome the opportunity to compete against girls who are transgender or intersex in the future.

44. In fact, a big part of what Jane loves about sport is the way that sport brings people together and helps a diverse group of young people learn to support each other and work toward a common goal as teammates. She wants everyone to have access to the joy sport brings, including girls who are transgender or intersex.

45. Jane wants to play soccer in the fall of her senior year of high school, like usual. Practice would start on or around August 10.

46. With H.B. 500 becoming law, Jane fears for her privacy and security, both emotionally and physically, if she continues to play sports. She worries that one of her competitors might decide to “dispute” her sex just to try to keep her from playing. H.B. 500 has created a system that other people could use to bully or harass her.

47. Jane does not commonly wear skirts or dresses, and most of her closest friends are boys. She also has an athletic build. Because of these things, people sometimes think of her as masculine. She

⁴ A cisgender individual is someone who has a gender identity that aligns with the sex they were assigned at birth.

worries that people might use that as an excuse to “dispute” her gender.

48. Jane has had to get a physical once every two years in high school to play school sports. Those physicals usually take less than ten to fifteen minutes. Jane and her family fill out a questionnaire. The healthcare provider asks her a few questions and performs a short physical exam that involves listening to her heart and lungs and looking at her spine. She does not get any other tests or exams as part of her sports physical, and her medical providers have never taken her blood or looked at her fully undressed as part of this exam. Her family has not had to pay for her sports physicals because one was covered by insurance and the other was provided free of charge. While she has not gone herself, she knows that some students go to an annual event where health care providers complete the regular sports physical exam for many students on the same day. She thinks those physicals cost around \$20.

49. Jane does not want to have to go through an invasive or uncomfortable test just to prove that she meets the state’s new criteria for being deemed a girl. She finds it horrifying that a doctor might have to examine her genitals just so she can play sports. She has never had a genetic test, hormone test, or transvaginal pelvic ultrasound (insertion and manipulation of a probe with a camera several inches into the vagina), and her pediatrician has never told her that she needs one. She does not want any of those tests or a pelvic examination unless she needs one for her health. She thinks it is unfair that girls will potentially have to go through invasive physical examinations to play sports, when boys will not.

50. If H.B. 500 is in effect during the Fall 2020 athletic season, Jane would worry about whether she might be seen as “too good” or “too masculine,” and so have her sex disputed. She would fear the invasion of her privacy, and she would be subject to different treatment than boys.

B. Background of Sex Testing in Sport

51. As women and girls gained greater access to athletic competition throughout the twentieth century, their participation led to accusations that successful female athletes were not “really” women. This led to various unfounded, invasive, and destructive so-called “sex verification” practices directed at female athletes, which, over time, became obsolete after informed scientific, medical, ethical, and public consideration. H.B. 500 would retrench such discredited practices.

52. For example, beginning in the 1960s, international competition organizations required female athletes to parade naked in front of a panel of three female doctors to “prove” that they were women. After ethicists and scientists, in addition to the athletes themselves, protested this humiliating, unscientific, and inhumane practice, it was abandoned and replaced (for a time) with chromosomal testing.⁵

53. Until the 1990s, the buccal (cheek/mouth) swab was used to test for chromosomes and regulate women’s competition by the International Olympic

⁵ Vanessa Heggie, *Testing sex and gender in sports; reinventing, reimagining and reconstructing histories*, 34(4) *Endeavor* 157, 160 (2010), <https://doi.org/10.1016/j.endeavour.2010.09.005>

Committee (“IOC”) and the International Association of Athletics Federations (“IAAF”), now known as World Athletics. However, these organizations abandoned this practice after the case of a female Spanish pole vaulter named María José Martínez-Patiño.

54. Martínez-Patiño had an intersex variation known as Complete Androgen Insensitivity Syndrome (“CAIS”), in which a person has XY chromosomes and internal testes producing high levels of testosterone, but androgen receptors that are unable to process the testosterone. As such, testosterone has none of its usual effects on the person’s body. Individuals with CAIS typically have a vulva and are assigned female at birth. Absent intervention, they develop secondary sex characteristics like breasts and hips consistent with a typical puberty without the impact of high levels of testosterone on the body. Most identify as girls and women.

55. In 1985, Martínez-Patiño “failed” the buccal swab because it revealed, unbeknownst to her, that she had XY chromosomes. As a result of that revelation, she was disqualified from women’s international competition. When she tried to participate the 1986 Spanish national championships, she was publicly shamed, her sports scholarship was revoked, and her times were removed from the country’s athletic records. Ultimately, she successfully fought her disqualification from women’s international competition, obtained her IAAF license, and was permitted to attempt to qualify for the 1992 Olympics in Barcelona, Spain. She failed to do so by ten hundredths of a second, ending her athletic career.

56. Martínez-Patiño faced great personal and professional harm as a result of the misguided belief that she was unfit to participate in women's sports due to her intersex variation. As Martínez-Patiño explains, "I paid a high price for my license—my story was told, dissected, and discussed in a very public way—and my victory was bittersweet."⁶

C. Current Policies of International Sports Bodies

57. Currently, no international sports body regulates sport (as Idaho now would) through chromosomal testing, endogenous hormone levels (intrinsic levels without medical intervention), or genital and internal reproductive organ examinations. These methods have been determined by geneticists, other scientists and medical professionals, as well as human rights experts and international athletic regulatory bodies, to be neither accurate nor ethical proxies for sex or athletic ability.

58. There are myriad genetic variations among athletes that can enhance athletic performance that are not related to sex characteristics – and have not been targeted for intrusive scrutiny or regulation. As just one example, variations in mitochondrial DNA have been associated with greater endurance capacity and greater mitochondrial density in muscles.

59. Under current IOC regulations and World Athletics regulations, transgender athletes are eligible to compete consistent with their gender

⁶ María José Martínez-Patiño, *Personal Account: A women tried and tested*, 366 *The Lancet* (Special Issue) S38 (2005), [https://doi.org/10.1016/S0140-6736\(05\)67841-5](https://doi.org/10.1016/S0140-6736(05)67841-5).

identity. This means that women who are transgender are able to compete in women's sports in the Olympics and other international elite competitions.

60. The IOC recognizes that “[i]t is necessary to ensure insofar as possible that trans athletes are not excluded from the opportunity to participate in sporting competition.”⁷

61. IOC rules allow women who are transgender to compete in the women's category with proof that they have declared a female gender identity and can establish testosterone suppression under 10 nMol/L for a period of one year.

62. World Athletics has a similar rule to the IOC for women who are transgender to compete in women's events, but has set the testosterone suppression to 5 nMol/L. Similarly, World Athletics does not bar participation by women with intersex traits in women's events. Under guidance issued in 2018, for certain track events, women with elevated testosterone who are androgen sensitive must suppress testosterone to a level below 5 nMol/L in order to compete in the women's category.

63. Eligibility to participate in international elite athletics for women who are transgender and intersex is not determined based on an athlete's chromosomes, reproductive anatomy, or endogenous hormone levels.

⁷ IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism (November 2015), https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf.

64. After substantial research and consultation, experts in endocrinology, ethics, athletics, genetics, and other specialties determined that the standards set by the IOC and World Athletics are consistent with treatment guidelines for transgender individuals and consistent with the broader goals of elite international athletic competition.

65. H.B. 500, which would bar competition in women's sports by all women who are transgender and many women with intersex traits, is far more restrictive than the policies of the most elite athletic regulatory bodies in the world.

D. State and NCAA Policies Prior to H.B. 500

66. In the United States, high school interscholastic athletics are generally governed by state interscholastic athletic associations, such as the Idaho High School Activities Association ("IHSAA").

67. The NCAA sets policies for member colleges and universities, including Boise State University and other member colleges and universities in Idaho.

68. Each state and the NCAA set their own standards, if any, for inclusion of transgender individuals in athletic activities.

69. The policies developed by World Athletics and the IOC for participation of transgender athletes, described above, derived from the particular context of elite international competition. Because of that unique context, most interscholastic bodies have *less* stringent rules for participation in high school competition.

70. Prior to the passage of H.B. 500, no state had ever passed a law categorically excluding all women

and girls who are transgender from participating in high school or collegiate athletic competition consistent with their gender identity.

71. Prior to the passage of H.B. 500, the policy for transgender inclusion in K-12 athletics in Idaho was set by the IHSAA. Under the 2019-20 IHSAA Rules and Regulations, the policy governing athletes who are transgender allowed participation as follows:

11-3 TRANSGENDER STUDENT PARTICIPATION

A transgender student, defined as a student whose gender identity differs from the student's assigned birth gender, shall be eligible to participate in interscholastic athletics that is consistent with the student's gender identity, under the following conditions:

- a. A female-to-male transgender student athlete who is taking a medically prescribed hormone treatment under a physicians care for the purposes of gender transition may participate only on a boys team.
- b. A male-to-female transgender student athlete who is not taking hormone treatment related to gender transition may participate only on a boys team.
- c. A male-to-female transgender student athlete who is taking medically prescribed hormone treatment under a physicians care for the purposes of gender transition may participate on a boys team at any time, but must complete one year of hormone treatment related to the gender transition before competing on a girls team.

- d. Process: A student athlete who has completed, plans to initiate, or is in the process of taking hormones under a physician's care as part of a gender transition shall submit the request to participate on a sports team to the administration of the student's school and to the IHSAA. The request shall include a letter from the student's physician documenting the student's intention to transition or the student's transition status if the process has already been initiated. This letter shall identify the prescribed hormonal treatment for the student's gender transition and the date the hormone treatment was initiated. The Executive Director shall make a determination whether the student is eligible to compete under the above criteria.
- e. Once the transgender student has been granted eligibility to participate in the sport consistent with his/her gender identity, the eligibility is granted for the duration of the student's participation and does not need to be renewed every sports season or school year.
- f. Once the transgender student selects the gender or the team on which the student wishes to participate, the student thereafter must consistently participate on teams of that gender in all sports for the duration of their high school career.
- g. Appeals: The decision of the Executive Director may be appealed to the Eligibility Committee. The decision of the Eligibility Committee may be appealed to the IHSAA Board of Directors for a review and hearing.

h. Confidentiality: All discussions among involved parties and the required written supporting documentation shall be kept confidential.

Idaho High School Activities Association, Rules and Regulations, 2019-20, Rule 11-3.

72. The policy does not reference athletes with intersex traits. Most high school athletic associations do not have policies restricting participation for intersex athletes.

73. The IHSAA policy for transgender athletes was among the most restrictive policies in the country even prior to the passage of H.B. 500. In order to compete in girls' athletics under IHSAA Rule 11-3, a girl who is transgender must have undergone one year of prescribed hormone therapy under the care of a physician for the purposes of gender transition. Many transgender high school students are likely unable to meet that criterion due to limited access to health care providers in rural areas, cost of care not covered by insurance, and potentially unsupportive parents or guardians unwilling to consent to treatment.

74. In contrast to IHSAA Rule 11-3, at least 17 states and the District of Columbia permit individuals to participate in athletics consistent with gender identity without any proof of medical transition. A small minority of states with policies on participation of athletes who are transgender have policies comparable to IHSAA Rule 11-3. Prior to H.B. 500, no state categorically barred the participation of women and girls who are transgender from women's sports.

Nor did any state restrict athletic competition based on a physician's evaluation of chromosomes, endogenous hormones, or reproductive anatomy.

75. Like the IHSAA policy, the NCAA policy governing athletes who are transgender allows a woman who is transgender to participate in women's sports after one year of hormone therapy suppressing testosterone. This NCAA policy was implemented in 2011 after consultation with medical, legal, and sports experts and has been in effect since that time.

76. Millions of student-athletes have competed in the NCAA since 2011, with no reported examples of any disturbance to women's sports as a result of transgender inclusion. The NCAA reports that 460,000 student-athletes compete in 24 sports each year.⁸ This likely includes only a handful of athletes who are transgender.

E. The Enactment of H.B. 500

77. On February 13, 2020, H.B. 500, titled "Fairness In Women's Sport Act," was introduced in the Idaho House by Rep. Barbara Ehardt ("Rep. Ehardt"). The only aspect of "women's sport" regulated by the Act concerned the exclusion of women and girls from women's sports teams if their sex was "dispute[d]" and they could not "verify" their "biological sex" based on enumerated criteria that categorically exclude participation by all women and girls who are transgender and many who are intersex. Idaho Code § 33-6203(3) (engrossment).

⁸ NCAA, Student-Athletes, <http://www.ncaa.org/student-athletes> (last visited Apr. 12, 2020).

78. The genesis of this legislation during a time of growing national pandemic was a “national campaign backed by the Scottsdale-based Alliance Defending Freedom [“ADF”].”⁹ Idaho Rep. Ehardt “received assistance with the bill’s language” from ADF, which “has been involved in similar legislative efforts across the country.”¹⁰ Pervasively referring to women and girls who are transgender as male, ADF claims that “Coronavirus Is Not the Only Thing Threatening to Cancel Women’s Sports,”¹¹ which, according to ADF, are “facing a potentially fatal risk” from transgender athletes that “may mean the end of women’s sports.”¹²

79. The operative language of H.B. 500 as introduced provided:

⁹ Bob Christie, *Arizona bill would ban transgender girls, women from sports teams*, PBS News Hour (Jan. 24, 2020, 9:27 PM), <https://www.pbs.org/newshour/education/arizona-bill-would-ban-transgender-girls-women-from-teams>, archived at <https://perma.cc/N2XK-DMRM>.

¹⁰ Dan Levin, *A Clash Across America Over Transgender Rights*, N.Y. Times (Mar. 12, 2020), <https://www.nytimes.com/2020/03/12/us/transgender-youth-legislation.html>, archived at <https://perma.cc/L8EA-KS2H> (reporting interview with Ms. Ehardt).

¹¹ Maureen Collins, *Coronavirus Is Not the Only Thing Threatening to Cancel Women’s Sports*, Blog, Alliance Defending Freedom (Mar. 26, 2020), <https://www.adflegal.org/details/pages/blogdetails/allianceedge/2020/03/26/coronavirus-is-not-the-only-thing-threatening-to-cancel-women-s-sports>, archived at <https://perma.cc/9W32-RRRP>.

¹² Maureen Collins, *Idaho Governor Signs Landmark Bill to Save Women’s Sports*, Blog, Alliance Defending Freedom (Apr. 7, 2020), <https://www.adflegal.org/details/pages/blog-details/allianceedge/2020/04/07/idaho-governor-signs-landmark-bill-to-save-women-s-sports>, archived at <https://perma.cc/3WVE-6XWQ>.

33-6203. DESIGNATION OF ATHLETIC TEAMS. (1) Interscholastic, inter-collegiate, intramural, or club athletic teams or sports that are sponsored by a public school or any school that is a member of the Idaho high school activities association or a public institution of higher education or any higher education institution that is a member of the national collegiate athletic association (NCAA), national association of intercollegiate athletics (NAIA), or national junior college athletic association (NJCAA) shall be expressly designated as one (1) of the following based on biological sex:

- (a) Males, men, or boys;
- (b) Females, women, or girls; or
- (c) Coed or mixed.

(2) Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex.

(3) If disputed, a student may establish sex by presenting a signed physician's statement that shall indicate the student's sex based solely on:

- (a) The student's internal and external reproductive anatomy;
- (b) The student's normal endogenously produced levels of testosterone; and
- (c) An analysis of the student's genetic makeup.

Idaho Code § 33-6203.

80. On February 19, 2020, the House State Affairs Committee heard testimony on H.B. 500. When asked at that hearing whether any person in Idaho had ever challenged an athlete's eligibility based on gender, Rep. Ehardt admitted that this had

never occurred, but speculated that “it is just around the corner.”¹³

81. Ty Jones, Executive Director of the IHSAA, answered questions at the hearing and noted that no student had ever complained of participation by transgender athletes, and no transgender athlete had ever competed under the existing policy regulating inclusion of transgender athletes.

82. On February 21, 2020, H.B. 500 was passed out of the House committee.

83. On February 25, 2020, the Idaho Office of the Attorney General warned in a written opinion letter that H.B. 500 raised serious constitutional and other legal concerns due to the disparate treatment and impact that both transgender and intersex athletes would face, as well as the potential privacy intrusion all student-athletes would face.¹⁴

84. On February 26, 2020, the House debated the bill. Rep. Ehardt, the bill sponsor, referred to two girls in high school and one woman in college who are transgender and participating on teams for women and girls. She claimed that the mere fact of the athletes’ participation exemplified the “threat” the bill sought to address. Remarks of Rep. Ehardt, House

¹³ Idaho Education News, *Lawmakers hear emotional testimony but take no action on transgender bill*, Idaho News 6 (Feb. 20, 2020, 9:46 AM), <https://www.kivitv.com/news/education/making-the-grade/lawmakers-hear-emotional-testimony-but-take-no-action-on-transgender>.

¹⁴ Letter from Attorney General Lawrence Wadsen to Representative Ilana Rubel (Feb. 25, 2020), https://www.idaho.press.com/attorney-generals-opinion-hb-500/pdf_4ebb604a-83eb-5bd4-a232-b13a64f4be47.html.

Floor Debate, Feb. 26, 2020 at 43:30. The bill passed the House floor.

85. After passage in the House, H.B. 500 was heard in the Senate State Affairs Committee and was passed out of committee on March 9, 2020.

86. The next day, on March 10, 2020, the bill was sent to the Committee of the Whole Senate for amendment, where minor amendments were made. The amended version retained the categorical exclusion of transgender women and girls and many intersex athletes and allowed invasive testing upon a “dispute regarding a student’s sex,” requiring examination of “the student’s reproductive anatomy, genetic makeup, or normal endogenously produced testosterone levels.” H.B. 500, S. amend., 65th Leg., 2d Regular Sess. – 2020 (Idaho 2020).

87. The engrossed version of H.B. 500 as amended that went to the Senate floor (and that ultimately was signed into law) read, in relevant part:

33-6203. DESIGNATION OF ATHLETIC TEAMS. (1) Interscholastic, inter-collegiate, intramural, or club athletic teams or sports that are sponsored by a public primary or secondary school, a public institution of higher education, or any school or institution whose students or teams compete against a public school or institution of higher education shall be expressly designated as one (1) of the following based on biological sex:

- (a) Males, men, or boys;
- (b) Females, women, or girls; or
- (c) Coed or mixed.

(2) Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex.

(3) A dispute regarding a student's sex shall be resolved by the school or institution by requesting that the student provide a health examination and consent form or other statement signed by the student's personal health care provider that shall verify the student's biological sex. The health care provider may verify the student's biological sex as part of a routine sports physical examination relying only on one (1) or more of the following: the student's reproductive anatomy, genetic makeup, or normal endogenously produced testosterone levels. The state board of education shall promulgate rules for schools and institutions to follow regarding the receipt and timely resolution of such disputes consistent with this subsection.

Idaho Code § 33-6203(3) (engrossment).

88. The bill does not specify what reproductive anatomy, genetic makeup, or normal endogenously produced testosterone levels would need to be identified to "verify" a student's "biological sex." Idaho Code § 33-6203(3) (engrossment).

89. The day after the bill was sent to the Committee of the Whole Senate, on March 11, 2020, the World Health Organization declared COVID-19 a pandemic.¹⁵ Many states adjourned state legislative sessions indefinitely or adjourned sine die to protect

¹⁵ World Health Organization, WHO Timeline – COVID-19, <https://www.who.int/news-room/detail/08-04-2020-who-timeline---covid-19> (Last visited Apr. 13, 2020).

lawmakers and constituents from the spread of the virus.

90. In contrast, the Idaho Senate remained in session and passed H.B. 500 as amended on March 16, 2020. The House concurred in the Senate amendments on March 18, 2020. The next day, the bill was delivered to Defendant Governor Brad Little.

91. Professor Doriane Lambelet Coleman, whose work was misleadingly cited in the H.B. 500 legislative findings, urged Governor Little to veto the bill, explaining that her work was misused and “there is no legitimate reason to seek to bar all trans girls and women from girls’ and women’s sport, or to require students whose sex is challenged to prove their eligibility in such intrusive detail.” Professor Coleman endorsed the existing NCAA rule, which mirrors IHSA Rule 11-3, and stated: “No other state has enacted such a flat prohibition against transgender athletes, and Idaho shouldn’t either.”¹⁶

92. Five former Idaho Attorneys General likewise urged Governor Little to veto the bill “to keep a legally infirm statute off the books.”¹⁷ They observed that their successor, the incumbent Idaho Attorney

¹⁶ Betsy Russell, *Professor whose work is cited in HB 500a, the transgender athletes bill, says bill misuses her research and urges veto*, Idaho Press (Mar. 19, 2020), https://www.idahopress.com/eyeonboise/professor-whose-work-is-cited-in-hb-a-the-transgender/article_0e800202-cac1-5721-a769-3268665316a8.html, archived at <https://perma.cc/NTA7-NJP5>.

¹⁷ Tony Park, Wayne Kidwell, David Leroy, Jim Jones, and Al Lance, *5 former Idaho attorneys general urge transgender bill veto*, Idaho Statesman (Mar. 17, 2020), <https://www.idahostatesman.com/opinion/readers-opinion/article241267071.html>.

General Lawrence Wasden, had identified a “number of legal infirmities” in the statute, including an “apparent conflict with the Equal Protection Clause,” making the law “subject to invalidation in federal court proceedings.” They urged Governor Little to “heed the sound advice” of Attorney General Wasden, who had “raised serious concerns about the legal viability and timing of this legislation.”

93. On March 30, 2020, Governor Little signed H.B. 500 into law. It becomes effective on July 1, 2020.

94. Also signed into law by Governor Little on March 30, 2020 was H.B. 509, a law barring the state from accurately reflecting the sex of transgender and some intersex individuals on Idaho-issued birth certificates. This Court had already ruled that Idaho’s previous policy for restricting updates to the sex designation on birth certificates was unconstitutionally discriminatory, with State of Idaho defendant officials admitting its irrationality. *See F.V. v. Barron*, 286 F. Supp. 3d 1131, 1145 (D. Idaho 2018). Yet, H.B. 509’s supporters urged reenactment of the policy deemed unconstitutional because, according to supporters of the bill, “Boys are boys and girls are girls, and no doctor, no judge, no Health & Welfare Department is going to change that reality.”¹⁸

¹⁸ Betsy Russell, *Senate votes 27-6 in favor of HB 509, the transgender birth certificate bill, sending it to Gov. Little*, Idaho Press: Eye on Boise, Mar. 17, 2020, https://www.idahopress.com/eyeonboise/senate-votes-27-6-in-favor-of-hb-509-the-transgender-birth-certificate-bill-sending/article_1d9fad0f-3f4d-5b79-abef-3fe56f2cc1bf.html, archived at <https://perma.cc/9ZPL-7WRW> (quoting Idaho Sen. Lee Heider).

F. Transgender Individuals and Appropriate Medical Treatment

95. “Gender identity” is the medical term for a person’s internal, innate sense of belonging to a particular sex.

96. Medical consensus supports that there is a significant biologic component underlying gender identity.

97. Everyone has a gender identity. An individual’s gender identity is durable and cannot be changed by medical intervention.

98. The term “biological sex” is imprecise. A person’s sex encompasses several different biological attributes, including certain chromosomes, certain genes, gonads, the body’s production of and response to certain hormones, internal and external genitalia, secondary sex characteristics, and gender identity. Those attributes are not always aligned in typical ways.

99. When a child is born, a sex designation usually occurs at birth based on the infant child’s genitals. This designation is then recorded and usually becomes the designation listed on the infant’s birth certificate. Most people have a gender identity that aligns with the sex they are assigned at birth.

100. A transgender individual is someone who has a gender identity that does not align with the sex they are assigned at birth. This lack of alignment experienced by transgender individuals can create significant distress that is felt by children as young as two years old.

101. According to the American Psychiatric Association's Diagnostic & Statistical Manual of Mental Disorders ("DSM-V"), "gender dysphoria" is the diagnostic term for the condition where clinically significant distress results from the lack of congruence between a person's gender identity and the sex they are designated at birth.

102. Gender dysphoria is a serious medical condition that, if left untreated, can result in severe anxiety and depression, self-harm, and suicidality.

103. Attempted suicide rates in the transgender community are over 40%. The only treatment to avoid this serious harm is to recognize the gender identity of patients with gender dysphoria and follow appropriate treatment protocols to affirm gender identity and alleviate distress.

104. The Endocrine Society and the World Professional Association for Transgender Health have published widely accepted standards of care for treating individuals with gender dysphoria. The goal of medical treatment for gender dysphoria is to eliminate the clinically significant distress by helping a transgender person live in alignment with their gender identity.

105. Every major medical association in the United States agrees that the medically necessary treatment for gender dysphoria is safe, necessary, and effective.

106. The precise treatment for gender dysphoria depends on each person's individualized need, and the medical standards of care differ depending on whether the treatment is for a pre-pubertal child, an adolescent, or an adult.

107. For transgender individuals of all ages, a critical part of treatment is affirming “social transition”: the process by which a person expresses themselves consistent with gender identity. It undermines social transition to force a person with gender dysphoria to live in a manner that does not align with the person’s gender identity. For example, requiring a girl who is transgender to use facilities or participate in single-sex activities for boys can be deeply harmful and disruptive to treatment. In the context of activities like athletics, forcing a girl who is transgender out of spaces designated for girls is extremely harmful and can result in serious health consequences.

108. For many transgender adolescents, going through endogenous puberty can cause extreme distress. Puberty-blocking treatment allows transgender youth to avoid going through their endogenous puberty, thereby avoiding the heightened gender dysphoria and permanent physical changes that puberty would cause.

109. Puberty-blocking treatment pauses endogenous puberty at whatever stage it is at when the treatment begins. This has the impact of limiting the influence of a person’s endogenous hormones on the body. For example, a girl who is transgender who undergoes puberty-blocking treatment will experience none of the impacts of testosterone that would be typical if she underwent her endogenous puberty.

110. The overwhelming majority of youth who are treated with puberty-blocking treatment continue treatment and initiate medically necessary, gender-

affirming hormone therapy to initiate puberty consistent with gender identity. For girls who are transgender this means administering both testosterone-suppressing treatment as well as estrogen to initiate hormonal puberty consistent with gender identity and preventing the impacts of testosterone that would result from their endogenous puberty. For boys who are transgender this means administering testosterone.

111. Treatment protocols for adults also recommend gender-affirming therapy for patients to alleviate distress when deemed medically necessary.

112. Hormone therapy and social transition significantly change a person's physical appearance and bodily systems.

113. After the age of majority, and in some cases beginning around the age of 16, transgender individuals may be treated with surgery to bring their body into further alignment with their gender identity. Some surgical treatment alters hormone production and reduces or eliminates the need for patients to administer exogenous hormones as part of treatment of gender dysphoria. Not all transgender people need surgical treatment to alleviate their dysphoria.

G. Intersex Individuals

114. Intersex people, who comprise up to 2% of the population, are born with variations in physiological characteristics associated with sex. These variations may appear in a person's chromosomes, genitals, internal organs like testes or ovaries, secondary sex characteristics, or hormone production or response.

115. Not all intersex traits are discovered at birth. Some might become apparent at puberty, later in adulthood, or never. In cases where there are clear variations among sex attributes, experts may disagree on the “correct” sex to designate an intersex child in infancy.

116. However, medical experts agree that when an individual’s sex attributes conflict, the attribute that should be determinative is their self-attested gender identity once it is known. Therefore, if a sex designation in infancy is made that later conflicts with a person’s gender identity, the appropriate course of action is to re-designate the individual’s sex in line with gender identity.

117. Often, children discovered to be intersex in infancy are subjected to nonconsensual, harmful, and irreversible “normalizing” surgical interventions, including reducing the size of the clitoris, creating a vaginal opening, and removing hormone-producing gonads in an attempt to erase their intersex differences based on notions of what is “normal” for boys’ or girls’ bodies. These interventions, when performed without the consent of the affected individual, have been condemned by every human rights organization to have considered the issue. Though the practice is increasingly under question by authorities, many intersex individuals, including youth, have extreme medical trauma related to nonconsensual genital interventions.

118. There are roughly forty variations in which a person’s sex characteristics (such as chromosomes, genitalia, hormones) do not all align in typical male or female ways. In addition to CAIS

(described above with respect to María Martínez-Patiño), these variations include Partial Androgen Insensitivity Syndrome (PAIS), Swyer Syndrome, Turner Syndrome, Mosaicism, Ovotesticular DSD, Congenital Adrenal Hyperplasia (CAH), and 5-Alpha Reductase Deficiency (5-ARD), among others.

119. In an estimated one out of every 1,000 to 2,000 live births, the infant's genitals do not appear typically male or female. Many intersex traits are not visible at birth. Given that approximately 2% of the population has an intersex variation, in any given school district, there are likely to be multiple students with intersex traits.

120. The type of sex verification testing that H.B. 500 requires could reveal intersex traits, in some instances for the first time. For example, a genetic test could reveal that someone had XY chromosomes despite having been assigned female at birth (as for María Martínez-Patiño). It could also reveal that a person had less common chromosomal combinations, like XO, XXY, or mosaicism (a different chromosome combination in different cells of the body). An examination of internal reproductive anatomy could reveal that someone did not have a uterus or ovaries, despite having been born with female-typical external anatomy. A hormone test could reveal an unexpected level of one or more hormones associated with sex. Because any one test required under H.B. 500 might produce atypical results for an intersex girl or woman, she might have to undergo additional tests in an attempt to prove her sex under the law.

H. H.B. 500 Is Directed at and Harms Only Women and Girls, Including Women and Girls Who Are Transgender and Intersex

121. Under H.B. 500, all women and girls who are transgender are barred from athletic activities for women and girls. This is so because transgender women will not be able to establish a “biological sex” of female based on the deliberately limited bases of “proof” available under H.B. 500: internal and external reproductive anatomy, chromosomes, or endogenous testosterone levels (intrinsic levels without medical intervention). Even women who have had gender-affirming genital surgery to treat gender dysphoria, and therefore may meet the test imposed by H.B. 500 as to external reproductive anatomy, would not have a uterus or ovaries, and so would not meet it as to internal reproductive anatomy. The vast majority of women who are transgender have XY chromosomes. And even women who are transgender whose circulating testosterone levels are within a range typical of non-transgender women would be disqualified because those testosterone levels are influenced by treatment for gender dysphoria, and thus not “endogenous.”

122. Under H.B. 500, some women and girls with intersex traits will be completely barred from athletics consistent with their gender identity as well, because they will likewise be unable to establish a “biological sex” of female based on reproductive anatomy, chromosomes, or endogenous testosterone levels. Intersex girls with congenital adrenal hyperplasia, for example, may be judged to have genitals that appear “too masculine.” Intersex girls with CAIS (like María Martínez-Patiño) could be

disqualified on the basis of their XY chromosomes, testosterone levels, or internal testes, despite the fact that their bodies are not responsive to the testosterone they produce. Other women and girls with intersex traits might be permitted to participate on women's teams, but only after enduring invasive and traumatizing examinations to assess their sex characteristics, and after sharing information from those examinations with school officials.

123. H.B. 500 is expressly directed at only women's and girls' sports; it does not restrict participation in men's and boys' sports. It states that "[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex," with no comparable provision for men's and boys' sports, and then sets out the only criteria that may be used to determine "sex" for this purpose. Idaho Code § 33-6203(2).

124. H.B. 500 authorizes, and includes no mechanisms to protect athletes from, unwarranted intrusion into their bodies and disclosure of private medical information. Nor does H.B. 500 protect against further disclosure of private medical information by school officials to others.

125. The language of H.B. 500 does not limit who may "dispute" an individual's sex as not being "biological[ly]" female.

126. Female athletes who are successful, who have features that are considered masculine, or who simply become someone's target, may have their sex "dispute[d]" and may then be subjected to invasive medical testing.

127. The purpose of a sports physical is to make sure that a student-athlete does not have an underlying health condition that could result in serious injury or death while participating in athletics. Genetic tests, internal and external reproductive anatomy exams, and blood tests for endogenous hormone levels – the exclusive means of testing for “biological sex” as required by H.B. 500 – are not part of any standard athletic physical or other examination that women and girls typically undergo. In addition, the tests laid out in H.B. 500 can be very expensive, and a student-athlete and her family may be forced to bear the costs of the testing.

128. Genetic testing, pelvic examinations, transvaginal pelvic ultrasounds, and blood tests can and do reveal a significant amount of extremely private personal information.

129. Genetic testing, pelvic examinations, transvaginal pelvic ultrasounds, and blood tests can cause trauma and trigger past sexual and other types of trauma.

130. The language of H.B. 500 does not impose any limits on school officials disclosing information they receive about these tests to others.

131. Fear of being subject to such invasive testing will deter female athletes, including but not limited to women and girls who are transgender and intersex, from participating in athletics.

132. Athletics offer a range of benefits to children and young adults that are experienced throughout life. For example, athletes who participate in high school sport are more likely to finish college and more likely to be actively engaged

in planning for their future after their sport career ends. One study found that women who participated in high school sport enjoyed greater success in the business world.

133. Athletics offer students in school a range of physical and emotional health benefits, including an opportunity to gain confidence, to develop important social and coping skills, and to build social connections.

134. Policies that bar subsets of women and girls from athletic competition for women and girls limit the benefits of athletics for *all* women and girls. Such policies also discourage, rather than encourage, participation in athletics.

135. Excluding girls who are transgender and intersex from athletics alongside their peers increases shame and stigma and contributes to negative physical and emotional health outcomes for those who are excluded.

136. Often young girls who are transgender or intersex are not known to be transgender or intersex in their schools and by their peers. H.B. 500 thus could force them to either abandon participation in sports or disclose this private information. Both options risk stigma, shame, isolation, and physical and emotional harm.

137. Policies that exclude girls and women who are transgender from activities for girls and women interfere with treatment for gender dysphoria, increase risk of suicide, and contribute to negative health outcomes.

CLAIMS FOR RELIEF

COUNT I

Deprivation of Equal Protection

U.S. Const. Amend. XIV

Plaintiff Hecox against Defendant Little, State
Board of Education Defendants, and Defendant
Tromp

Plaintiff Doe against Defendant Little, Defendant
Ybarra, State Board of Education Defendants, and
Boise School District Defendants

138. Plaintiffs incorporate paragraphs 1 through 137 as though fully set forth herein.

139. Plaintiffs bring this Count against Defendant Little and the State Board of Education Defendants. Plaintiff Hecox also brings this Count against Defendant Tromp. Plaintiff Doe also brings this Count against Defendant Ybarra and the Boise School District Defendants.

140. The Equal Protection Clause of the Fourteenth Amendment, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

141. Under the Equal Protection Clause, discrimination by the government based both on sex and transgender status is tested under heightened scrutiny and is therefore presumptively unconstitutional absent a showing by the government that the discrimination is substantially related to an important state interest.

142. Transgender individuals as a group possess all the indicia of a suspect class that have

been identified by the Supreme Court as triggering heightened scrutiny, including: (1) transgender people have experienced a history of discrimination; (2) transgender people are a discrete and insular minority who lack the political power to protect themselves through the legislative process; (3) being transgender does not limit or affect one's ability to contribute to society; and (4) being transgender is a core part of one's identity so fundamental to one's identity and conscience that a person cannot be required to abandon it as a condition of equal treatment.

143. H.B. 500 singles out women, individuals who depart from sex stereotypes, transgender people, and intersex people for discriminatory treatment.

144. Under H.B. 500, only those competing in women's sports are subject to being excluded if their sex is "disputed" and they do not submit to invasive treatment in order to "verify" they are women; those competing in men's sports may participate without having to undergo invasive testing under the new law.

145. Under H.B. 500, girls and women who are transgender and intersex girls and women deemed insufficiently female or insufficiently feminine are barred from athletic competition consistent with their gender identity.

146. H.B. 500 is an extreme departure from athletic policy anywhere in the world.

147. H.B. 500 was passed in the midst of a global pandemic, along with another bill targeting transgender people.

148. H.B. 500 was passed based on unfounded stereotypes and false scientific claims.

149. H.B. 500 was passed even though Idaho had a preexisting policy regarding transgender athletes that was consistent with the most stringent standards in national and international athletic competition. H.B. 500 was passed even though there were no reported issues of people misusing Idaho's preexisting policy; in fact, there was no record of any athletes using that policy at all.

150. H.B. 500 is not substantially related to any important state interest.

151. H.B. 500 is not rationally related to any legitimate state interest.

COUNT II

Deprivation of Substantive Due Process
Infringement Upon Right to Informational Privacy
U.S. Const. Amend. XIV

Plaintiff Hecox against Defendant Little, State
Board of Education Defendants, and Defendant
Tromp

Plaintiff Doe against Defendant Little, Defendant
Ybarra, State Board of Education Defendants, and
Boise School District Defendants

152. Plaintiffs incorporate paragraphs 1 through 151 as though fully set forth herein.

153. Plaintiffs bring this Count against Defendant Little and the State Board of Education Defendants. Plaintiff Hecox also brings this Count against Defendant Tromp. Plaintiff Doe also brings this Count against Defendant Ybarra and the Boise School District Defendants.

154. The Due Process Clause of the Fourteenth Amendment places limitations on state action that deprives individuals of life, liberty, or property.

155. Substantive protections of the Due Process Clause include the right to avoid disclosure of sensitive, personal information.

156. There is a fundamental right of privacy in preventing the release of, and in deciding in what circumstances to release: (1) personal information that, if disclosed, could subject an individual to bodily harm; and (2) information of a highly personal and intimate nature, including medical information.

157. By forcing women and girls to undergo invasive internal and external reproductive examinations and turn over sensitive information to the government to participate in athletic activities, H.B. 500 infringes Plaintiffs' right to privacy.

158. There is no compelling state interest that is furthered by H.B. 500, nor is H.B. 500 narrowly tailored or the least restrictive alternative for promoting a state interest. H.B. 500 is not even rationally related to a legitimate state interest.

159. In addition, the privacy interests of women and girls subjected to the forced disclosure of sensitive information, including genetic information and information about their genital and reproductive anatomy, outweigh any purported interest the government could assert.

160. Because the government lacks a sufficient interest in subjecting women and girls to intrusive and offensive testing and learning the privacy-

invasive results of those tests, H.B. 500 violates Plaintiffs' right to privacy.

161. H.B. 500 further violates Plaintiffs' right to privacy because it lacks safeguards to prevent unauthorized disclosure by school officials of the sensitive information learned through this intrusive and offensive testing.

COUNT III

Unconstitutional Search & Seizure

U.S. Const. Amend. IV

Plaintiff Hecox against Defendant Little, State
Board of Education Defendants, and Defendant
Tromp

Plaintiff Doe against Defendant Little, Defendant
Ybarra, State Board of Education Defendants, and
Boise School District Defendants

162. Plaintiffs incorporate paragraphs 1 through 161 as though fully set forth herein.

163. Plaintiffs bring this Count against Defendant Little and the State Board of Education Defendants. Plaintiff Hecox also brings this Count against Defendant Tromp. Plaintiff Doe also brings this Count against Defendant Ybarra and the Boise School District Defendants.

164. The Fourth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that “[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . .” U.S. Const. amend. IV.

165. A government-compelled medical test is a search under the Fourth Amendment.

166. Government-compelled and medically unnecessary pelvic examinations, transvaginal pelvic ultrasounds, blood tests, and genetic tests are searches under the Fourth Amendment.

167. A government-compelled disclosure of private medical information is a search under the Fourth Amendment.

168. Subjecting women and girls to invasive medical testing that is not medically necessary or appropriate, and forcing them to disclose the results of this testing to the government, is unreasonable.

169. The government has no legitimate basis for the forced testing or disclosure of private medical information of girls and women.

170. The searches involve invasive and offensive intrusions on the bodies of girls and women, and obtain information that is highly sensitive and private.

171. By forcing athletes subjected to a “dispute” over their sex to disclose to their school private medical information, including information about their genetics, hormones, and/or genitals, H.B. 500 subjects female athletes in Idaho to unreasonable searches in violation of the Fourth Amendment.

COUNT IV

Violation of Title IX

20 U.S.C. § 1681, *et seq.*

Plaintiff Hecox against Defendant Boise State
University

Plaintiff Doe against Boise School District

172. Plaintiff incorporates paragraphs 1 through 171 as though fully set forth herein.

173. Plaintiff Hecox brings this Count against Boise State University. Plaintiff Doe brings this Count against Defendant Boise School District.

174. Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a).

175. Under Title IX, discrimination “on the basis of sex” encompasses discrimination against individuals because they are transgender, because they are women and girls (whether cisgender or transgender), and because they depart from stereotypes associated with sex (which can include stereotypes about sex characteristics that are or are not typically associated with being male or female).

176. The statutory language of Title IX does not exempt athletic programs from the broad prohibition on discrimination. The implementing regulations for Title IX permit sports teams to be separated by sex but do not mandate such separation.

177. Neither Title IX, its regulations, nor its guidance purports to define “sex” based on endogenous hormone levels, internal or external reproductive anatomy, or chromosomes, nor do they specify what constitutes separation of sex for purposes of athletic activities, should a school choose to separate certain sports teams by sex.

178. Pursuant to H.B. 500, Defendants Boise State University and the Boise School District are required to obtain from a student athlete whose sex is “disputed”: “a health examination and consent form

or other statement signed by the student's personal health care provider that shall verify the student's biological sex." Idaho Code § 33-6203(3) (engrossment).

179. Only girls and women can be excluded from participation in sports under H.B. 500.

180. By barring Plaintiff Hecox from girls' and women's athletic teams, Defendants exclude her from, deny her the benefits of, and subject her to discrimination in educational programs and activities "on the basis of sex," in violation of her rights under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*

181. By subjecting Plaintiff Doe to potential "dispute" over her sex and exposing her to invasive, expensive, and unnecessary medical testing, Defendants deny her the benefits of, and subject her to discrimination in educational programs and activities "on the basis of sex," in violation of her rights under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*

COUNT V

Lack of Fair Notice

U.S. Const. Amend. XIV

Plaintiffs against the Idaho Code Commission
Defendants

182. Plaintiff incorporates paragraphs 1 through 181 as though fully set forth herein.

183. Plaintiffs bring this Count against the members of the Idaho Code Commission in their official capacities.

184. Because H.B. 500 is unconstitutional, the Idaho Code misleads and deceives school officials, other government actors, students, and the general public about the requirements of the law. The publication of H.B. 500's provisions in the official Idaho Code without clear notice stating that the law is unconstitutional and unenforceable coerces compliance with the law despite its unconstitutionality and illegality, chills women and girls from participating in student sports, and promotes unconstitutional and illegal enforcement of the law by school officials and other government actors.

185. The lack of fair notice of the unconstitutionality and unenforceability of H.B. 500 in the Idaho Code violates the due process clause of the Fourteenth Amendment to the U.S. Constitution.

186. Under 42 U.S.C. § 1983, Plaintiffs are entitled to injunctive relief requiring defendants to publish clear notice in the official Idaho Code of the Act's unconstitutionality and unenforceability.

187. Plaintiffs are also entitled under 28 U.S.C. §§ 2201–2202 to a declaratory judgment declaring that official publication of Idaho Code §§ 33-6201–6206 without clear notice of those provisions' unconstitutionality and unenforceability is unconstitutional.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter orders and judgment:

A. Declaring that the provisions of and enforcement by Defendants of H.B. 500 as discussed

above violate Plaintiffs' rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment and the Fourth Amendment to the United States Constitution;

B. Declaring that the provisions of and enforcement by Defendants of H.B. 500 as discussed above violate Plaintiffs' rights under Title IX;

C. Declaring that official publication of Idaho Code §§ 33-6201–6206 without clear notice of those provisions' unconstitutionality and unenforceability is unconstitutional;

D. Preliminarily and permanently enjoining enforcement or any threat of enforcement by Defendants and their employees, agents, appointees, or successors of H.B. 500 as discussed above;

E. Preliminarily and permanently enjoining the individual members of the Idaho Code Commission and their employees, agents, appointees, and successors to publish clear notice that Idaho Code §§ 33-6201–6206 are unconstitutional, unenforceable, null, and void;

F. Waiving the requirement for the posting of a bond as security for entry of temporary or preliminary injunctive relief;

G. Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and other applicable laws; and

H. Granting such other and further relief as the Court deems just and proper.

Dated: April 15, 2020

Respectfully submitted,

/s/ Richard Eppink

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EXHIBIT A

LEGISLATURE OF THE STATE OF IDAHO
Sixty-fifth Legislature Second Regular Session - 2020
IN THE HOUSE OF REPRESENTATIVES
HOUSE BILL NO. 500, As Amended in the Senate
BY EDUCATION COMMITTEE

AN ACT

RELATING TO THE FAIRNESS IN WOMEN'S SPORTS ACT; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 62, TITLE 33, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSE, TO PROVIDE FOR THE DESIGNATION OF ATHLETIC TEAMS, TO PROVIDE PROTECTION FOR EDUCATIONAL INSTITUTIONS, TO PROVIDE FOR A CAUSE OF ACTION, AND TO PROVIDE SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 62, Title 33, Idaho Code, and to read as follows:

CHAPTER 62
FAIRNESS IN WOMEN'S SPORTS ACT

33-6201. SHORT TITLE. This chapter shall be known and may be cited as the "Fairness in Women's Sports Act."

33-6202. LEGISLATIVE FINDINGS AND PURPOSE. (1) The legislature finds that there are “inherent differences between men and women,” and that these differences “remain cause for celebration, but not for denigration of the members of either sex or for artificial constraints on an individual’s opportunity,” *United States v. Virginia*, 518 U.S. 515, 533 (1996);

(2) These “inherent differences” range from chromosomal and hormonal differences to physiological differences;

(3) Men generally have “denser, stronger bones, tendons, and ligaments” and “larger hearts, greater lung volume per body mass, a higher red blood cell count, and higher haemoglobin,” Neel Burton, *The Battle of the Sexes*, *Psychology Today* (July 2, 2012);

(4) Men also have higher natural levels of testosterone, which affects traits such as hemoglobin levels, body fat content, the storage and use of carbohydrates, and the development of type 2 muscle fibers, all of which result in men being able to generate higher speed and power during physical activity, Doriane Lambelet Coleman, *Sex in Sport*, 80 *Law and Contemporary Problems* 63, 74 (2017) (quoting Gina Kolata, *Men, Women and Speed. 2 Words: Got Testosterone?*, *N.Y. Times* (Aug. 21, 2008));

(5) The biological differences between females and males, especially as it relates to natural levels of testosterone, “explain the male and female secondary sex characteristics which develop during puberty and have life-long effects, including those most important for success in sport: categorically different strength, speed, and endurance,” Doriane Lambelet Coleman and Wickliffe Shreve, “Comparing Athletic

Performances: The Best Elite Women to Boys and Men,” Duke Law Center for Sports Law and Policy;

(6) While classifications based on sex are generally disfavored, the Supreme Court has recognized that “sex classifications may be used to compensate women for particular economic disabilities [they have] suffered, to promote equal employment opportunity, [and] to advance full development of the talent and capacities of our Nation’s people,” *United States v. Virginia*, 518 U.S. 515, 533 (1996);

(7) One place where sex classifications allow for the “full development of the talent and capacities of our Nation’s people” is in the context of sports and athletics;

(8) Courts have recognized that the inherent, physiological differences between males and females result in different athletic capabilities. See e.g. *Kleczek v. Rhode Island Interscholastic League, Inc.*, 612 A.2d 734, 738 (R.I. 1992) (“Because of innate physiological differences, boys and girls are not similarly situated as they enter athletic competition.”); *Petrie v. Ill. High Sch. Ass’n*, 394 N.E. 2d 855, 861 (Ill. App. Ct. 1979) (noting that “high school boys [generally possess physiological advantages over] their girl counterparts” and that those advantages give them an unfair lead over girls in some sports like “high school track”);

(9) A recent study of female and male Olympic performances since 1983 found that, although athletes from both sexes improved over the time span, the “gender gap” between female and male performances remained stable. “These suggest that women’s performances at the high level will never match those of men.” Valerie Thibault et al., *Women*

and men in sport performance: The gender gap has not evolved since 1983, 9 *Journal of Sports Science and Medicine* 214, 219 (2010);

(10) As Duke Law professor and All-American track athlete Doriane Coleman, tennis champion Martina Navratilova, and Olympic track gold medalist Sanya Richards-Ross recently wrote: “The evidence is unequivocal that starting in puberty, in every sport except sailing, shooting, and riding, there will always be significant numbers of boys and men who would beat the best girls and women in head-to-head competition. Claims to the contrary are simply a denial of science,” Doriane Coleman, Martina Navratilova, et al., *Pass the Equality Act, But Don’t Abandon Title IX*, *Washington Post* (Apr. 29, 2019);

(11) The benefits that natural testosterone provides to male athletes is not diminished through the use of puberty blockers and cross-sex hormones. A recent study on the impact of such treatments found that even “after 12 months of hormonal therapy,” a man who identifies as a woman and is taking cross-sex hormones “had an absolute advantage” over female athletes and “will still likely have performance benefits” over women, Tommy Lundberg et al., “Muscle strength, size and composition following 12 months of gender-affirming treatment in transgender individuals: retained advantage for the transwomen,” *Karolinkska Institutet* (Sept. 26, 2019); and

(12) Having separate sex-specific teams furthers efforts to promote sex equality. Sex-specific teams accomplish this by providing opportunities for female athletes to demonstrate their skill, strength, and athletic abilities while also providing them with opportunities to obtain recognition and accolades, college scholarships, and the numerous other long-

term benefits that flow from success in athletic endeavors.

33-6203. DESIGNATION OF ATHLETIC TEAMS. (1) Interscholastic, inter-collegiate, intramural, or club athletic teams or sports that are sponsored by a public primary or secondary school, a public institution of higher education, or any school or institution whose students or teams compete against a public school or institution of higher education shall be expressly designated as one (1) of the following based on biological sex:

- (a) Males, men, or boys;
- (b) Females, women, or girls; or
- (c) Coed or mixed.

(2) Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex.

(3) A dispute regarding a student's sex shall be resolved by the school or institution by requesting that the student provide a health examination and consent form or other statement signed by the student's personal health care provider that shall verify the student's biological sex. The health care provider may verify the student's biological sex as part of a routine sports physical examination relying only on one (1) or more of the following: the student's reproductive anatomy, genetic makeup, or normal endogenously produced testosterone levels. The state board of education shall promulgate rules for schools and institutions to follow regarding the receipt and timely resolution of such disputes consistent with this subsection.

33-6204. PROTECTION FOR EDUCATIONAL INSTITUTIONS. A government entity, any licensing

or accrediting organization, or any athletic association or organization shall not entertain a complaint, open an investigation, or take any other adverse action against a school or an institution of higher education for maintaining separate interscholastic, intercollegiate, intramural, or club athletic teams or sports for students of the female sex.

33-6205. CAUSE OF ACTION. (1) Any student who is deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a violation of this chapter shall have a private cause of action for injunctive relief, damages, and any other relief available under law against the school or institution of higher education.

(2) Any student who is subject to retaliation or other adverse action by a school, institution of higher education, or athletic association or organization as a result of reporting a violation of this chapter to an employee or representative of the school, institution, or athletic association or organization, or to any state or federal agency with oversight of schools or institutions of higher education in the state, shall have a private cause of action for injunctive relief, damages, and any other relief available under law against the school, institution, or athletic association or organization.

(3) Any school or institution of higher education that suffers any director indirect harm as a result of a violation of this chapter shall have a private cause of action for injunctive relief, damages, and any other relief available under law against the government entity, licensing or accrediting organization, or athletic association or organization.

(4) All civil actions must be initiated within two (2) years after the harm occurred. Persons or organizations who prevail on a claim brought pursuant to this section shall be entitled to monetary damages, including for any psychological, emotional, and physical harm suffered, reasonable attorney's fees and costs, and any other appropriate relief.

33-6206. SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

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* Admitted *Pro Hac Vice*

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

<p>LINDSAY HECOX, et al.,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p style="text-align: center;">v.</p> <p>BRADLEY LITTLE, et al.,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p>No. 1:20-cv-184-CWD</p> <p>EXPERT DECLARATION OF DEANNA ADKINS, MD, IN SUPPORT OF PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION</p>
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I, Deanna Adkins, MD, have been retained by counsel for Plaintiffs Lindsay Hecox and Jane Doe, with her next friends, Jean Doe and John Doe, as an expert in connection with the above-captioned litigation.

1. The purpose of this declaration is to provide my expert opinion on: (1) the nature and impact of treatment protocols for transgender youth; and (2) the different biological characteristics of sex and the ways in which they may not align in the same direction within an individual.

2. I have knowledge of the matters stated in this declaration and have collected and cite to relevant literature concerning the issues that arise in this litigation in the body of this declaration.

3. In preparing this declaration, I reviewed the legislative findings for H.B. 500, as enacted, and the sources cited therein. I also relied on my scientific education and training, my research experience, and my knowledge of the scientific literature in the pertinent fields. The materials I have relied upon in

preparing this declaration are the same types of materials that experts in my field of study regularly rely upon when forming opinions on these subjects. I may wish to supplement these opinions or the bases for them as a result of new scientific research or publications or in response to statements and issues that may arise in my area of expertise.

BACKGROUND AND QUALIFICATIONS

4. I received my medical degree from the Medical College of Georgia in 1997. I served as the Fellowship Program Director of Pediatric Endocrinology at Duke University School of Medicine for fourteen years and am currently the Director of the Duke Center for Child and Adolescent Gender Care.

5. I have been licensed to practice medicine in the state of North Carolina since 2001.

6. I have extensive experience working with children with endocrine disorders and I am an expert in the treatment of children with differences or disorders of sex development and in the treatment of children with gender dysphoria.

7. I am a member of the American Academy of Pediatrics, the North Carolina Pediatric Society, the Pediatric Endocrine Society, and The Endocrine Society. I am also a member of the World Professional Association for Transgender Health (“WPATH”), the leading association of medical and mental health professionals in the treatment of transgender individuals.

8. I am the founder of the Duke Center for Child and Adolescent Gender Care (“Gender Care Clinic”),

which opened in 2015. I currently serve as the director of the clinic. The Gender Care clinic treats children and adolescents age 7 through 22 with gender dysphoria and/or differences or disorders of sex development. I have been caring for these individuals in my routine practice for many years prior to opening the clinic.

9. I currently treat approximately 400 transgender and intersex young people from North Carolina and across the Southeast at the Gender Care clinic. I have treated approximately 500 transgender and intersex young people in my career.

10. As part of my practice, I stay familiar with the latest medical science and treatment protocols related to differences or disorders of sex development and gender dysphoria.

11. I am regularly called upon by colleagues to assist with the sex assignment of infants who cannot be classified as male or female at birth due to a range of variables in which sex-related characteristics are not completely aligned as male or female.

12. I have testified twice as an expert at trial or deposition in the past four years.

TREATMENT PROTOCOLS FOR TRANSGENDER INDIVIDUALS

13. A transgender individual is an individual who has a gender identity that differs from the person's sex designated at birth.

14. A person's gender identity refers to a person's inner sense of belonging to a particular gender, such as male or female.

15. Everyone has a gender identity.

16. Children usually become aware of their gender identity early in life.

17. Most people have a gender identity that aligns with the sex they are designated at birth. However, for some people, their gender identity does not align with the sex they are given at birth. This lack of alignment can create significant distress for individuals with this experience and can be felt in children as young as 2 years old.

18. A person's gender identity (regardless of whether that identity matches other sex-related characteristics) is fixed, is not subject to voluntary control, cannot be voluntarily changed, and is not undermined or altered by the existence of other sex-related characteristics that do not align with it.

19. According to the American Psychiatric Association's Diagnostic & Statistical Manual of Mental Disorders ("DSM V"), "gender dysphoria" is the diagnostic term for the condition where clinically significant distress results from the lack of congruence between a person's gender identity and the sex they are designated at birth. In order to be diagnosed with gender dysphoria, the incongruence must have persisted for at least six months and be accompanied by clinically significant distress or impairment in social, occupational, or other important areas of functioning.

20. Gender dysphoria is a serious medical condition that, if left untreated, can result in severe anxiety and depression, self-harm, and suicidality. Spack NP, Edwards-Leeper L, Feldmain HA, et al. Children and adolescents with gender identity

disorder referred to a pediatric medical center. *Pediatrics*. 2012; 129(3):418-425. Olson KR, Durwood L, DeMeules M, McLaughlin KA. Mental health of transgender children who are supported in their identities. *Pediatrics*. 2016; 137:1-8.

21. Before receiving treatment, many individuals with gender dysphoria have high rates of anxiety, depression and suicidal ideation. I have seen in my patients that without appropriate treatment this distress impacts every aspect of life.

22. Attempted suicide rates in the transgender community are over 40%. The only treatment to avoid this serious harm is to recognize the gender identity of patients with gender dysphoria and follow appropriate treatment protocols to affirm gender identity and alleviate distress.

23. When appropriately treated, gender dysphoria is easily managed. I currently treat hundreds of transgender patients. All of my patients have suffered from persistent gender dysphoria, which has been alleviated through clinically appropriate treatment.

24. The Endocrine Society and the World Professional Association for Transgender Health have published widely accepted standards of care for treating gender dysphoria. Hembree WC, et al. Endocrine treatment of gender-dysphoria/gender incongruent persons: An Endocrine Society clinical practice guideline. *J Clin Endocrinol Metab* 2017; 102: 3869–3903; World Prof'l Ass'n for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People (7th Version, 2011),

http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=465
5.

25. The medical treatment for gender dysphoria is to eliminate the clinically significant distress by helping a transgender person live in alignment with their gender identity. This treatment is sometimes referred to as “gender transition,” “transition related care,” or “gender affirming care.” The American Academy of Pediatrics agrees that this care is safe, effective, and medically necessary treatment for the health and wellbeing of children and adolescents suffering from gender dysphoria. Rafferty J, Committee on Psychosocial Aspects of Child and Family Health, Committee on Adolescence and Section on Lesbian, Gay, Bisexual, and Transgender Health and Wellness, *Pediatrics* October 2018; 142(4): 2018-2162.

26. The precise treatment for gender dysphoria depends on each person’s individualized need, and the medical standards of care differ depending on whether the treatment is for a pre-pubertal child, an adolescent, or an adult.

27. Before puberty, treatment does not include any drug or surgical intervention. For this group of patients, treatment is limited to “social transition,” which means allowing a transgender child to live and be socially recognized in accordance with their gender identity. This can include allowing children to wear clothing, to cut or grow their hair, to use names and pronouns, and to access restrooms and other sex-separated facilities and activities in line with their gender identity instead of the sex assigned to them at

birth. Social transition is a critical part of treatment of patients with gender dysphoria of all ages and it is the only treatment for pre-pubertal children.

28. It undermines social transition – a critical part of gender dysphoria treatment – to force a person with gender dysphoria to live in a manner that does not align with the person’s gender identity. Requiring a girl who is transgender, for example, to use facilities or participate in single-sex activities for boys can be deeply harmful and disruptive to treatment. In the context of activities like athletics, which are typically separated by sex, I know from experience with my patients that it can be extremely harmful for a transgender young person to be excluded from the team consistent with their gender identity.

29. For many transgender adolescents, going through endogenous puberty can cause extreme distress. Puberty blocking treatment allows transgender youth to avoid going through their endogenous puberty thereby avoiding the heightened gender dysphoria and permanent physical changes that puberty would cause.

30. Puberty blocking treatment works by pausing endogenous puberty at whatever stage it is at when the treatment begins. This has the impact of limiting the influence of a person’s endogenous hormones on the body. For example, after the initiation of puberty blocking treatment, a girl who is transgender will experience none of the impacts of testosterone that would be typical if she underwent her full endogenous puberty.

31. When treating a transgender young person, when medically indicated, I prescribe puberty

blocking treatment at the Tanner 2 stage of puberty. For girls who are transgender, this means that puberty is put on pause usually around the time that the patient has circulating testosterone at a level of 50 ng/dL or 1.735 nMol/L. A patient that undergoes puberty blocking treatment at this stage and then proceeds to gender-affirming hormone therapy will never have circulating testosterone above what is typical of non-transgender girls.

32. Under the Endocrine Society Clinical Guidelines, once a transgender adolescent establishes further maturity and competence to make decisions about additional treatment, it may then be medically necessary and appropriate to provide gender-affirming hormone therapy to initiate puberty consistent with gender identity. For girls who are transgender this means administering both testosterone suppressing treatment as well as estrogen to initiate hormonal puberty consistent with the patient's female gender identity. For boys who are transgender this means administering testosterone.

33. Hormone therapy and social transition significantly change a person's physical appearance. For example, boys who are transgender treated with puberty blockers and gender affirming hormones will receive the same amount of testosterone during puberty that non-transgender boys generate with their testes. They will grow darker and thicker facial and body hair, experience fat distribution away from the hips, have decreased breast growth, and develop lower vocal pitch. Likewise, girls who are transgender and treated with puberty blockers and gender affirming hormones will receive the same amount of estrogen during puberty that non-transgender girls

generate endogenously. They will develop breast tissue, fat will be distributed to their hips, their skin will soften and their vocal pitch will not deepen further.

34. Adolescents who undergo hormone treatment before the end of puberty may experience some permanent physical changes that a person who transitions later in life would not.

35. Treatment for transgender youth and adolescents is safe, effective and essential for the well-being of transgender young people. My patients who receive medically appropriate hormone therapy and who are treated consistent with their gender identity in all aspects of life experience significant improvement in their health.

36. For many patients, social transition and hormone therapy are sufficient forms of treatment for gender dysphoria. Others also need one or more forms of surgical treatment to alleviate gender dysphoria. Transgender boys may receive chest reconstruction surgery as young as 16. Genital surgery for transgender women and men is not performed until the person has reached the age of at least 18. Genital surgery for transgender women can result in a vulva and vagina—external genitalia typical of women—as well as removal of the testes, which eliminates the need for medical testosterone suppression. Because surgery does not produce ovaries, transgender women who have had this form of surgery typically continue to need estrogen therapy. I do not perform surgery, but I refer my older patients for surgery when clinically appropriate. In my experience, some young adults who would benefit from one or more forms of

surgical treatment for gender dysphoria face financial and insurance barriers that prevent them from accessing this care.

37. My clinical experience with my patients, which has also been documented extensively in research, has been that they suffer and experience worse health outcomes when they are ostracized from their peers through policies that exclude them from spaces and activities that other boys and girls are able to participate in consistent with gender identity.

SEX ASSIGNMENT AND BIOLOGICAL SEX CHARACTERISTICS

38. When a child is born, a sex designation usually occurs at birth based on the infant's genitals. This designation is then recorded and usually becomes the sex designation listed on the infant's birth certificate.

39. Usually, though not always, a person's gender identity aligns with the sex designated based on the person's genitals at birth.

40. For transgender people and people with differences of sex development (DSDs), however, there is not complete alignment among sex-related characteristics.

41. Differences of sex development or DSDs refer to the range of variations in which a person's sex-related characteristics don't all align in one direction. Some describe people with these variations as "intersex."

42. Sex-related characteristics include external genitalia, internal reproductive organs, gender identity, chromosomes, and secondary sex

characteristics. These biological sex-related characteristics do not always align as completely male or completely female in a single individual. And none of these characteristics exists in a binary.

43. Although we generally label infants as “male” or “female” based on observing their external genitalia at birth, external genitalia are not always clearly identifiable as typically male or typically female. External genitalia do not account for the full spectrum of sex-related characteristics nor are they alone a proxy for how we understand sex.

44. In one out of every 1,000 live births, the infant’s genitals are not typically male or female.

45. For individuals with DSDs, sex assignment at birth can involve the evaluation of the chromosomes, the external genitalia, the internal genitalia, hormonal levels, and sometimes, specific genes. There are also cases in which the appearance of the external genitalia can change at puberty as well as variations in the appearance of secondary sex characteristics that may signal a difference in sex development in a person.

46. When designation of sex of an infant with a DSD is made at birth, that assignment is temporary until the individual can express their gender identity. In cases where the initial designation was incorrect, appropriate medical protocols instruct that the sex should be updated to align with the individual’s gender identity. Similarly, if the sex designation of an infant without a DSD turns out to be inconsistent with the individual’s gender identity, as for transgender people, the sex should be updated to align with the individual’s gender identity.

47. Where surgery has been done on children with DSDs prior the child's understanding and expression of their gender identity, significant distress can result. Many of these children have had to endure further surgeries to reverse earlier surgical intervention because their gender identity did not match the initial sex designation.

48. Out of every 300 people in the world, at least one has an intersex variation meaning that the person's sex characteristics do not all align as typically male or typically female.

49. Some examples of these variations include:

- a. Individuals with Complete Androgen Insensitivity (CAIS) have 46,XY chromosomes and internal testes that produce testosterone, but do not have the tissue receptors that respond to testosterone or other androgens. The body, therefore, does not develop a penis, thicker facial hair and other secondary sex characteristics more commonly associated with men. At birth, based on the appearance of the external genitalia, individuals with CAIS are generally assigned female. If their testes are left in place, the body will convert the hormones into estrogen. Many do not find out they have XY chromosomes or testes until they do not start menstruating at the expected age.
- b. Androgen Insensitivity can also be partial (known as PAIS). Individuals with PAIS have XY chromosomes, testes, and some

(but still lower than typical) response to testosterone. They may be born with genitals that appear like a typical penis, a typical vulva, or somewhere in between.

- c. Individuals with Swyer Syndrome have XY chromosomes and “streak” gonads (gonadal tissue that did not develop into testes or ovaries). Externally, a child with Swyer Syndrome usually develops a vulva. Because their gonads do not produce hormones, they will not develop most secondary sex characteristics without hormone treatment.
- d. Individuals with Klinefelter Syndrome have 47,XXY chromosomes and internal and external genitalia typically associated with males, however, their testicles may have reduced testosterone production. This may lead to breast development, low muscle mass and body hair, and infertility.
- e. Individuals with Turner Syndrome have 45,XO chromosomes, which means they have one fewer copy of the X chromosome than expected. In utero, these individuals form sex characteristics typically associated with females, including internal structures like a uterus and fallopian tubes, but the ovaries may degenerate before birth (or in some cases, not until young adulthood), leading to an inability to make estrogen. Many individuals with Turner Syndrome will not go through puberty without hormone therapy.

- f. Individuals with Mosaicism have different sets of chromosomes in different cells. Mosaic karyotypes happen as a result of atypical cell division early in embryonic development and could involve various combinations among XX, XY, XO, XXY, and other chromosome patterns. Configuration of gonadal tissue, genitals, and hormone production and response can all vary.
- g. Individuals with ovotestes (sometimes known as Ovotesticular DSD) have gonads that contain both ovarian and testicular tissue. Their chromosomes may be XX, XY, or Mosaic. Genital appearance at birth can be male-typical, female-typical, or something else.
- h. Congenital Adrenal Hyperplasia (CAH) can occur in individuals with XX or XY chromosomes. Individuals with CAH and 46,XX chromosomes have ovaries, a uterus, and a higher-than-typical production of androgens in utero that can lead to the development of genital differences at birth – such as an enlarged clitoris that may look like a penis, or the lack of a vaginal opening. CAH can also cause the development of typically masculine features like increased muscle mass and body hair. Most individuals with CAH and XX chromosomes are assigned female at birth, but many eventually have a male or nonbinary gender identity.

- i. Individuals with 5-alpha reductase deficiency (5-ARD) have XY chromosomes, but they have an enzyme deficiency that inhibits conversion of testosterone to dihydrotestosterone (the active form of testosterone) to varying degrees. This can impact genital development, and at birth, individuals with 5-ARD may have genitals that appear female-typical, neither male-typical nor female-typical, or mostly male-typical with differences like hypospadias (where the urethra is located somewhere other than the tip of the penis). During puberty, hormonal changes allow them to make more dihydrotestosterone, causing the development of some secondary sex characteristics typically associated with males, as well as genital masculinization. Many of those who were assigned female based on the appearance of their genitals at birth have a male gender identity and live as males beginning in adolescence or early adulthood.

50. As the examples above underscore, from a medical perspective, chromosomes, reproductive anatomy and endogenous testosterone alone do not determine a person's sex, nor does a single sex-related characteristic.

51. Idaho's new law instructs physicians to "verify" an individual's sex based on chromosomes, reproductive anatomy or endogenous testosterone but none of these characteristics alone or in any combination can "verify" sex.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 27, 2020 Deanna Adkins, MD

Deanna Adkins, MD

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of April, 2020, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Dan Skinner

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*Attorney for Boise School District,
Individual members of the Board of Trustees of
Boise School District, Coby Dennis*

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Sherri Ybarra,
Individual members of the State Board of
Education,
Boise State University,
Marlene Tromp,*

*Individual members of the Idaho Code
Commission*

DATED this 30th day of April, 2020.

/s/ Richard Eppink

EXHIBIT A

DUKE UNIVERSITY MEDICAL CENTER
CURRICULUM VITAE

for
Permanent Record
and the
Appointments and Promotions Committee

Date Prepared: April 27, 2020

Name:	Deanne W. Adkins, MD
Primary Academic Appointment:	Assistant Professor Track IV
Primary Academic Department:	Pediatrics
Secondary Appointment	<u>None</u>
Present Academic Rank and Title	Associate Professor of Pediatrics
Date and Rank of First Duke Faculty Appointment:	July 1, 2004 Clinical Associate

Medical Licensure:	North Carolina
License #:	200100207
Date:	March 15, 2001
Specialty Certification(s) and Dates:	10/16/2001-2018 General Pediatrics 8/18/2003 and current- Pediatric Endocrinology
Date of Birth:	1970
Place:	Albany, GA USA
Citizen of:	USA
Visa Status:	N/A

Education	Institution	Date (Year)	Degree
High School	Tift County High School	1988	Graduated with High Honors
College	Georgia Institute of Technology	1993	BS Applied Biology/ Genetics High Honors
Graduate or Professional School	Medical College of Georgia	1997	MD

Professional Training and Academic Career

Institution	Position/Title	Dates
University of North Carolina Hospitals, Chapel Hill, North Carolina	Pediatrics Resident	1997-2000
University of North Carolina Hospitals, Chapel Hill, North Carolina	Pediatric Endocrine Fellow	2000-2004
Duke University Medical Center, Durham, North Carolina	Clinical Associate/Medical Instructor	2004-2008
Duke University Medical Center, Durham, North Carolina	Assistant Professor	2008-2020
Duke University Medical Center,	Fellowship Program Director Pediatric Endocrinology	2008-2010

Durham, North Carolina		
Duke University Medical Center, Durham, North Carolina	Associate Fellowship Program Director Pediatric Endocrinology	2010-2014
Duke University Medical Center, Durham, North Carolina	Fellowship Program Director Pediatric Endocrinology	2014-12/2019
Duke University Medical Center, Durham, North Carolina	Director Duke Child and Adolescent Gender Care	3/2015- present
Duke University Medical Center, Durham, North Carolina	Medical Director- Duke Children's Specialty of Raleigh	3/2017- present
Duke University Medical	Associate Professor Pediatric	1/2020- present

Center, Durham, North Carolina		
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Publications

Refereed Journals

1. Zeger M, **Adkins D**, Fordham LA, White KE, Schoenau E, Rauch F, Loechner KJ.” Hypophosphatemic rickets in opsismodysplasia,” J Pediatr Endocrinol Metab. 2007 Jan;20(1):79-86. PMID: 17315533
2. Worley G, Crissman BG, Cadogan E, Milleson C, **Adkins DW**, Kishnani PS “Down Syndrome Disintegrative Disorder: New-Onset Autistic Regression, Dementia, and Insomnia in Older Children and Adolescents With Down Syndrome” . J Child Neurol. 2015 Aug;30(9):1147-52. doi:10.1177/0883073814554654. Epub 2014 Nov 3.PMID:25367918
3. Tejawani R, Jiang R, Wolf S, **Adkins DW**, Young BJ, Alkazemi M, Wiener JS, Pomann GM, Purves JT, Routh JC,” Contemporary Demographic, Treatment, and Geographic Distribution Patterns for Disorders of Sex Development”.Clin Pediatr (Phila). 2017 Jul 1:9922817722013. doi:10.1177/0009922817722013. PMID:28758411
4. Lapinski J1, Covas T2, Perkins JM3, Russell K4, **Adkins D** 5, Coffigny MC6, Hull S7. “Best Practices in Transgender Health: A Clinician’s GuidePrim Care”. 2018 Dec;45(4):687-703.

doi:10.1016/j.pop.2018.07.007. Epub 2018 Oct 5. PMID: 30401350 DOI:10.1016/j.pop.2018.07.007

5. Paula Trief, Nicole Foster, Naomi Chaytor, Marisa Hilliard, Julie Kittelsrud, Sarah Jaser, Shideh Majidi, Sarah Corathers, Suzan Bzdick, **Adkins DW**, Ruth Weinstock; “Longitudinal Changes in Depression Symptoms and Glycemia in Adults with Type 1 Diabetes”, *Diabetes Care*; 2019 Jul;42(7):1194-1201. doi: 10.2337/dc18-2441. Epub 2019 May; PMID: 31221694
6. M. Hassan Alkazemi, MD, MS, Leigh Nicholl, MS, Ashley W. Johnston, MD, Steven Wolf, MS, Gina-Maria Pomann, PhD, Diane Meglin, MSW, **Deanna Adkins, MD**, Jonathan C. Routh, MD, MPH; “Community Perspectives on Difference of Sex Development (DSD) Diagnoses: a Crowdsourced Survey”, *Journal of Pediatric Urology* accepted April 2, 2020

Study Group publications

1. Turner DA, Curran ML, Myers A, Hsu DC, Kesselheim JC, Carraccio CL and the Steering Committee of the Subspecialty Pediatrics Investigator Network (SPIN). Validity of Level of Supervision Scales for Assessing Pediatric Fellows on the Common Pediatric Subspecialty Entrustable Professional Activities. *Acad Med*. 2017 Jul 11. doi: 10.1097/ACM.0000000000001820.PMID:28700462
2. Mink R, Carraccio C, High P, Dammann C, McGann K, Kesselheim J, Herman B. Creating the Subspecialty Pediatrics Investigator

- Network (SPIN). Creating the Subspecialty Pediatrics Investigator Network Richard Mink, MD, MACM1, Alan Schwartz, PhD2, Carol Carraccio, MD, MA3, Pamela High, MD4, Christiane Dammann, MD5, Kathleen A. McGann, MD6, Jennifer Kesselheim, MD, EdM7, *J Peds* 2018 Jan;192:3-4.e2. PMID: 29246355 DOI:10.1016/j.jpeds.2017.09.079
3. Erratum 2018. PMID: 29246355 DOI: [10.1016/j.jpeds.2017.09.079](https://doi.org/10.1016/j.jpeds.2017.09.079)
 4. Mink RB¹, Myers AL, Turner DA, Carraccio CL. Competencies, Milestones, and a Level of Supervision Scale for Entrustable Professional Activities for Scholarship. *Acad Med*. 2018 Jul 10. doi: 10.1097/ACM.0000000000002353. [Epub ahead of print] PMID: 29995669 DOI:[10.1097/ACM.0000000000002353](https://doi.org/10.1097/ACM.0000000000002353) Mink RB, Schwartz A, Herman BE,

Editorials

- a. Editorial Charlotte News and Observer-“**NC pediatric specialists say HB2 ‘flawed’ and ‘harmful,’ call for repeal**”; April 18, 2016; authors: Deanna Adkins, Ali Calikoglu, Nina Jain, Michael Freemark, Nancie MacIver, Robert Benjamin, Beth Sandberg, etc.
- b. Editorial Raleigh News and Observer-“**Beverly Gray: Repeal HB2**” May 2016: authors Beverly Gray, Deanna Adkins, Judy Sidenstein, Jonathan Routh, Haywood Brown, Clayton Afonso, William Meyer, Kristen Russell, Caroline Duke, Nancy Zucker, Kevin Weinfurt, Jennifer St. Claire, Angela Annas, Katherine Keitcher

Chapters in Books

1. Endocrinology Chapter writer and editor in **Fetal and Neonatal Physiology for the Advanced Practice Nurse**; Editors: Amy Jnah DNP, NNP-BC, Andrea Nicole Trembath MD, MPH, FAAP. December 21, 2018 ISBN-10 0826157319

Selected Abstracts:

1. Redding-Lallinger RC, **Adkins DW**, Gray N: The use of diaries in the study of priapism in sickle cell disease. Poster Abstract in Blood November 2003
2. **Adkins, D.W.** and Calikoglu, A.S.: Delayed puberty due to isolated FSH deficiency in a male. Pediatric Research Suppl. 51: Abstract #690. page 118A, 2004
3. Zeger, M.P.D., **Adkins, D.W.**, White, K., Loechner, K.L.: Opsismodysplasia and Hypophosphatemic Rickets. Pediatric Research Suppl.-from PAS 2005
4. Kellee M. Miller¹, David M. Maahs², **Deanna W. Adkins**³, Sureka Bollepalli⁴, Larry A. Fox⁵, Joanne M. Hathway⁶, Andrea K. Steck², Roy W. Beck¹ and Maria J. Redondo⁷ for the T1D Exchange Clinic Network; Twins Concordant for Type 1 Diabetes in the T1D Exchange - poster at ADA scientific sessions 6/2014
5. Laura Page, MD; Benjamin Mouser, MD; Kelly Mason, MD; Richard L. Auten, MD; **Deanna Adkins, MD** CHOLESTEROL SUPPLEMENTATION IN SMITH-LEMLIOPITZ: A Case of Treatment During Neonatal Critical Illness; - poster 06/2014

6. Lydia Snyder, MD, **Deanna Adkins, MD**, Ali Calikoglu, MD; Celiac Disease and Type 1 Diabetes: Evening of Scholarship UNC Chapel Hill 3/2015 poster
7. **Deanna W. Adkins, MD**, Kristen Russell, LCSW, Dane Whicker, PhD, Nancy Zucker, Ph. D: Departments of Pediatrics and Psychiatry, Duke University Medical Center; Evaluation of Eating Disturbance and Body Image Disturbance in the Trans Youth Population; WPATH International Scientific Meeting June 2016; Amsterdam, The Netherlands
8. Rohit Tejwani, **Deanna Adkins**, Brian J. Young, Muhammad H. Alkazemi, Steven Wolf³, John S. Wiener, J. Todd Purves, and Jonathan C. Routh; Contemporary Demographic and Treatment Patterns for Newborns Diagnosed with Disorders of Sex Development; Poster presentation at AUA meeting 2016
9. S.A. Johnson, **D.W. Adkins**, Case Report: The Co-diagnosis of Hypopituitarism with Klinefelter in a patient with short stature; Pediatric Academic Society Meeting 2018
10. Lapinski J, Dooley R, Russell K, Whicker D, Gray, B, **Adkins DW**; **Title:** Developing a Pediatric Gender Care Clinic at a Major Medical Setting in the South; Workshop Philadelphia Trans Wellness Conference 2018
11. Jessica Lapinski, DO, Deanna Adkins, MD, Tiffany Covas, MD, MPH, Kristen Russell, MSW, LCSW; An Interdisciplinary Approach to Full Spectrum Transgender Care; WPATH Conference Buenos Aires, Argentina, November 3, 2018

12. Leigh Spivey, MS, Nancy Zucker, PhD, Erik Severiede, B.S., Kristen Russell, LCSW, Deanna Adkins, MD; USPATH Washington, DC Sept. 2019. Platform presentation; “Psychological Distress Among Clinically Referred Transgender Adolescents: A latent Profile Analysis”

Non-Refereed Publications

- i. Print
 - i. Editorial Charlotte News and Observer-“**NC pediatric specialists say HB2 ‘flawed’ and ‘harmful,’ call for repeal**”; April 18, 2016
 - ii. Editorial News and Observer-HB2 May 2016 -“**Beverly Gray: Repeal HB2**” May 2016
- ii. Digital
 - i. Supporting and Caring for Transgender Children-HRC guide 2017
 - ii. Initial endocrine workup and referral guidelines for primary care providers- Pediatric Endocrine Society Education Committee Website Publication
 - iii. Only Human Podcast August 2, 2016; <https://www.wnycstudios.org/podcasts/only-human/episodes/id-rather-have-livingson-dead-daughter>
- iii. Media and Community Interviews
 - i. Greensboro News and Record Community Forum October 2017-*Transgender Panel Moderator*
 - ii. Playmakers Repertory Company-Chapel Hill: *Draw the Circle* Transgender Community Panel 2017
 - iii. Duke Alumni Magazine

- iv. Duke Stories
- v. DukeMed Alumni Magazine
- vi. NPR Podcast Only Human piece on caring for transgender youth and follow up piece 1 year later
- vii. ABC11, WRAL, WNCN News Coverage
- viii. News and Observer: Charlotte and Raleigh
- ix. Duke Chronicle and Daily Tarheel Article
- x. Huffington Post Article

Published Scientific Reviews for Mass Distribution

- c. Lapinski J1, Covas T2, Perkins JM3, Russell K4, **Adkins D** 5, Coffigny MC6, Hull S7. Best Practices in Transgender Health: A Clinician's Guide Prim Care. 2018 Dec;45(4):687-703. doi: 10.1016/j.pop.2018.07.007. Epub 2018 Oct 5. PMID: 30401350 DOI: 10.1016/j.pop.2018.07.007

Position and Background Papers

Non-authored Publications

Other

Consultant Appointments:

North Carolina Newborn Screening Committee,
Human Rights Campaign Transgender Youth
Advisory Board

Scholarly Societies: None

Professional Awards and Special Recognitions

ESPE Fellows Summer School, 2001
NIH Loan Repayment Program Recipient
Lawson Wilkins AstraZeneca Research Fellow,
2003-2004

HEI 2017 Leaders in LGBTQ Healthcare
 Equality
 Inside Out Durham Appreciation Award
 Duke Health System Diversity and Inclusion
 Award January 2018

Editorial Experience

Editorial Boards

Ad Hoc scientific review journals:

Hormone Research, Lancet, NC Medical
 journal, Journal of Pediatrics, Pediatrics,
 Transgender Health, International Journal of
 Pediatric Endocrinology

Organizations and Participation

American Academy of Pediatrics
 Council on Information Technology
 Member
 Reviewer COCIT AAP Annual Meeting
 presentations
 Member Section on Endocrinology

NC Pediatric Society
 The Endocrine Society
 Member Education Committee
 Writer Web Publication for Pediatrician
 WPATH-International Transgender Society

External Support

<u>Approx- imate Duration</u>	<u>PI</u>	<u>% Effo rt</u>	<u>Purpose</u>	<u>Amount Duration</u>
<u>Past</u>	<u>JAEB Center- Deanna Adkins</u>	<u>0.5%</u>	<u>Type 1 diabetes research</u>	<u>\$ 5yr</u>

<u>Past</u>	<u>Josiah Trent Foundation Grant-Deanna Adkins</u>	0.5%	<u>Trans-gender and eating disorder research</u>	<u>\$5000 3 yr</u>
<u>Pending: Submitted</u>	<u>NIH-Kate Whetten</u>	0.1%	<u>Analysis of Trans-gender Health in Adolescents in Rural Africa, India, and Thailand</u>	<u>Consultant</u>
<u>submitted</u>	<u>NIH Deanna Adkins</u>	2%	Development of New Gender Dysphoria Measures in Youth	<u>Co PI</u>

Mentoring Activities

Faculty	
Fellows, Doctoral, Post docs	Nancie MacIver-fellow
	Dorothee Newbern-fellow
	Krystal Irizarry-fellow
	Kelly Mason-fellow
	Laura Page-fellow

	Elizabeth Sandberg fellow UNC
	Dane Whicker- psychology post doc
Residents	Yung-Ping Chin- mentor
	Kristen Moryan- mentor
	Jessica Lapinski- mentor
	Kathryn Blew- research mentor
	Matthew Pizzuto, Breana Scott-Coach
Medical students	
Undergraduates	Erik Severeide-Duke University Lindsay Carey- Dickinson College Jeremy Gottlieb-Duke University Jay Zussman-Duke University
High School Students	Aeryn Colton-Intern Apex High School
Graduate Student MBS program	Nicholas Hastings

Educational Activities:

Didactic classes

Undergraduate

1. Duke School of Nursing Course on Sexual and Gender Health guest lecturer: fall 2017, spring 2018, fall 2018, spring 2019, fall 2019, spring 2020
2. Duke School of Nursing Lecture on Transgender Care-recorded for reuse
3. Duke Physician Assistant Program guest lecturer; fall 2017, spring 2018
4. Duke Global Health Course guest lecturer fall 2016
5. Duke Neuroscience course on Gender and Sex guest lecturer fall 2016
6. Duke Ethics Interest group guest lecturer fall 2018
7. Duke Med Pediatrics Interest Group lecture fall 2018
8. Duke EMS group lecture fall 2018

UME:

1. Cultural Determinants of Health and Health Disparities Course: Facilitator and developed one class; 2017-18 and 2018-19 and 2019-2020; Steering Committee member for course development
2. UNC School of Medicine Lecturer for LGBTQ Health series 2016-recorded for reuse

Graduate School Courses:

1. Master of Biomedical Science Program-guest lecturer on Transgender Medicine fall 2016
2. School of Nursing Graduate Intensive Course Lecturer on Sexual and Gender Health; fall 2017, spring 2018, fall 2018, spring 2019

3. Fuqua School of Business Med Pride Panel and presentation fall 2017
4. Master of Biomedical Science Program Mentor 2019-2020

DUHS Employee Education

1. Annual Duke Human Resources Lunch and Learn on Gender Diversity 2016, 2017, 2018
2. Over 40 lectures across the institution on gender including CHC front desk/nursing staff, hospital wide social work/case management, radiology, PDC clinic front desk/nursing staff
3. Steering Committee for Sexual and Gender Identity Epic Module development and Educational module development
4. DCRI Pride invited speaker

GME:

1. Adult Endocrinology Fellows every year on growth and/or gender
2. Pediatric Residency Noon conferences on Growth and Gender-yearly
3. Reproductive Endocrinology Noon Conferences every 2 to 3 years
4. Psychiatry Noon Conferences periodically
5. Family Practice Noon Conference periodically
6. Pediatric Endocrine Fellow lectures twice a year or more
7. Pediatrics grand rounds: Vitamin D, Type 2 diabetes, Pubertal Development, Gender Diverse Youth

Development of Courses Educational programs

1. Pituitary Day October 2019-full day multi-specialty seminar for caregivers of patients

with hypopituitarism-Organized and developed the curriculum

2. Development of Gender Diversity Education for Health System education
3. Steering Committee for Cultural Determinants and Health Disparities Course
4. Helping to Adapt Resident Coaching Program to Pediatric Fellowships
5. Developed half day course for Duke Student Health on Care of the Gender Diverse Student with multiple disciplines included
6. Course Director: American Diabetes Association Camp Carolina Trails rotation for fellows and residents: 2009, 2011 – 2019
7. Medical Education for Camp Morris 2019

Development of Assessment Tools and Methods

1. Currently under development with Population Health Sciences-method to assess gender dysphoria; received Brief High Intensity Production (BHIP) grant for this collaboration; NIH grant Submitted March 2020; I am writing the portion of grant giving background on the population and the need for better measures.
2. Collaborating with the Duke Chaplain group to develop a spiritual assessment tool for gender diverse children and their families. completed

Educational leadership roles

1. Fellowship Program Director Pediatric Endocrinology 2008-2019
2. Course Director: American Diabetes Association Camp Carolina Trails rotation for fellows and residents: 2009, 2011 to present

Educational Research

1. -Working with national group on SPIN to analyze new EPA's and Milestones Efficacy in Fellow Education
2. -Working with Boston Children's on a Journal Club Curriculum for Pediatric Endocrinology fellows with pre and post assessments
3. -Working with coaching program for residents modified and applied in pediatric fellows

Invited Lectures and Presentations

1. Trent Center for Ethics Lecture May 2017: Transgender Medicine: a Wealth of Ethical Issues
2. Visiting Professorship: ECU Brody School of Medicine Invited Professor October 2017
3. College of Diplomates-pediatric dentistry society-Webinar on transgender care 4/1/2020

International Meetings

1. WPATH Amsterdam 2016
2. WPATH Buenos Aires 2018

National Scientific Meetings (invited)

1. Transgender SIG Developing a Patient Registry
2. Patient Advocacy for Transgender Youth Philadelphia 2018

Instructional Courses, Workshops, Symposiums (National)

1. Time to Thrive Arkansas Children's Hospital April 2018
2. National Transgender Health Summit UCSF Jan 2018: Providers as Advocates Workshop

3. Magic Foundation-Chicago, IL Annual Speaker on Precocious Puberty at National Conference 2016, 2017, 2019
4. The Seminar-Fort Lauderdale, FL Invited Speaker on Care of Transgender Youth 2017

Posters (National and International meetings)

1. WPATH 2018 Meeting Buenos Aires: Building a Multidisciplinary Gender Care Team at an Academic Center; Lapinski, J, Adkins DW
2. Lapinski J, Dooley R, Russell K, Whicker D, Gray, B, Adkins DW; Title: Developing a Pediatric Gender Care Clinic at a Major Medical Setting in the South; Workshop Philadelphia Trans Wellness Conference 2018
3. S.A. Johnson, D.W. Adkins, Case Report: The Co-diagnosis of Hypopituitarism with Klinefelter in a patient with short stature; Pediatric Academic Society Meeting 2018
4. Rohit Tejwani, Deanna Adkins, Brian J. Young, Muhammad H. Alkazemi, Steven Wolf, John S. Wiener, J. Todd Purves, and Jonathan C. Routh; Contemporary Demographic and Treatment Patterns for Newborns Diagnosed with Disorders of Sex Development; Poster presentation at AUA meeting 2016
5. Deanna W. Adkins, MD, Kristen Russell, LCSW, Dane Whicker, PhD, Nancy Zucker, Ph.D: Departments of Pediatrics and Psychiatry, Duke University Medical Center; Evaluation of Eating Disturbance and Body Image Disturbance in the Trans Youth Population; WPATH International Scientific Meeting June 2016; Amsterdam, The Netherlands

Regional Presentations and Posters

- a. North Carolina Pediatric Society: Pubertal Development Presentation–Pinehurst, NC 2017
- b. North Carolina Psychiatric Association: Caring for Transgender Children Presentation and Workshop on key concepts in care of transgender child-Asheville, NC 2017
- c. ECU Campus Health Presentation Caring for Transgender Patients 2018
- d. Radiology Technology Symposium Presentation on Caring for Transgender Patients 2018
- e. Duke CME in Wake County-Update on Type 2 Diabetes Treatments Feb 2019
- f. Hilton Head Pediatric CME Course-Update on Type 2 Diabetes, Short Stature, and Caring for Transgender Patients June 2019 as well at 2020 discussion lipid disorders and type 2 diabetes

Local Presentations

1. Grand Rounds: 2016 to present-Duke Pediatrics twice, Moses Cones Pediatrics, ECU Ob/Gyn, Duke Ob/Gyn, Duke Psychiatry, Duke Urology, Duke Adult Endocrinology
2. Prior to 2016-Rex Grand rounds: Salt and Water balance, New treatments in Pediatric Diabetes, Adrenal Insufficiency, Duke peds grand rounds Bone Health, Type 2 Diabetes Mellitus
3. Duke Women’s Weekend 2018 hosted by Duke Alumni Association
4. NCCAN Social Work Training 2016
5. NAPNAP lecture 2016

6. Profiles in Sexuality Research Presentation at Duke Center for Sexual and Gender Diversity 2017
7. Duke LGBTQ Alumni Weekend Presentation 2017
8. UNC Chapel Hill Campus Health Presentation 2018
9. Duke Student Health Presentation 2017 and 2018

Clinical Activity

1. Duke Consultative Services of Raleigh-2.5 days per week in endocrinology and diabetes
2. Duke Child and Adolescent Gender Care Clinic 1 day per week at the CHC
3. Inpatient Consult Service Pediatric Endocrinology 1 week per month

Clinical Projects:

1. Epic module key stakeholder and steering committee on Sexual Orientation and Gender Identity Module 2018
2. Incorporation of Glooko system to Duke adult and pediatric diabetes clinics to download diabetes data from insulin pumps and continuous glucose sensors for analysis
3. Helped develop the pediatric endocrinology dashboard for Epic/Maestro
4. Helped develop a community advisory board for LGBTQ care at Duke and continue to help run this group which meets quarterly
5. Collaborating with the Duke Chaplain group to develop a spiritual assessment tool for gender diverse children and their families.

Participation in academic and administrative activities of the University and Medical Center

Administrative and Leadership Positions

1. Medical Director Duke Children’s and WakeMed Consultative Services of Raleigh
2. Director Duke Child and Adolescent Gender Care Clinic
3. Pediatric Endocrinology Fellowship Program Director 2008-2019

Committees

1. Graduate Medical Education Committee-2008-2019
2. School of Medicine Sexual and Gender Diversity Council
3. Pediatrics Clinical Practice Committee
4. Pediatric Diversity and Inclusion Committee
5. Pediatrics Advocacy Committee

Community

1. Test proctor local schools
2. Guest lecture GSA multiple years
3. Diabetes Camp
4. 100 Women who give a hoot
5. Collaborated to bring “Becoming Johanna” to Duke along with multiple screenings with the director and the lead actor
6. Teddy Bear Hospital volunteer

Signature of Chair

Date

Personal Information

Faculty Member’s Preferred Familiar Name:	Deanna
Home Address	Apex, NC

Telephone Number:	919-363-5706
Email Address:	Deanna.adkins@duke.edu

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* Admitted *Pro Hac Vice*

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

LINDSAY HECOX, et al.,

Plaintiffs,

v.

BRADLEY LITTLE, et
al.,

Defendants.

No. 1:20-cv-184-CWD

**DECLARATION OF
ANDREW BARR IN
SUPPORT OF
PLAINTIFFS'
MOTION FOR
PRELIMINARY
INJUNCTION**

I, Andrew Barr, declare under penalty of perjury of the laws of the United States of America that the following is true and correct, and state:

1. I am an attorney with the law firm Cooley LLP, counsel of record for Plaintiffs Lindsay Hecox and Jane Doe, with her next friends, Jean Doe and John Doe. I have been admitted *pro hac vice* in this Court for this action. The following is true of my own personal knowledge, and, if called as a witness, I would and could testify competently thereto.

2. As set forth below, I have transcribed excerpts of the Idaho Legislature's testimony regarding H.B. 500 as accurately as possible. Each excerpt that I transcribed is described in the respective Exhibit using the timestamp of testimony as available on the Idaho Legislature's public recordings. I have also provided a hyperlink to the Idaho Legislature's website where the recordings are available for public review. As of the date of this filing, each of the hyperlinks is in working order. I have also saved

copies of recordings for each of the excerpts of testimony set forth in the Exhibits and am happy to provide that to the Court or opposing counsel upon request.

3. Attached hereto as Exhibit A is a true and correct transcription of excerpts from testimony heard during the House State of Affairs Committee Meeting on February 19, 2020. A recording of the testimony is available at: http://164.165.67.41/IIS/2020/House/Committee/State%20Affairs/200219_hsta_0900AM-Meeting.mp4 (last accessed April 29, 2020).

4. Attached hereto as Exhibit B is a true and correct transcription of excerpts from testimony heard during the House State of Affairs Committee Meeting on February 20, 2020. A recording of the testimony is available at: http://164.165.67.41/IIS/2020/House/Committee/State%20Affairs/200220_hsta_0800AM-Meeting.mp4 (last accessed April 29, 2020).

5. Attached hereto as Exhibit C is a true and correct transcription of excerpts from testimony heard during the House Floor Meeting and Vote on February 26, 2020. A recording of the testimony is available at: <http://164.165.67.41/IIS/2020/House/Chambers/HouseChambers02-26-2020.mp4> (last accessed April 29, 2020).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 29, 2020

Andrew Barr
Andrew Barr, Esq.

EXHIBIT A**House Senate Affairs Committee**

DATE: Wednesday, February 19, 2020
TIME: 9:00 A.M.
PLACE: Room EW42
MEMBERS: Chairman Harris, Vice Chairman Armstrong, Representatives Crane, Palmer, Barbieri, Holtzclaw, Monks, Zito, Scott, Andrus, Hartgen, Young, Smith, Gannon, Green, Ehardt

Excerpts of testimony on House Bill 500:

Time Stamp	Testimony
18:42 – 19:14	[Representative Ehardt]: I come to you today with this piece of legislation, with this legislation designed to do one thing. This legislation is designed to continue to protect opportunities for girls and women in sports. Every girl deserves a chance to pursue her dreams to compete and excel in athletic opportunities. Forcing girls and women to compete against biological boys and men has too often made us spectators in our own sports.
41:35 – 43:06	[Representative Ehardt]: Mr. Chairman, Representative Green. I believe that if you read what is listed in the Idaho High School Activities Association, and if you read the actual policy of the NCAA that you will see that these are actually not similar, the Idaho High School Activities Association provides for a means for a

	<p>transgender student athlete to start a process with a doctor for a year before competing, ironically, there's no follow-up. It literally could start with one shot. But aside from that, the NCAA's policy is a permissive policy and that permissive policy states that a trans female student athlete being treated with testosterone suppression medication for gender identity disorder or gender dysphoria and transsexualism for the purposes of NCAA competition may continue to compete on a man's team, but may not compete on a women's team without changing it to a mixed team status until completing one year of testosterone suppressant treatment. This is a permissive statement. It is not required by the NCAA, but it allows for a path forward should a team decide to allow for a biological man to compete with their team. That is the policy of the NCAA.</p>
49:27 – 50:31	<p>[Representative Green]: I want to go back and revisit this non-discrimination policy and if I can look in the audience, I suspect the director of the Idaho High School Athletic Association is in attendance. And so I [could] be asking similar questions but to Representative as it pertains to the current statute or the current rule in place for students. Can you tell us the time where in Idaho that we have had an appeal process</p>

	<p>where a student felt that they were being harmed by the current rule in place.</p> <p>[Chairman Harris]: I'll let you answer that question as it applies to the current bill before us.</p> <p>[Representative Ehardt]: Mr. Chairman, Representative Green.</p> <p>I think it's important to answer this-this way. Obviously, there's a clause in place that was preemptive.</p> <p>And we are going to replace it with something that's preempted because it's happening all over the country. When is the time to deal with an issue like this when we have a student athlete who's already on the team and now we're asking to remove them and replace them with the young gal that should have been on the team.</p>
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EXHIBIT B

House Senate Affairs Committee

DATE: Thursday, February 20, 2020
TIME: 8:00 A.M.
PLACE: Room EW42
MEMBERS: Chairman Harris, Vice Chairman Armstrong, Representatives Crane, Palmer, Barbieri, Holtzclaw, Monks, Zito, Scott, Andrus, Hartgen, Young, Smith, Gannon, Green, Ehardt

Excerpt of testimony on House Bill 500:

Time Stamp	Testimony
1:26:10 – 1:27:18	[Representative Ehardt]: There will be lawsuits and they will be coming from the parents of girls whose spots were taken by biological boys. Connecticut, the Connecticut story is not the only story out there, but it is a story that Idaho should pay very much attention to. Three fantastic young women, who are talented, have had their opportunities taken away by two biological boys that had competed on the boys' side and now identify as girls and have broken and hold [] 15 state championships that nine other girls had held prior to the last two years. This will happen quickly. The discrimination factor is that these girls are no longer allowed to compete for that Championship because the determination is basically being outlined by the inherent advantages that boys and men have.

EXHIBIT C**House of Representatives**

Fifty-Second Legislative Day
Second Regular Session
Sixty-Fifth Legislature

DATE: Wednesday, February 26, 2020

TIME: 10:30 A.M.

Excerpts of debate on House Bill 500:

Time Stamp	Testimony
41:29 – 42:44	<p>[Representative Ehardt]: This bill does not prevent biological boys and men from competing in sports. It doesn't. Make no mistake. They are allowed to identify as whatever they want because this is not about identification or how we feel. This is about competing in the biological sex in which we were born. They would just have to compete on the side of those biological boys and men with whom they look or, about whom they look alike.</p> <p>Now, let me briefly also take you through a couple of things. Remember there are physical advantages the boys and men have. They have bigger body size, longer limbs, stronger base that is designed for mass power movement. They have denser, stronger bones, tendons, ligaments. They have a larger and stronger heart, larger lungs with a greater lung volume per mass. Higher red blood count, higher hemoglobin. They also have natural higher levels of testosterone. These help with things with muscle fiber carbohydrates, on and on and on, but particularly the ability to generate higher speed and power during physical activity. No amount of hormone will eliminate those advantages. No</p>

	amount of hormone will ever eliminate those advantages. Make no mistake.
1:36:56 – 1:40:43	<p>[Representative Ehardt]: Mr. Speaker. Thank you. Yes, let me remind you first and foremost that this bill is about preserving opportunities for girls and women. The opportunities that first came to light in 1972 with a federal law called Title IX. I would like to take just a moment and address a couple -- a couple things, but I do feel like I've answered it and answered it very clearly though things are continually brought back up the clear answers are there.</p> <p>In regards to the three options when it comes to tests testing, aside from the medical form, it does if you read before it does say may not shall and let me just address a couple of the things mentioned. First, in regards to the Idaho High School Activities Association and their current policy. The current policy is, I had spoken with the executive director Ty Jones on this actually about a year and a half ago as we discussed the current policy. It's fairly vague. It allows for a young man who wants to compete on the women's side on the girl's side to start to start the process with the drugs and that's all they have to do with the doctor's notification is start and then wait a year. They may take shots or whatever is required once a week, once a month, or once. That's it. Let me also share with</p>

you what also would come within the last two and a half three years, before the Idaho High School Activities Association, according to the Human Rights Campaign our policy is not enough. And what they're wanting to do is just be able to identify however they want with nothing required. So, just in addressing that which was brought up in regards to the policies of the Idaho High School Activities Association, let me address if I may the Commerce Clause and how this would affect that. It doesn't. This is -- this would be Idaho's policy. It would only affect Idaho's student athletes. Currently, there is a biological runner at the University of Montana who had competed very well on the men's side in track and he [] is now competing on the women's side had decided to compete on the women's side and has done very well. He competes in the Big Sky [Conference].

This does not, when they come here to Idaho, when they go to Pocatello to compete at my alma mater Idaho State they get to. We don't get to dictate that. We only get to say that for Idaho our student athletes have to be got biological girls and women. Again, let me remind you that the NCAA policy is a permissive policy and it allows for us to determine this.

When it comes to this kind of legislation. Guess what? Currently, it's being

	<p>introduced in 13 states and another seven are on board to introduce it. Because this is happening throughout the United States. So I found out last night it's come to Idaho which we knew it was going to be here within the next year or two anyway.</p> <p>Again, this is about opportunities for girls and women in preserving that which we hold so dear. It has been mentioned that they'll be lawsuits. My friends, there will be lawsuits and guess from where they're coming. Just like the three young women in Connecticut. These lawsuits will be coming from the parents of those girls whose opportunities have been displaced by biological boys and men. Make no mistake about it.</p>
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of April, 2020, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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*Individual members of the State Board of
Education,*

Boise State University,

Marlene Tromp,

*Individual members of the Idaho Code
Commission*

DATED this 30th day of April, 2020.

/s/ Richard Eppink

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* Admitted *Pro Hac Vice*

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

<p>LINDSAY HECOX, et al.,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p style="text-align: center;">v.</p> <p>BRADLEY LITTLE, et al.,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p>No. 1:20-cv-184-CWD</p> <p>EXPERT DECLARATION OF HELEN CARROLL IN SUPPORT OF PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION</p>
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I, Helen Carroll, have been retained by counsel for Plaintiffs Lindsay Hecox and Jane Doe, with her next friends, Jean Doe and John Doe, as an expert in connection with the above-captioned litigation.

1. The purpose of this declaration is to offer my expert opinion on policies for transgender inclusion in athletics at the high school and collegiate levels in the United States.

2. In preparing this report, I reviewed the legislative findings for H.B. 500, as enacted, and the sources cited therein.

3. I have knowledge of the matters stated in this declaration and have collected and cite to relevant literature concerning the issues that arise in this litigation in the body of this declaration.

PROFESSIONAL BACKGROUND

4. I received a Bachelor of Science in Physical Education in 1974 from Middle Tennessee State

University, located in Murfreesboro, Tennessee, and a Masters of Science in 1976 from Appalachian State University, located in Boone, North Carolina. A current copy of my resume is attached as Exhibit A.

5. I was the Head Women's Basketball Coach of the 1984 National Championship Team at the University of North Carolina-Asheville from 1980-1984, and Associate Athletic Director from 1985-1988.

6. I was a National Collegiate Athletic Association ("NCAA") and National Association of Intercollegiate Athletics ("NAIA") Athletic Director at Mills College located in Oakland, California, from 1988-2000.

7. My responsibilities as a coach included athlete recruitment, ensuring my athletes' privacy and safety, and creating team cohesion. These responsibilities also included developing and implementing guidelines that covered, among other things, an atmosphere of inclusion and respect within the team.

8. My responsibility as athletic director included ensuring that all coaches and all teams followed school policies regarding privacy, safety, and inclusion; supporting coaches in implementing policies; and in athlete recruitment and team development. I was also responsible for ensuring that facilities met the needs of teams and visiting teams. My responsibilities also included Title IX compliance, general athletic department budgets, and developing and implementing nondiscrimination policies designed to ensure the inclusion and safety of all student athletes.

9. I joined National Center for Lesbian Rights (“NCLR”) as the Director of the Sports Project in 2001 after spending 30 years as an athlete, coach, and collegiate athletic director. I devoted my efforts at NCLR to helping athletes, athletic programs, and institutions recognize that the inclusion of people who are lesbian, gay, bisexual, and/or transgender or intersex, diversifies and strengthens the sport experience.

10. I have personally assisted at least ten (10) NCAA collegiate institutions develop and adopt policies for the inclusion of transgender student athletes. I have assisted at least seven (7) state high school athletic associations in developing and adopting policies for the inclusion of their transgender student athletes.

11. I am the co-author of the 2011 NCAA Guide for Transgender Athlete Inclusion.

12. I have worked closely with major national sports organizations including the Women’s Sports Foundation and the NCAA. I have also been a featured speaker on panels with Nike, ESPN’s “Outside the Lines,” and The New York Times. I am featured in Dr. Pat Griffin’s book, “Strong Women, Deep Closets and The Outsports Revolution” by authors Jim Buzinski and Cyd Ziegler Jr.

13. I originally became familiar with transgender student athletes after the International Olympic Committee announced a policy in 2005 that included the participation of transgender athletes. After this policy was announced, I worked with several institutions and individuals, including the Professional Golf Association, United States Track

and Field Association, Ladies Professional Golf Association, and transgender athletes, to determine the best practices for sports organizations for the inclusion of transgender athletes.

14. In October 2010, I co-authored a report with Dr. Pat Griffin entitled “On the Team: Equal Opportunity for Transgender Student Athletes” (“Report”). The Report was co-sponsored by the Women’s Sports Foundation and NCLR, and was the result of a 2009 national think tank entitled “Equal Opportunities for Transgender student athletes,” hosted by the NCAA. Think Tank participants included leaders from the NCAA and the National High School Federation, transgender student athletes, and an array of experts on transgender issues from a range of disciplines — law, medicine, advocacy, and athletics. The goals of the initiative were to develop model policies and identify best practices for high school and collegiate athletic programs to ensure the full inclusion of transgender student athletes. The Report also led to the 2011 NCAA Guide for Transgender Athlete Inclusion.

SCHOOL ATHLETIC POLICIES ON TRANSGENDER INCLUSION

15. School athletic programs are widely accepted as integral parts of the high school and college experience. The benefits of school athletic participation include many positive effects on physical, social, and emotional well-being. Playing sports can provide student athletes with important lessons about self-discipline, teamwork, success, and failure—as well as the joy and shared excitement that being a member of a sports team can bring.

16. Participation in high school athletics shows that a student is well-rounded and can improve a student's chances of acceptance into college. For some students, playing on high school teams leads to future careers in athletics as competitors, coaches, administrators, and athletic trainers. It can also lead to scholarship opportunities at the collegiate level. All students, including those who are transgender, deserve access to these benefits.

17. Through my work, I have experience developing policies governing the inclusion of transgender student athletes with high schools and athletic associations to ensure that transgender athletes have access to athletic opportunities as children, adolescents, and young adults. I have also worked with coaches learning how to accommodate transgender students who want to play on sports teams. These policies often address the standard under which transgender athletes are able to participate as well as basic accommodations, such as knowing what pronouns or names to use when referring to a transgender student, where a transgender student should change clothes for practice or competition, and what restroom or locker room that student should use.

18. Many state athletic associations have developed policies that allow transgender student-athletes to participate in athletics consistent with their gender identity without any proof of medical treatment. This is best practice for K-12 athletics.

19. Other states have policies that permit participation based on gender identity after certification of different aspects of medical transition.

20. Only a very small number of states require proof of hormone therapy before permitting girls who are transgender to participate in high school athletics for women and girls. Before enactment of H.B. 500, Idaho was one of these states.

21. Idaho's new policy under H.B. 500, as enacted, is a complete outlier. No state, college, or athletic association in the United States has such a restrictive and exclusionary policy. Prior to the enactment of H.B. 500, no state or athletic association completely barred transgender student athletes from participating in athletics consistent with gender identity. Likewise no state or university imposed a verification process for all competitors in women's athletics whose sex is disputed.

22. Athletic leaders who are charged with policy development need guidance to avoid inscribing misconceptions and misinformation in policies that create problems rather than solve them. Idaho's new law is counter to the prevailing standards of inclusion in high school athletics and perpetuates misconceptions and misinformation.

23. Failure to adopt inclusive participation policies also hurts cisgender students by conveying a message that the values of non-discrimination and inclusion are not important. This can undermine team unity and also encourage divisiveness by policing who is "really" a girl. Laws like Idaho's newly enacted law can also put transgender athletes at risk of bullying and harassment within the school or community by singling them out for discrimination.

24. When a school or athletic organization denies transgender students the ability to participate

equally in athletics because they are transgender, that condones, reinforces and affirms the transgender students' social status as outsiders or misfits who deserve the hostility they experience from peers.

25. I am not aware of any cisgender girls being harmed by the presence of a transgender student-athlete participating on their team or in their league. I am likewise not aware of cisgender students losing scholarship opportunities as a result of transgender athletes participating on their team or in their league. Athletic scholarship opportunities are awarded based on a range of factors. Coaches look at the entire athlete not just on what place a person or team comes in at a given race or tournament.

NCAA POLICY FOR TRANSGENDER INCLUSION

26. In 2011, the NCAA published the Guide for Transgender Athlete Inclusion, which is a guide to colleges and universities on how to adopt inclusive policies and practices for transgender student-athletes. I am a co-author of the NCAA Guide for Transgender Athlete Inclusion.

27. The guide includes the operative NCAA policy for inclusion of transgender women athletes on women's teams for schools to follow for maintaining eligibility in NCAA-sponsored events (such as conference and league tournaments). The NCAA's policy allows women who are transgender to compete on women's teams in women's sporting events after completion of one year of testosterone suppression hormone therapy as part of gender transition.

28. The NCAA policy was developed with the expertise of sports administrators, doctors, athletes,

and other experts in collegiate sports. Experts involved in developing the NCAA policy included, amongst others, the NCAA's the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports.

29. The purpose of NCAA policy requiring transgender athletes to undergo one-year of hormone therapy prior to being eligible to play on a team consistent with their gender identity was to ensure that all women had the opportunity to participate consistent with gender identity after minimizing potential impact of testosterone on the body. The length of the therapy that must be shown (one year) was chosen intentionally for multiple reasons: first, after consultation with medical providers, including experts that had consulted on elite, international policies for transgender inclusion in athletics, it was determined that one year was more than sufficient to minimize any advantage resulting from circulating testosterone; and second, because under NCAA athletic eligibility rules, all student-athletes are able to maintain four years of athletic eligibility out of five years of collegiate attendance. This one-year rule ensured that by taking a year off to undergo hormone therapy, transgender athletes could still compete consistent with gender identity for four years or however many years of eligibility remained for them. The NCAA policy therefore mirrors the hormone suppression rules for Olympic competition in duration of testosterone. Unlike the Olympic rules, however, the NCAA policy does not require athletes to certify hormone suppression to a certain level. The policy is aimed at making the process easier for the student-athlete and institutions to comply with and therefore

only requires certification by a medical provider that testosterone suppression has been ongoing for a period of one year rather than ongoing monitoring of testosterone and disclosure of lab results.

30. The NCAA policy does not require schools to report the number of transgender students participating in athletics unless and until the team with a transgender athlete seeks to participate in an NCAA-sponsored event (e.g., conference or league tournaments).

31. For the past nine years, transgender athletes have been able to compete on teams at NCAA member colleges and universities consistent with their gender identity like all other student-athletes with no disruption to women's collegiate sports.

32. The NCAA policy was carefully designed by experts in the field and has been successfully implemented for nearly a decade. H.B. 500 is the only state-level policy to contradict the NCAA policy and is an outlier in excluding transgender and many intersex athletes.

33. Prior to the passage of H.B. 500, no state had separately regulated collegiate participation of transgender athletes and the NCAA policy was the standard for inclusion across the United States. Idaho stands alone in undermining NCAA's longstanding policy for collegiate athletes in the state and risks harming collegiate athletes not only in Idaho but across the country who may seek to compete in Idaho.

34. Like for high school athletics, collegiate athletics provide important opportunities for social, emotional and physical well-being, confidence and other positive impacts for student-athletes. Creating

a statewide ban on the participation of transgender young women in collegiate athletics will disrupt existing policies and harm transgender and cisgender student-athletes.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 28 day of April 2020.

Helen Carroll
Helen Carroll

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of April, 2020, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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Attorneys for Bradley Little,

*Sherri Ybarra,
Individual members of the State Board of
Education,
Boise State University,
Marlene Tromp,
Individual members of the Idaho Code
Commission*

DATED this 30th day of April, 2020.

/s/ Richard Eppink

EXHIBIT A

Helen J. Carroll
Sports Diversity Consultant

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(415) 595-2123

SUMMARY

Over 40 years of leadership in women's sports including:

- Developing National Think Tank series for LGBT concerns in athletics
- Coaching a team to an NAIA National Championship title.
- Directing, coaching and teaching in NCAA I, II, and III athletic programs.
- Maintaining strong, ongoing relationships with coaches, players, AD's and media at all levels from junior high school through WNBA.
- Marketing university sports programs to alumni and corporate donors.

- Nationally recognized spokesperson for women's sports issues.
- Nationally recognized spokesperson for LGBT issues in sport
- Nationally recognized expert for Transgender inclusion in all sport levels
- Demonstrated ability to recognize and leverage trends impacting women's sports

EXPERIENCE

National Center For Lesbian Rights, San Francisco, CA 2001 - 2016

Sports Project Director Maintain relationships at all levels of women's basketball, from high school to the WNBA. Consult with coaches, athletic directors and academic/administrative staff on sexual orientation and transgender issues that impact women's sports programs. Provide expert commentary for media. Attend NCAA Basketball Finals, WBNA games and playoffs, and other key competitions.

- Created National Think Tank series for issues pertaining to LGBT student athletes, coaches and Administrators with the NCAA

- Co-authored the 2011 NCAA Guide for Transgender Athlete Inclusion.

- co-authored the 2010 "On the Team: Equal Opportunity for Transgender Student Athletes" The Report was co-sponsored by the Women's Sports Foundation and NCLR, and was the result of a 2009 national think tank entitled "Equal Opportunities for Transgender student athletes," hosted by the NCAA

with participation including the National Federation of High Schools

- Worked closely with major national sports organizations including the Women's Sports Foundation and the NCAA. Featured speaker on panels with Nike, ESPN's "Outside the Lines," and The New York Times

- Featured in Dr. Pat Griffin's book, "Strong Women, Deep Closets and The Outsports Revolution" by authors Jim Buzinski and Cyd Ziegler Jr.

- presented "The Gay/Lesbian Athlete's Place in the Corporate World" at Nike main campus.

- Developed an innovative education program to help entering NCAA LGBT athletes be included in sports in a positive way

- Worked with high visibility coaches and administrators to address unethical recruiting practices that negatively impact women's basketball's image.

- Working with the NCAA Director of Inclusion, on diversity issues affecting student athletes resulting in policy changes at national level.

Mills College, Oakland, CA 1988 – 2000

Director of Athletics, Physical Education and Recreation

Directed NCAA intercollegiate sports programs. Developed and implemented department vision and strategic plan. Oversaw department budget. Hired, trained and evaluated coaches, lecturers, recreation and support staff. Negotiated contracts and salaries. Oversaw NCAA compliance, eligibility and financial

aid for student-athletes. Managed sports information, promotion and marketing. Co-partnered with college president to raise funds for sports.

- Guided programs of inclusion including combatting racism, classism, homophobia and transphobia

- Helped maintain academic excellence of student athletes including two Rhodes Scholar fellowships and Academic All America Teams.

- Directed construction of new athletic facilities including aquatic center, soccer fields and cross country trail by working to increase funds commitments from supporters.

University of North Carolina – Asheville,
Asheville, NC 1981 – 1988

Interim Athletic Director and Associate Athletic Director (1984 – 1988)

Led athletic program including strategic vision, budget, recruiting, hiring. Managed transition from NAIA affiliation to NCAA Division I Big South Conference.

Head Women’s Basketball Coach (1981 – 1984)

Responsible for total program including player development, hiring/supervising staff, recruiting, budget management and maintaining visibility with alumni and media. Coordinated strategy, and provided leadership during games.

- Within four years, built team that won 1984 NAIA National Championship title by setting a strategic vision, recruiting key players,

developing innovative game plan, and providing environment for athletes to excel.

- Named NAIA National Coach of year for outstanding achievement in leading a team to national championship within four years.

Basketball and Tennis Coach, University of Tennessee, Martin, TN 1976 – 1978

Basketball, Track and Field Coach, Wayne State College, Wayne, NE 1979 – 1981

EDUCATION

M.A., Athletic Administration, Appalachian State University

- Emphasis in Athletic Administration, Coaching, Recreational Administration

B. S., Health, Physical Education and Recreation, Middle Tennessee University

- Minor in Psychology

PROFESSIONAL AFFILIATIONS

National Association of Collegiate Women Athletic directors (NACWAA)

National Association of Collegiate Directors of America (NACDA)

American Alliance of Health, Physical Education and Recreation

National Association of Girls and Women in Sport

Women's Sports Foundation

Women's Basketball Coaches Association

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

<p>LINDSAY HECOX, et al.,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p style="text-align: center;">v.</p> <p>BRADLEY LITTLE, et al.,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p>No. 1:20-cv-184-CWD</p> <p>EXPERT DECLARATION OF MARY FRY, PHD, IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION</p>
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I, Professor Mary D. Fry, PhD, have been retained by counsel for Plaintiffs Lindsay Hecox and Jane Doe, with her next friends Jean Doe and John Doe, as an expert in connection with the above-captioned litigation.

1. The purpose of this declaration is to offer my expert opinion on: (1) the psychological and behavioral benefits of sports for youth and young adults; and (2) the conditions that lend themselves to youth and young adults participating in athletics and accessing those benefits when they do participate.

2. I have knowledge of the matters stated in this declaration. I have collected and cite to relevant literature concerning the issues that arise in this litigation in the body of this declaration and in the attached bibliography.

3. In preparing this declaration, I reviewed the legislative findings for H.B. 500, as enacted.

4. In preparing this declaration, I relied on my education and training, my professional and research experience, and my knowledge of the literature in the pertinent fields. The materials I have relied upon in preparing this declaration are the same types of materials that experts in my field of study regularly rely upon when forming opinions on the subject. I may wish to supplement these opinions or the bases for them as a result of new research or publications or in response to statements and issues that may arise in my area of expertise.

PROFESSIONAL BACKGROUND

5. I am a Professor in the Department of Health, Sport & Exercise Sciences at the University of Kansas in Lawrence, Kansas. A true and correct copy of my CV is attached hereto as Exhibit A.

6. In 1984, I graduated from Texas Wesleyan University in Fort Worth, Texas with a Bachelor of Science in Physical Education. After graduating, I spent about five years teaching physical education and coaching tennis at schools and summer camps in Texas and North Carolina.

7. I graduated with a Master of Science in Sport Psychology/Pedagogy from the University of North Carolina in Greensboro in 1990. Then, in 1994, I graduated with a doctorate in Sport & Exercise Psychology from Purdue University. From 1994 to 1999, I served as an Assistant Professor in the University of Memphis's Department of Human Movement Sciences and Education. I continued at the same institution from 1999 to 2007 as an Associate Professor in the Department of Human & Sport Sciences. I joined the faculty of the University of

Kansas in 2007, where I continue to teach and research as a Professor today.

8. I have authored or coauthored 63 papers in peer-reviewed journals, including many studies in sport psychology and youth athlete motivation. I have coauthored five book chapters and one book, titled *A Coach's Guide to Maximizing the Youth Sport Experience: Work Hard and Be Kind*. I have also given 116 presentations on my research at both international and national conferences, as well as dozens of local and regional presentations.

9. I have taught and/or developed six undergraduate level courses and 12 graduate level courses in sport and exercise psychology. The courses I developed include Psychosocial Aspects of Sport, Applied Sport Psychology, Developmental Perspectives in Youth Sport, and Special Course: Sport Psychology Within Youth Sport.

10. On a national level, I have served with the Association of Applied Sport Psychology ("AASP") as a member of the Program Review Committee (2008-present), a Subject Matter Expert for the Certification Exam Committee (2018), and a member of the Ad-Hoc Future of AASP Committee (2012-2015). For the AASP, I have served as an Executive Board Member (2004-2006), two three-year terms as a member of the Social Psychology Section Committee (1996-99; 2001-2003), and as a member of the Dissertation Award Committee (1998 & 2002). I have also served on the Editorial Board for *Physical Activity Today* (1997-2001) and on the Program Review Committee for the American Alliance of Health, Physical Education, Recreation & Dance (2009-2017), in addition to

chairing the Committee in 2010. I also serve on the National Advisory Board for the Positive Coaching Alliance.

11. I have undertaken editorial roles on professional journals within my field, including as Associate Editor (2009-2012) and Editorial Board Member (2000-2009; 2013-present) for the *Journal of Applied Sport Psychology*; Associate Editor (2008-present) for the *Journal of Sport Psychology in Action*; Section Editor (2003-2006) and Reviewer (1994-present) for the *Research Quarterly for Exercise and Sport*; and Editorial Board Member (2011-present) for *Sport, Exercise, and Performance Psychology*.

12. I have served on the Kansas University Certificate in Sport Committee (2017-2018), and the Kansas University Center for Undergraduate Research, Advisory Board (2016-2018), among other roles at the University.

13. I am, or have been, a member of several professional organizations, including the AASP, the American Psychological Association (2017-present), the Kansas Alliance for Health, Physical Education, Recreation, & Dance (2008-present), the American Alliance for Health, Physical Education, Recreation, and Dance (1988-2017), and the North American Society for the Psychology of Sport and Physical Activity (1988-2000).

14. I also have experience applying sport psychology in the field, which include mental skills interventions for various athletes and teams, including with high school and university athletes (2018-present), a high school baseball team (2013-2018), a youth baseball team (2009-2011), a Division

I collegiate volleyball team (2008-2010), a high school basketball team (2006-2007), and a Division I cross country team (2006).

15. I have not previously testified as an expert witness in either deposition or at trial.

16. I am being compensated at an hourly rate of \$250 per hour. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

MOTIVATION AND ATHLETICS

17. There are many benefits to young people from participating in athletic activities, discussed further below. But understanding what motivates youth and young adults to participate in athletics in the first place is essential for understanding how youth and young adults can access these benefits. One critical way to increase participation in athletics is to understand the factors that motivate individuals to stay engaged at different ages and in different contexts. Understanding motivation also helps to explain how the benefits athletes derive from participating in sport translate to other aspects of their lives.

18. In simple terms, motivation is the desire to do activities. More formally, it is defined as “the process that influences initiation, direction, magnitude, perseverance, continuation, and quality of goal-directed behavior” (Maehr & Zusho, 2009). Motivation is about why, how, when, and in what circumstances people employ their resources.

19. One of the most-researched motivational theories in the field of sport psychology is

achievement goal perspective theory (“AGPT”), which was developed to address how motivation could be heightened and sustained over time (Nicholls 1984, 1989). AGPT includes three components that together can work to optimize motivation among all individuals, including youth participating in sports.

20. First, is the developmental component of AGPT. Young children are incapable of accurately comparing their ability to others, overestimate their ability, and are naturally focused on their effort as a marker of success. By the time they enter adolescence, however, they are able to distinguish the concepts of effort, luck, and ability.

21. Second, around 12 years of age, children achieve a mature understanding of the concept of ability and at that time adopt their own personal definitions of success, or “goal orientations.” The primary goal orientations are task and ego. Individuals with a “high task orientation” define success based on their effort, improvement, and mastery of tasks over time. In contrast, a high ego orientation occurs when individuals define success in normative terms, only feeling successful when they outperform others. Individuals are to some degree both task- and ego-oriented; in fact, they can be high and/or low in both orientations.

22. Third, motivations are shaped by outside factors, which can reinforce a task orientation as opposed to an ego orientation. Specifically, athletes’ perceptions of the environment that is created by coaches (but can also be influenced by parents and teammates) (Ames, 1992a, 1992b; Nicholls, 1984, 1989) can be a caring and task-involving or ego-

involving climate. A caring climate is one where athletes feel safe and welcome, comfortable, valued, and are treated with kindness and respect by all in the sport setting (Newton et al. 2007).

23. With the goal of increasing opportunities for participation in mind, AGPT provides important guidance about how to help each athlete maximize their sport experience and to increase opportunities within athletics for youth and young adults.

BENEFITS OF SPORT FOR ATHLETES FROM YOUTH SPORT THROUGH COLLEGE ATHLETICS

24. For youth and young adult student-athletes, athletics serve a different purpose than for athletes who participate in professional athletics or world elite competition. The National Collegiate Athletic Association (NCAA) estimates that there are 7.3 million high school student-athletes in the United States. Of those millions of athletes, only about 6% go on to compete at the college level in any division (with only about 2% earning an athletic scholarship).¹ By the numbers alone, the primary purpose of high school sports is not about preparing youth for college sports. For the 94% of high school athletes who do not compete in college as well as for those who do, youth sport creates a myriad of benefits.

25. Then for collegiate athletics, most athletes do not go on to have athletic careers beyond college in an elite sports context. According to the NCAA: “Fewer

¹ NCAA Recruiting Facts (March 2018),
<https://www.ncaa.org/sites/default/files/Recruiting%20Fact%20Sheet%20WEB.pdf>.

than two percent of NCAA student-athletes go on to be professional athletes.”² That percentage does not include National Association of Intercollegiate Athletics (for small college sports) and junior college student-athletes, who are less likely to have professional sports careers. So among total numbers of collegiate athletes in the United States, the total percentage of athletes who go on to participate in elite, professional athletics after college is even lower than two percent.

A. Athletes’ Type of Goal Orientation Determines What Benefits They Derive from Athletics.

26. A high task orientation, described above in Paragraph 21, is the key to optimizing motivation over time, because effort and improvement – the keys to task orientation – are variables individuals can more easily control. In contrast, individuals high in ego orientation define success based on performance relative to others. High task orientation results in athletes’ being more likely to seek challenge, exert high effort, and persist over time (Maehr & Zusho, 2009).

27. Perhaps the strongest finding within the goal orientation research links a task orientation with high enjoyment. Throughout childhood and adolescence, and across a range of sports, athletes who define success based on their personal effort and improvement have more fun playing their sport than those high in ego orientation (Schneider, Harrington, & Tobar, 2017; Seifriz, Duda, & Chi, 1992; Stephens,

² *Id.*

1998; Stuntz & Weiss, 2009; van de Pol & Kavussanu, 2011). Importantly, goal orientations are also associated with the sources of enjoyment athletes identify. For example, youth athletes with a high task orientation report experiencing enjoyment from learning and having positive team interactions. In contrast, athletes high in ego orientation report experiencing enjoyment as a result of winning and having high perceived competence (Lochbaum & Roberts, 1993).

28. Another benefit of high task orientation in youth athletes is the strong and positive association with interpersonal and team dynamics (Balaguer, Duda, & Crespo, 1999; Ommundsen, Roberts, Lemyre, & Miller, 2005). Task orientation is positively correlated with peer acceptance, less conflict with peers, and greater satisfaction with the coach.

29. Athletes high in ego orientation report lower companionship and greater conflict with teammates (Balaguer et al., 1999), and there is no evidence to suggest they reap the benefits of enhanced social relationships that athletes with high task orientation do (Ommundsen et al., 2005).

30. Athletes high in task orientation also report greater confidence and perceived ability, and task orientation has been correlated with both self and team efficacy and greater perceived competence (Magyar & Feltz, 2003; Seifriz et al., 1992; Stuntz & Weiss, 2009). Further, athletes high in task orientation report utilizing more adaptive coping strategies (Kim, Duda, & Gano-Overway, 2011; McCarthy 2011). These adaptive outcomes have been

found for middle school, high school, and collegiate athletes.

31. Ego orientation, in contrast, is not correlated with perceived ability in general. Confidence of athletes high in ego orientation was more often based on their perceptions of ability and having a strong physical presence, whereas athletes high in task orientation based their perceptions of confidence on their sense of feeling well prepared and mentally strong (Magyar and Feltz, 2003). There is also a consistently significant relationship between ego orientation and anxiety (Lochbaum et al., 2016). Young athletes with high ego orientation participating in a variety of sports have reported higher trait and state cognitive and somatic anxiety, as well as greater concentration disruption, maladaptive perfectionism, and concern over making mistakes (Grossbard, Cumming, Standage, Smith, & Smoll, 2007; Hall, Kerr, & Matthews, 1998; Ommundsen & Pedersen, 1999; Ommundsen et al., 2005; White & Zellner, 1996).

B. Structuring Sport with a Caring and Task-Involving Climate Fosters High Task Orientation, Which Optimizes Benefits for Youth and Young Adult Athletes.

32. A large body of research in sport psychology identifies how sport can be structured to help young athletes reap many physical, psychological, and social benefits from their participation in sport and physical activities (Duda, 2013; Fry & Hogue, 2018; Fry & Moore, 2019; Harwood, Keegan, Smith, & Raine, 2015; Roberts, 2013).

33. In youth sports, the climate created on individual athletes' teams, more than the identity of their opponents, determines whether and to what extent young athletes are deriving optimal benefits from sport and maintaining motivation to participate in sport. Overall, the best way to get youth athletes to participate in sports is to create a caring and task-motivated climate, which reinforces high task orientation and leads to the benefits described above. These outcomes help athletes have a sport experience that makes them want to keep playing sport.

34. A caring and task-involving climate is one in which coaches do the following: recognize and reward effort and improvement; foster cooperation among teammates; make everyone feel they play an important role on the team; treat mistakes as part of the learning process; and encourage an approach where everyone is treated with mutual kindness and respect.

35. When athletes perceive a caring and task-involving climate on their teams, they are more likely to have fun, exert high effort, experience intrinsic motivation, have better interpersonal relationships with coaches and athletes, display better sportsperson-like values and behaviors, have better psychological well-being, and perform better (Duda & Nicholls, 1992; Fry & Hogue, 2018; Iwasaki & Fry, 2013; Newton, Duda, & Yin, 2000; McDonald, Cote, Eys, & Deakin, 2011). Strengthened relationships were also found among collegiate athletes where their perceptions of a task-involving climate were associated with feeling greater closeness and commitment to their coach, and vice-versa (perceiving their coach feels close and committed to the athlete)

as well as closeness with teammates (Boyd, Kim, Ensari, & Yin, 2014; Olympiou, Jowett, & Duda, 2008). In addition, there are positive and significant associations between perceptions of a caring climate in sport settings and the hope and happiness of youth, and negative relationships with depression and sadness (Fry et al., 2012), as well as the ability of youth athletes to monitor and control their affective responses. This self-regulation was found to contribute to athlete empathy, indicating that fostering more caring climates in sport settings may facilitate positive social interactions and character development (Gano-Overway et al., 2009). Elite adult athletes who are task-oriented and/or who perceive a task-involving climate are also significantly more likely to report not using performance-enhancing drugs (Allen, et al., 2015).

36. Youth involved in positive and supportive sport environments experience greater self-esteem, psychological well-being, and hope, with less depression, sadness, and burnout than those in less supportive environments. They have better emotional self-regulation, meaning they are more able to manage negative emotions, to keep things in perspective, and to feel and express joy when good things happen (Fry et al, 2012; Gano-Overway et al, 2009). Further, college athletes' perceptions of a task-involving climate have been linked to more adaptive patterns of coping with challenges (Kim, Duda, & Gano-Overway, 2011).

37. In contrast, where coaches reward only ability and performance outcome, foster rivalry among teammates, punish mistakes, and give most of the recognition to a few "stars," they contribute to an ego-

focused climate that can lead to athletes' experiencing fewer adaptive and positive motivational outcomes and greater negative outcomes. Ego-focused environments create greater acceptance of rough play, cheating, and aggressive behaviors in their sport (Boixados, Cruz, Torregrosa, & Valiente, 2004), and are less likely to lead to appropriate, desirable, and respectful behaviors within sport (Fry & Newton, 2003).

38. Athletes' perceptions of a caring and task-involving climate may also be linked to higher quality training and better performance outcomes, as researchers report more effective practice strategies in sport and physical education settings (Boyce, Gano-Overway, & Campbell, 2009; Iwasaki & Fry, 2016; Lochbaum et al., 2016). A limited number of studies have revealed a direct association between perceptions of a task-involving climate to objective performance (Hogue, Fry, & Fry, 2017; Theeboom, De Knop, & Weiss, 1995; Xiang, Bruene, & McBride, 2004). Interestingly, Division I college athletes who perceived a caring and task-involving climate on their teams reported having stronger mental skills including their use of goal setting; ability to concentrate, remain worry free, cope with adversity and peak under pressure; act with confidence; and be open to receiving feedback from coaches (Fry, Iwasaki, & Hogue; 2020). These findings would suggest that athletes with strong mental skills might also perform better. Further, perceptions of an ego-involving climate have been linked to higher salivary cortisol responses (Hogue, Fry & Fry, 2017). Cortisol is an important and necessary hormone, but in excess

it can break down muscle tissue and interfere with the immune system.

39. Young athletes have also had higher winning percentages on their teams and performed better on tasks when they perceived a task-involving (rather than ego-involving) climate (Cumming et al., 2007; Sarrazin, Roberts, Cury, Biddle, & Famose, 2002). In addition, college athletes have described being task-involved as they reflect back on their best performances (Jackson & Roberts, 1992).

40. Athletes' perceptions of a task-involving climate were associated with less performance worry and escapism thoughts (Hatzigeorgiadis & Biddle, 2002). Often, mistakes and facing challenges present opportunities to learn and succeed in different ways (by improving oneself, for example). And in sport, much is unpredictable: An opponent's unexpected performance, the weather, and an illness, can drastically change a competition day. Being adaptive and focused on giving one's best effort can help athletes' overcome disappointment (Fry, et al., 2020; Fry & Moore, 2019).

41. College athletes who perceived a caring and task-involving climate on their teams reported higher confidence that they can do the activities necessary and make decisions that support their career exploration and engagement (Poux & Fry, 2015). Further, college athletes perceiving a task-involving climate on their teams reported experiencing greater academic satisfaction (Tudor & Ridpath, 2018).

42. Despite the ego-involving climate's emphasis on performance outcomes, results across studies suggest that the benefits of a task-involving climate

may have a direct impact on athletic performance and ultimately improve performance outcomes (Jackson & Roberts, 1992; McDonald, Cote, & Deakin, 2011). By contrast, no evidence currently points to an ego-involving climate leading to greater performance outcomes with young athletes.

43. Even for athletes who are themselves highly ego-oriented, and who prioritize winning and external rewards, a task-involving and caring climate is preferable. Such a climate encourages young athletes to orient themselves toward a task-involved model for motivation and away from the stress-inducing ego-orientation, which will in turn garner the young person the benefits associated with a task-orientation.

44. If the athletes are in a climate that emphasizes winning and comparison to other athletes—which is already built into sports and does not need to be further emphasized by coaches, teammates, and parents—it will result in more athletes leaving sport and possibly taking with them bad memories of that involvement.

**EXCLUDING GROUPS FROM
PARTICIPATING IN HIGH SCHOOL AND
COLLEGIATE ATHLETICS WOULD DEPRIVE
THEM OF A WIDE RANGE OF EDUCATIONAL
BENEFITS**

45. A goal of youth sport is to help young athletes have positive experiences across sport. This includes creating space for athletes to have fun, develop skills, make friends, increase their levels of physical activity, continue their participation over time, and learn valuable life lessons (Thompson, 2010). If

athletes are arbitrarily excluded from youth sports, they are, in turn, deprived of those positive experiences and outcomes and their teammates are deprived of a task-involving and caring sports climate.

46. Athletes who participate in high school sport are more likely to finish college, and more likely to be actively engaged in planning for their future after their sport career ends (Chamberlin & Fry, 2020; Troutman & Defur, 2007). Many of the benefits to youth who participate in athletics are documented throughout life. For example, women who participated in high school sport see greater success in the business world (ESPNW & EY, 2017; Sasaki, 2020).

47. All youth benefit from a sport environment that is task-involving, which results in athletes' taking on more challenging tasks (Stuntz & Weiss, 2009; van de Pol & Kavussanu, 2011), building stronger interpersonal dynamics (Balaguer, Duda, & Crespo, 1999; Ommundsen, Roberts, Lemyre, & Miller, 2005), reducing antisocial behavior (Kavussanu & Roberts, 2001; Stephens & Kavanagh, 2003), and acquiring greater confidence (Magyar & Feltz, 2003; Seifriz et al., 1992; Stuntz & Weiss, 2009).

48. Coaches and others involved in youth sport have a responsibility for creating the climate that is most conducive to encouraging athletes to adopt a high task-orientation. Arbitrarily excluding athletes from their teams undermines a caring climate, which, in turn, diminishes the positive outcomes for all youth and collegiate athletes. The negative outcomes apply

not only to the athletes who are excluded, but to the other athletes on the team.

49. Excluding groups of athletes can also undermine the benefits of a high task-involving climate, as such a climate should help athletes develop strong interpersonal and team dynamics (Balaguer, Duda, & Crespo, 1999; Ommundsen, Roberts, Lemyre, & Miller, 2005). Fostering task orientation positively correlates with peer acceptance, less conflict with peers, and greater satisfaction with the coach. These outcomes help athletes have a sport experience that make them want to keep playing sport.

50. When athletes are excluded from participating in youth sport, or are in a climate where they do not feel accepted or respected, they do not have the opportunity to reap these benefits.

**FOCUSING SOLELY ON PERFORMANCE
OUTCOMES UNDERMINES THE BENEFITS
OF SPORT FOR YOUTH SPORTS THROUGH
COLLEGE**

51. When a team, league, or organization adopts an ego-promoting philosophy, and cares only about performance outcomes, the broader benefits of sport are diminished for all involved (both with regard to their future athletic careers and lives outside of sport). The overwhelming majority of high school athletes will never go on to compete in college, and the overwhelming majority of college athletes will never go on to compete on professional teams. Focusing only on the highest-performing athletes or post-graduate elite athletics compromises the other critical benefits of sports for youth and young adults.

52. Such a focus is stress-inducing and undermines the experience of the rest of the athletes who may train hard, improve, but may not be on the podium to receive a medal. The climate of youth sport must be geared to include everyone, including those who are not as skilled, so that teams are more likely to help every athlete maximize their potential. From an educational perspective, it is optimal to encourage all athletes to do the best that they can, and to help all athletes enjoy the sport that they love. Even among Division I collegiate athletes, athletes who perceived a task-involving climate on their teams reported higher academic and athletic satisfaction (Tudor & Ridpath, 2018).

53. Athletes are more likely to reap the positive benefits associated with sports if they are task-involved, which places greater emphasis on effort, than if they are ego-involved, which would put greater emphasis on those trappings of individual success.

54. For coaches of youth athletes, one important message is that, for the overwhelming majority of people, the period of time that a person participates in organized athletics is short and maximizing the benefits of that participation is essential. As Jim Thompson, Founder and CEO of the Positive Coaching Alliance notes: “Here’s the bottom line for parents. Your child’s experience with youth sports will come to an end, and it may happen suddenly. If you are like me, you will look back and think, ‘I wish I had enjoyed it more. I wish I hadn’t obsessed so much about how well my child was performing, or the team’s record, or whether he or she was playing as much as I wanted, or why the coach didn’t play him or her in the right position. I wish I had just enjoyed

the experience more.’ Because the youth sports experience is so intense, we tend to forget how short it is and what a small amount of time parents and children get to spend together over the course of life.”

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated April 28, 2020

Mary D. Fry
Professor Mary D. Fry, PhD

BIBLIOGRAPHY

- Allen, J., Taylor, J., Dimeo, P, Dixon, S., & Robinson, L. (2015). Predicting elite Scottish athletes’ attitudes towards doping: Examining the contribution of achievement goals and motivational climate. *Journal of Sports Sciences*, 33, 899-906.
- Ames, C. (1992a). Achievement goals, motivational climate, and motivational processes. In *Motivation in sport and exercise* (pp. 161–176). Champaign, IL: Human Kinetics.
- Ames, C. (1992b). Classrooms: Goals, Structures, and Student Motivation. *Journal of Educational Psychology*, 84(3), 261–271. <https://doi.org/10.1037/0022-0663.84.3.261>
- Balaguer, I., Duda, J. L., & Crespe, M. (1999). Motivational climate and goal orientations as predictors of perceptions of improvement, satisfaction, and coach ratings among tennis

players. *Scandinavian Journal of Medicine and Science in Sports*, 9, 381-388.

- Boixadós, M., Cruz, J., Torregrosa, M., & Valiente, L. (2004). Relationships among motivational climate, satisfaction, perceived ability, and fair play attitudes in young soccer players. *Journal of Applied Sport Psychology*, 16(4), 301–317. <https://doi.org/10.1080/10413200490517977>
- Boyce, B. A., Gano-Overway, L. a., & Campbell, A. L. (2009). Perceived motivational climate's influence on goal orientations, perceived competence, and practice strategies across the athletic season. *Journal of Applied Sport Psychology*, 21(January), 381–394. <https://doi.org/10.1080/10413200903204887>
- Boyd, M., Kim, M., Ensari, N. & Yin, Z. (2014). Perceived motivational team climate in relation to task and social cohesion among male college athletes. *Journal of Applied Social Psychology*, 44, 115-123.
- Cumming, S. P., Smoll, F. L., Smith, R. E., & Grossbard, J. R. (2007). Is winning everything? The relative contributions of motivational climate and won-lost percentage in youth sports. *Journal of Applied Sport Psychology*, 19(3), 322–336. <https://doi.org/10.1080/10413200701342640>
- Duda, J. L. (2013). The conceptual and empirical foundations of Empowering Coaching TM: Setting the stage for the PAPA project. *International Journal of Sport and Exercise Psychology*, 11(4), 311–318. <https://doi.org/10.1080/1612197X.2013.839414>

- Duda, J. L., & Nicholls, J. G. (1992). Dimensions of achievement motivation in schoolwork and sport. *Journal of Educational Psychology, 84*(3), 290–299. <https://doi.org/10.1037/0022-0663.84.3.290>
- Fry, M. D., & Hogue, C. M. (2018). Psychological considerations for children and adolescents in sport and performance. Oxford Research Encyclopedia of Psychology.
- Fry, M., & Moore, E. (2018). Motivation in sport: Theory and application. In M. H. Anshel (Ed.), T. Petrie, E. Labbe, S. Petruzello, & J. Steinfeldt (Assoc. Eds.), *APA Handbook of Sport and Exercise Psychology. Vol 1. Sport Psychology* (pp. 273-299). Sport psychology. Washington DC: American Psychological Association.
- Fry, M. D., & Newton, M. (2003). Application of Achievement Goal Theory in an urban youth tennis setting. *Journal of Applied Sport Psychology, 15*(1), 50–66. <https://doi.org/10.1080/10413200305399>
- Fry, M. D., Gano-Overway, L., Guivernau, M., Kim, M., & Newton, M. (2020). A coach's guide to maximizing the youth sport experience: Work hard, be kind. New York: Routledge.
- Fry, M. D., Iwasaki, S., & Hogue, C. (2020). The relationship between the perceived motivational climate in elite collegiate sport and athlete psychological coping skills. *Journal of Clinical Sport Psychology* (paper under revision).
- Gano-Overway, L. A., Newton, M., Magyar, T. M., Fry, M. D., Kim, M.-S., & Guivernau, M. R. (2009). Influence of caring youth sport contexts on

efficacy-related beliefs and social behaviors. *Developmental Psychology*, *45*(2), 329–340. <https://doi.org/10.1037/a0014067>

- Grossbard, J. R., Cumming, S. P., Standage, M., Smith, R. E., & Smoll, F. L. (2007). Social desirability and relations between goal orientations and competitive trait anxiety in young athletes. *Psychology of Sport and Exercise*, *8*(4), 491–505. <https://doi.org/10.1016/j.psychsport.2006.07.009>
- Hall, H. K., Kerr, A. W., & Matthews, J. (1998). Precompetitive anxiety in sport: The contribution of achievement goals and perfectionism. *Journal of Sport & Exercise Psychology*, *20*(2), 194–217.
- Harwood, C. G., Keegan, R. J., Smith, J. M. J., & Raine, A. S. (2015). A systematic review of the intrapersonal correlates of motivational climate perceptions in sport and physical activity. *Psychology of Sport and Exercise*, *18*, 9–25. <https://doi.org/10.1016/j.psychsport.2014.11.005>
- Hogue, C. M., Fry, M. D., & Fry, A. C. (2017). The differential impact of motivational climate on adolescents' psychological and physiological stress responses. *Psychology of Sport and Exercise*, *30*, 118–127. <https://doi.org/10.1016/j.psychsport.2017.02.004>
- Iwasaki, S., & Fry, M. D. (2016). Female adolescent soccer players' perceived motivational climate, goal orientations, and mindful engagement. *Psychology of Sport and Exercise*, *27*, 222–231. <https://doi.org/10.1016/j.psychsport.2016.09.002>

- Jackson, S. A., & Roberts, G. C. (1992). Positive performance states of athletes: Toward a conceptual understanding of peak performance. *Sport Psychologist, 6*(2), 156-171.
- Kavussanu, M., & Roberts, G. C. (2001). Moral functioning in sport: An achievement goal perspective. *Journal of Sport & Exercise Psychology, 23*(1), 37-54.
- Kim, M., Duda, J. L., & Gano-Overway (2011). Predicting occurrence of and responses to psychological difficulties: The interplay between achievement goals, perceived ability and motivational climates among Korean athletes. *International Journal of Sport and Exercise Psychology, 9*, 31-47.
- Lochbaum, M., Cetinkalp, Z. K., Graham, K., Wright, T., & Zazo, R. (2016). Task and ego goal orientations in competitive sport: A quantitative review of the literature from 1989 to 2016. *Kinesiology, 48*, 3-29.
- Maehr, M. L., & Zusho, A. (2009). Achievement goal theory: The past, present, and future. In K.R. Wentzel & A. Wigfield (Eds.), *Handbook of motivation at school* (pp. 77-104). New York, NY: Routledge.
- Magyar & Feltz (2003). The influence of dispositional and situational tendencies on adolescent girls' sport confidence sources. *Psychology of Sport and Exercise, 4*, 175-190.
- McCarthy, J. J. (2011). Exploring the Relationship Between Goal Achievement Orientation and

Mindfulness in Collegiate Athletics. *Journal of Clinical Sport Psychology*, 5(1), 44-57.

- MacDonald, D. J., Cote, J., Eys, M., Deakin, J. (2011). The role of enjoyment and motivational climate in relation to the personal development of team sport athletes. *Sport Psychologist*, 25, 32-46.
- Newton, M., Duda, J. L., & Yin, Z. (2000). Examination of the psychometric properties of the perceived motivational climate in sport questionnaire-2 in a sample of female athletes. *Journal of Sports Sciences*, 18(4), 275–290. <https://doi.org/10.1080/026404100365018>
- Newton, M., Fry, M. D., Watson, D. L., Gano-Overway, L. A., Kim, M., Magyar, T. M., & Guivernau, M. R. (2007). Psychometric properties of the Caring Climate Scale in a physical activity setting. *Revista de Psicología Del Deporte*, 16, 67–84. Retrieved from <file:///C:/Users/zar4559/Downloads/22-22-1-PB.pdf>
- Nicholls, J. G. (1984). Achievement motivation: Conceptions of ability, subjective experience, task choice, and performance. *Psychological Review*, 91(3), 328–346. <https://doi.org/10.1037/0033-295X.91.3.328>
- Nicholls, J. G. (1989). *The competitive ethos and democratic education*. Cambridge, MA: Harvard University Press.
- Olympiou, A., Jowett, S., & Duda, J. L. (2008). The psychological interface between the coach-created motivational Climate and the coach-athlete relationship in team sports. *Sport Psychologist*, 22(4), 423–438. Retrieved from

<http://search.ebscohost.com/login.aspx?direct=true&db=s3h&AN=35719365&lang=es&site=ehost-live&scope=site>

- Ommundsen, Y & Petersen, B.H. (1999). The role of achievement goal orientations and perceived ability upon somatic and cognitive indices of sport competition trait and anxiety. *Scandinavian Journal of Medicine and Science in Sports*, 9, 333-343.
- Ommundsen, Y., Roberts, G. C., Lemyre, P.-N., & Miller, B. W. (2006). Parental and coach support or pressure on psychosocial outcomes of pediatric athletes in soccer. *Clinical Journal of Sport Medicine : Official Journal of the Canadian Academy of Sport Medicine*, 16(6), 522–526. <https://doi.org/10.1097/01.jsm.0000248845.39498.56>
- Poux, K. N., & Fry, M. D. (2015). Athletes' perceptions of their team motivational climate, career exploration and engagement, and athletic identity. *Journal of Clinical Sport Psychology*, 9(4), 360–372. <https://doi.org/10.1123/jcsp.2014-0050>
- Roberts, G. C. (2013). Advances in motivation and sport exercise. In D. C. Roberts, G. C. & Treasure (Ed.), *Advances in motivation in sport and exercise* (3rd Ed), pp. 5–58. Champaign, IL: Human Kinetics.
- Sarrazin, P., Roberts, G. C., Cury, F., Biddle, S., & Famose, J.-P. (2002). Exerted effort and performance in climbing among boys: The influence. *Research Quarterly for Exercise and Sport*, 73(4).

- Sasaki, J. (2020). How can winning on the playing field prepare you for success in the boardroom? EY: Building a better world. https://www.ey.com/en_gl/womenfast-forward/how-can-winning-on-the-playing-field-prepare-you-for-success-in-the-boardroom
- Schneider, R. A. Y., Harrington, M., & Tobar, D. (2017). Goal orientation and how a task or ego mentality can affect the enjoyment for college hockey players. *College Student Journal*, 51(1), 57-62.
- Seifriz, J. J., Duda, J. L., & Chi, L. (1992). The relationship of perceived motivational climate to intrinsic motivation and beliefs about success in basketball. *Journal of Sport & Exercise Psychology*, 14, 375–391.
- Stephens, D. E., & Kavanagh, B. (2003). Aggression in Canadian youth ice hockey: The role of moral atmosphere. *International Sports Journal*, 7, 109-119.
- Stuntz & Weiss (2009). Achievement goal orientations and motivational outcomes in youth sport: The role of social orientations. *Psychology of Sport and Exercise*, 10, 255-262.
- Theeboom, M., Knop, P. De, & Weiss, M. R. (1995). Motivational climate, psychological responses, and motor skill development in children's sport: A field-based intervention study. *Journal of Sport & Exercise*, 17, 294–311.
- Thompson, J. (2010). Positive coaching: Building character and self-esteem through sports. New York: Brown & Benchmark.

- Troutman, K., & Dufur, M. (2007). From high school jocks to college grads: Assessing the long-term effects of high school sport participation on females' educational attainment. *Youth & Society*, 38(4), 443-462. doi:10.1177/0044118X06290651
- Tudor, M. L., & Ridpath, B. D. (2018). Does the perceived motivational climate significantly predict academic and/or athletic motivation among NCAA Division I college athletes. *Journal of Contemporary Athletics*, 12(4), 291-307.
- van De Pol, P. K. C., Kavussanu, M., (2011). Achievement goals and motivational responses in tennis: Does the context matter? *Psychology of Sport & Exercise*, 12, 176-183.
- White, S., & Zellner (1996). The relationship between goal orientation, beliefs about the causes of sport success, and trait anxiety among high school, intercollegiate, and recreational sport participants. *Sport Psychologist*, 10, 58-72.
- Xiang, P., Bruene, A., & McBride, R. E. (2004). Using achievement goal theory to assess an elementary physical education running program. *Journal of School Health*, 74, 220-225.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of April, 2020, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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Individual members of the State Board of
Education,
Boise State University,
Marlene Tromp,
Individual members of the Idaho Code
Commission*

DATED this 30th day of April, 2020.

/s/ Richard Eppink

EXHIBIT A

CURRICULUM VITAE

NAME: Mary D. Fry (Previously Mary D. Walling before 8/95)

DEPARTMENT: Health, Sport & Exercise Sciences

RANK: Professor

DEPARTMENT ADDRESS:

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Robinson Center, Room 161F

1301 Sunnyside Ave.

University of Kansas

Lawrence, KS 66045

(785) 864-1862(O); mfry@ku.edu (email)

EDUCATION

DEGREE	DISCIPLINE	INSTITUTION	YEAR
BS	Physical Education	Texas Wesleyan University	1984

MS	Sport Psychology/Pedagogy	University of North Carolina- Greensboro	1990
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PhD	Sport & Exercise Psychology	Purdue University	1994
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EXPERIENCE

RANK/POSITION	DEPARTMENT/DIVISION	INSTITUTION/ORG.
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PERIOD

Professor	Health, Sport & Exercise Sci	University of Kansas	2019
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Associate Professor	Health, Sport & Exercise Sci	University of Kansas	2007-2019
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Associate Professor	Human & Sport Sciences	University of Memphis	1999-2007
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Assistant Professor Human Movement Sciences &
 Education University of Memphis 1994-1999
 Editorial Assistant Journal of Applied Sport
 Psychology 1992-1994
 Associate Investigator Indiana Youth Risk Behavior
 Indiana Dept. of Education/Centers Study for
 Disease Control 1992
 Research Consultant Grant to Study Youth Sports
 National Institute for Fitness & Sport Indianapolis,
 IN 1991
 Teaching Assistant Health, Kinesiology & Leisure
 Studies Purdue University 1990-1992
 Teaching Assistant Sport & Exercise Science U.
 North Carolina-Greensboro 1989-1990

**RANK/POSITION DEPARTMENT/DIVISION.
 INSTITUTION/ORG. PERIOD**

Middle School Teacher Physical Education Allen
 Middle School Greensboro, NC 1988-89
 High School Teacher Physical Education/English &
 Head Tennis Coach Martin High School Arlington,
 TX 1987- 88
 High School Teacher Physical Education/English &
 Head Tennis Coach Richland High School Fort
 Worth, TX 1984-87
 Instructor University of Texas-Austin Summer
 Tennis Camps 1988 & 1989

Certification. Secondary Teacher Certification in
 English and Physical Education in the State of Texas,
 1984.

HONORS/AWARDS:

Del Shankel Teaching Excellence Award Finalist
 (2018; 2019)

- Budig Teaching Professorship, University of Kansas (2018)
- Outstanding Mentor, McNair Scholars Program (2017)
- KU Woman of Distinction, (2014-2015)
- Joyce Elaine Pauls Morgan HSES Teaching Award (2013)
- Budig Teaching Professorship, Nominee (2012)
- Bird Outstanding Mentor Award, Nominee (2011)
- Service Award, School of Education, University of Kansas, Nominee (2011)
- KU Keeler Professorship, University of Kansas (2010).
- Fellow, Association of Applied Sport Psychology (2009).
- Outstanding Research Article published in *Research Quarterly for Exercise & Sport* (1997).
Presented by the Research Consortium of the American Alliance of Health, Physical Education, Recreation, & Dance.
- Outstanding Doctoral Dissertation, North American Society for the Psychology of Physical Activity (1994).
- Student Representative, CIC Big Ten Conference "Capstone of Knowledge" hosted by Michigan University, December, 1992.

RESEARCH PUBLICATIONS

Refereed Journal Publications

- Hogue, C. M., Fry, M. D., & Fry, A. C. (in press). The protective impact of learning to juggle in a caring, task-involving climate versus and ego-involving climate on participants' inflammation, cortisol, and psychological responses. *International Journal of Sport and Exercise Psychology*.

- Brown, T. C., **Fry, M. D.**, Breske, M., Iwasaki, S., & Wilkinson, T. (2019). Motivational climate and athletes' likelihood of reporting concussions in a youth competitive soccer league. *Journal of Sport Behavior*, *42*(1), 29-47.
- Fry, M. D.**, Reid, C., Iwasaki, S., & Thompson, J. (2019). Bridging theory, research, and practice in youth sports: Sport Psychology's Partnership with Positive Coaching Alliance to enhance youth sport. *Journal of Sport Psychology in Action*, *10*, 1-10.
- Hogue, C. M. **Fry, M. D.**, & Iwasaki, S. (2019). The impact of the perceived motivational climate in physical education on adolescent greater life stress, coping appraisals, and experience of shame. *Sport, Exercise, & Performance Psychology*, *8*, 273-289.
- Glover, K., & **Fry, M. D.** (2018). Helping WIN provide a winning environment for girls in their summer camps. *Journal of Sport Psychology in Action*, *9*, 1-12.
- Miller, S., & **Fry, M. D.** (2018). Relationship between climate to body esteem and social physique anxiety within college physical activity classes. *Journal of Clinical Sport Psychology*, *12*, 525-543.
- Wineinger, T. O. & **Fry, M. D.** (2018). The power of a caring/task-involving climate to help students find their life's passion. *Kansas Association for Health, Physical Education, Recreation, & Dance Journal*, *90* (1), 49-56.
- Breske, M. P., **Fry, M. D.**, Fry, A. C., & Hogue, C. M. (2017). The effects of goal priming on cortisol responses in an ego-involving climate. *Psychology of Sport and Exercise*, *32*, 74-82.
- Brown, T. C., **Fry, M. D.**, & Moore, E. W. G. (2017). A motivational climate intervention and exercise-

- related outcomes: A longitudinal perspective. *Motivation Science*, 3, 337-353
- Chamberlin, J. & Fry, M. D. (2017). High school athletes' perceptions of the motivational climate in their off-season training programs. *Journal of Strength and Conditioning Research*, 31, 736-742.
- Fontana, M. S., & Fry, M. D. (2017). Creating and validating the shame in sport questionnaire. *Journal of Sport Behavior*, 40, 278-296.
- Hogue, C. M., Fry, M. D., & Fry, A. C. (2017). The differential impact of motivational climates on adolescents' psychological and physiological stress responses. *Psychology of Sport and Exercise*, 30, 118-127.
<http://dx.doi.org/10.1016/j.psychsport.2017.02.004>
- Fontana, M. S., Fry, M. D., & Cramer, E. (2017). Exploring the relationship between athletes' perceptions of the motivational climate to their compassion, self-compassion, shame, and pride in adult recreational sport. *Measurement in Physical Education and Exercise Science*, 21, 101-111.
- Moore, E. W., G., & Fry, M. D. (2017). National franchise members' perceptions of the exercise psychosocial environment, ownership, and satisfaction. *Sport, Exercise, & Performance Psychology*, 6, 188-198.
- Moore, E. G. W., & Fry, M. D. (2017). Physical education students' ownership, empowerment, and satisfaction with PE and physical activity. *Research Quarterly for Exercise and Sport*, 88, 468-478. <https://doi.org/10.1080/02701367.2017.1372557>
- Iwasaki, S., & Fry, M. D. (2016). Female adolescent soccer players' perceived motivational climate, goal orientations, and mindful engagement. *Psychology*

- of Sport & Exercise*, 27, 222-231. <http://dx.doi.org/10.1016/j.psychsport.2016.09.002>
- Claunch, J., & **Fry, M. D.** (2016). Native American football coaches' experience of a motivational climate collaboration with sport psychology researchers. *International Journal of Sport Science & Coaching*, 11, 482-495. DOI: 10.1177/1747954116655047
- Brown, T. C., & **Fry, M. D.** (2015). Effects of an intervention with recreation center staff to foster a caring, task-involving climate. *Journal of Clinical Sport Psychology*, 9, 41-51.
- Fontana, M., Bass, J., & **Fry, M. D.** (2015). From Smith Center to Coney Island: Examining the coaching climate in the United States sporting culture. *Journal of Contemporary Athletics*, 9, 211-226.
- Fry, M. D.**, & Brown, T. C. (2015). A caring/task-involving climate intervention for youth sport camp leaders. *Kansas Association for Health, Physical Education, and Recreation Journal*.
- Moore, E. W. G., Brown, T. C., & **Fry, M. D.** (2015). Psychometric Properties of the Abbreviated Perceived Motivational Climate in Exercise Questionnaire. *Measurement in Physical Education and Exercise Science*, 19(4), 186-199.
- Poux, K., & **Fry, M. D.** (2015). Athletes' perceptions of their team motivational climate, career exploration and engagement, and athletic identity. *Journal of Clinical Sport Psychology*, 9, 360-372. <http://dx.doi.org/10.1123/jcsp.2014-0050>
- Brown, T. C. & **Fry, M. D.** (2014). College exercise class climates, physical self concept, and psychological well-being. *Journal of Clinical Sport Psychology*, 8, 299-313.

- Brown, T. C. & **Fry, M. D.** (2014). Motivational climate, staff and members' behaviors, and members' psychological well-being at a large national fitness franchise. *Research Quarterly for Exercise and Sport*, *85*, 208-217.
- Moore, W. E. G, & **Fry, M. D.** (2014). Psychometric support for the Ownership in Exercise and Empowerment in Exercise Scales. *Measurement in Physical Education and Exercise Science*, *18*, 1-17.
- Brown, T. C., & **Fry, M. D.** (2014). Evaluating the pilot of Strong Girls: A life skills/physical activity program for third and fourth grade girls. *Journal of Applied Sport Psychology*. *26*, 52-65.
- Brown, T. C. & **Fry, M. D.** (2013). Association between females' perceptions of college aerobic class motivational climates and their responses. *Women & Health*, *58*, 843-857.
- Brown, T. C., **Fry, M. D.**, & Little, T. (2013). The psychometric properties of the Perceived Motivational Climate in Exercise Questionnaire. *Measurement in Physical Education and Exercise Science* *17*(1), 17-39.
- Hogue, C. M., Pornprasertmanit, S., **Fry, M. D.**, Rhemtulla, M., & Little, T. (2013). Planned missing data designs for spline growth models in salivary cortisol research. *Measurement in Physical Education and Exercise Science*, *17*, 310-325.
- Iwasaki, S., & **Fry, M. D.** (2013). Evaluations of youth sport programs requested by sport administrators. *The Sport Psychologist*, *27*, 360-371.
- Hogue, C.M., **Fry, M. D.**, Fry, A.C., Pressman, S. D. (2013). The influence of a motivational climate intervention on participants' salivary cortisol and psychological responses. *Journal of Sport and Exercise Psychology*, *35*, 85-97.

- Fry, M. D.**, Guivernau, M., Kim, M., Newton, M., Gano-Overway, L, & Magyar, M. (2012). Youth perceptions of a caring climate, emotional regulation, and psychological well-being. *Sport, Exercise, & Performance Psychology, 1*(1), 44-57.
- Huddleston, H., **Fry, M. D.**, & Brown, T. C. (2012). Corporate fitness members' perceptions of the environment and their intrinsic motivation. *Ravista de Psicología del Deporte. 21*(1),15-23.
- Brown, T.C., & **Fry, M. D.** (2011). Helping members commit to exercise: Specific strategies to impact the climate at fitness centers. *Journal of Sport Psychology in Action, 2*, 70-80.
- Brown, T. C., & **Fry, M. D.** (2011). Strong Girls: A physical activity/life skills intervention for girls transitioning to junior high. *Journal of Sport Psychology in Action, 2*, 57-69.
- Fry, M. D.** (2010). Creating a positive climate for young athletes from day 1. *Journal of Sport Psychology in Action, 1*(1), 33-41.
- Fry, M. D.**, & Gano-Overway, L. (2010). Exploring the contribution of the caring climate to the youth sport experience. *Journal of Applied Sport Psychology, 22*(3), 294-304.
- Dodd, R., Brown, T., & **Fry, M. D.** (2010). Young athlete's perceptions of their coaches' and teammates' caring and uncaring behaviors. *Kansas Association of Health Physical Education Recreation and Dance Journal, 83*(1), 38-45.
- Binkley, S. E., **Fry, M. D.**, & Brown, T.C. (2009). The relationship of college students' perceptions of their BMI and weight status to their physical self-concept. *American Journal of Health Education, 40*, 139-145.

- Gano-Overway, L. A., Magyar, T. M., Kim, M., Newton, M., **Fry, M. D.**, & Guivernau, M. R. (2009). Influence of caring youth sport contexts on efficacy-related beliefs and social behaviors. *Developmental Psychology, 45*, 329-340.
- Newton, M., **Fry, M.D.**, Gano-Overway, L., Kim, M., Watson, D., & Givernau, M. (2007). Psychometric properties of the Contextual Caring Scale in a physical activity setting. *Revista de Psicología del Deporte, 16*, 67-84.
- Newton, M., Watson, D., **Fry, M.**, Gano-Overway, L., Kim, M., & Givernau, M. (2007). The impact of caring in physical activity. *Urban Review, 39*, 281-299.
- Haneishi, K., Fry A.C., Moore C.A., Schilling B.K., Li Y., and **Fry M.D.** (2007). Cortisol and stress responses during a game and practice in female collegiate soccer players". *Journal of Strength and Conditioning Research, 21*, 583-588.
- Magyar, M., Kim, M., Givernau, M., Gano-Overway, L., Newton, M., & **Fry, M.** (2007). The influence of leader efficacy and emotional intelligence on personal caring. *Journal of Teaching in Physical Education, 26*, 310-319.
- Bone, J., & **Fry, M.D.** (2006). The influence of injured athletes' perceptions of social support from ATCs on athletes' beliefs about rehabilitation. *Journal of Sport Rehabilitation, 15*, 156-167.
- Fry, A.C., Cirosan D., **Fry M.D.**, LeRoux C.D., Schilling B.K., and Chiu L.Z.F. (2006), Anthropometric and performance variables discriminating elite junior weightlifters. *Journal of Strength and Conditioning Research, 20*, 861-866.
- Smith, S., **Fry, M. D.**, Ethington, C., & Li, Y. (2005). The effects of athletes' perceptions of their coaching

- behaviors on their perceptions of the motivational climate. *Journal of Applied Sport Psychology*, *17*, 1-8.
- Fry, M. D.**, & Newton, M. (2003). Application of achievement goal theory in an urban youth tennis setting. *Journal of Applied Sport Psychology* *15*, 50-66.
- Abma, C. L., **Fry, M. D.**, Li, Y., & Relyea, G. (2002). Differences in imagery content and imagery ability between high and low confident track and field athletes. *Journal of Applied Sport Psychology*, *13*, 341-349.
- Walling, M. D.**, Duda, J. L., & Crawford, T. (2002). Goal orientations, outcome, and responses to youth sport competition among high/low perceived ability athletes. *International Journal of Sport Psychology*, *14*, 140-156.
- Fry, M. D.** [2000]. A developmental examination of children's understanding of task difficulty in the physical domain. *Journal of Applied Sport Psychology*, *12*, 180-202.
- Fry, M. D.** (2000). A developmental analysis of children's and adolescents' understanding of luck and ability in the physical domain. *Journal of Sport and Exercise Psychology*, *22*, 145-166.
- Fry, A.C., Webber, J. M., Weiss, L.W., **Fry, M. D.**, & Li, Y. (2000). Impaired performances with excessive high-intensity free-weight training. *Journal of Strength and Conditioning Research*, *14*, 54-61.
- Fry, M. D.**, & Lattimore, D. (2000). Fostering a positive motivational climate in physical education. *Tennessee Educational Leadership Journal*, *27*, 39-43.

- Fry, M. D., & Fry, A. C.** (1999). Goal perspectives and motivational responses of elite junior weightlifters. *Journal of Strength and Conditioning Research, 13*, 311-317.
- Newton, M., & **Fry, M. D.** (1998). Senior Olympians achievement goals and beliefs concerning success. *Journal of Aging and Physical Activity, 6*, 256-270.
- Fry, M. D.** (1998). Al Oerter: An Olympian's views as seen from a sport psychology perspective. *Strength and Conditioning, 20*, 7-14.
- Fry, M. D.** & Duda, J. L. (1997). A developmental examination of children's understanding of effort and ability in the physical and academic domains. *Research Quarterly for Exercise and Sport, 66*, 331-344.
- Walling, M. D., & Duda, J. L.** (1995). Goals and their associations with beliefs about success in and perceptions of the purpose of physical education. *Journal of Teaching in Physical Education, 14*, 140-156.
- Walling, M. D., & Duda, J. L.** (1995). Motivating kids: Balance learning and fun. *Sport Psychology Training Bulletin, 4*, 1-8.
- Duda, J. L., Chi, L., Newton, M. L., **Walling, M. D., & Catley, D.** (1995). Task and ego orientation and intrinsic motivation in sport. *International Journal of Sport Psychology, 26*, 40-63.
- Walling, M. D., & Martinek, T.** (1995). Learned helplessness in a sixth grade physical education student: A case study. *Journal of Teaching in Physical Education, 14*, 454-466.
- Walling, M. D., Duda, J. L., & Chi, L.** (1993). The perceived motivational climate in sport questionnaire: Construct and predictive validity.

Journal of Sport and Exercise Psychology, 15, 172-183.

Invited Book Chapters

- Fry, M. D.**, & Hogue, C. M. (in press). Foundational psychological theories, models, and constructs. *Certified Mental Performance Consultant Essentials Resource Guide*. Association for Applied Sport Psychology.
- Fry, M. D.**, & Moore, E. W. G. (2019). *Motivation in sport: Theory to Application*. In M. H. Anshel (Ed.), T. Petrie, E. Labbe, S. Petruzello, & J. Steinfeldt (Assoc. Eds.), *APA handbook of sport and exercise psychology: Vol. 1. Sport psychology*. Washington DC: American Psychological Association.
- Fry, M. D.**, & Hogue, C. M. (2018). Psychological considerations for children in sport and performance. In Oliver Braddick (Ed.), *Oxford Research Encyclopedia of Psychology*. New York: Oxford University Press.
- Fry, M. D.** (2014). Sport and Exercise Psychology as a Venue to Develop “Difference Makers”. In K. Vaidya (Ed.), *Exercise and Sports for the Curious: Why Study Exercise and Sports*.
- Fry, M. D.** (2001). The development of motivation in children. In G. Roberts (Ed.), *Motivation in sport and exercise (2nd Ed.)*, pp. 51-78, Champaign, IL: Human Kinetics.

Book

- Fry, M. D.**, Gano-Overway, L., Guivernau, M., Kim, M., & Newton, M. (2020). *A Coach's Guide to Maximizing the Youth Sport Experience: Work Hard and Be Kind*. NY: Routledge.

PRESENTATIONS

Invited International Presentations

- Fry, M. D.** (2019). *Achievement goal perspective theory as a framework for interventions in sport and physical activity*. Autonomous University of Baja California; Ensenada, Mexico.
- Fry, M. D. (2019).** *Utilizing goal orientations as a lens to optimize athletes' motivation*. Autonomous University of Baja California; Ensenada, Mexico.
- Fry, M. D. (2019).** *Building a caring and task-involving climate in sport through words, activities, and core values*. Autonomous University of Baja California; Ensenada, Mexico.
- Fry, M. D. (2019).** *Team building to foster positive relationships on sport teams*. Autonomous University of Baja California; Ensenada, Mexico.
- Fry, M. D.** (2016). *The power of a caring and task-involving climate in sport*. Children International; Guatemala City, Guatemala.
- Fry, M. D.** (2005, March). *Creating a positive motivational climate in physical activity settings*. Sao Paulo, Brazil.
- Duda, J. L., & **Walling, M. D.** (1993, November). *Toward a developmental theory of motivation in sport*. University of Barcelona, Barcelona, Spain.
- Walling, M. D.** (1993, November). *The examination of Nicholls' developmental theory of motivation in the physical domain*. University of Valencia, Valencia, Spain.
- Walling, M. D.** (1993, November). *Motivational aspects in physical education for school-age Children*. National Physical Education Institute, Lleida, Spain.
- Duda, J. L., & **Walling, M. D.** (1993, November). *A conceptual and empirical examination of the*

motivational climate created by coaches. University of Barcelona, Barcelona, Spain.

Refereed Presentations at National Conferences

- Fry, M. D.**, Claunch, J., Hogue, C. M., Iwasaki, S., & Peyneta, I. (2019). *Indian youth sport coaches on the Zuni reservation.* Association for Applied Sport Psychology
- Moore, E. W. G., & **Fry, M. D.** (2018). *Elementary physical education students' motivational climate perceptions predict goal orientations and physical education satisfaction.* International Society of Behavioral Nutrition and Physical Activity. Hong Kong.
- Pan, T. Y., Davis, A. M., Atchley, R. A., Forbush, K. T., Wallace, D. P., Savage, C. R., & **Fry, M.D.** (2018). *The longitudinal relationship between obesity and depression in children.* American Psychological Association, San Francisco, CA.
- Warlick, C., Krieshok, T., Frey, B., Kerr, B., . . . & **Fry, M. D.** (2018). *Does hope matter? Examining a popular positive psychology construct in a DBT intensive-outpatient community health population.* Association for Behavioral and Cognitive Therapies.
- Breske, M., **Fry, M. D.**, A., & Hogue, C. M. (2017). *The effects of goal priming on cortisol responses in an ego-involving climate.* Association for Applied Sport Psychology, Orlando, FL.
- Chamberlin, J., **Fry, M. D.**, & Iwasaki, S. (2017). *The influence of high school athletes' perceptions of the motivational climate on athletic identity and academic endeavors.* Association for Applied Sport Psychology, Orlando, FL.

- Easton, L., **Fry, M. D.**, & Iwasaki, S. (2017). *The relationship of fitness center members' goal orientations and perceptions of the motivational climate to variables related to well-being and motivational responses*. Association for Applied Sport Psychology, Orlando, FL.
- Fontana, M. & **Fry, M. D.** (2017). *Exploring the relationship between motivational climate and shame*. Association for Applied Sport Psychology, Orlando, FL.
- Fry, M. D.**, Thompson, J., Iwasaki, S., & Reid, C. (2017). *Bridging theory, research, and practice in youth sports: sport psychology's partnership with positive coaching alliance to enhance youth sport*. Association for Applied Sport Psychology, Orlando, FL.
- Glover, K., **Fry, M. D.**, & Weingartner, H. (2017). *Helping a women's intersport network provide a winning experience for girls in their summer sport camps*, Association for Applied Sport Psychology, Orlando, FL.
- Iwasaki, S., & **Fry, M. D.** (2017). *An exploration of the relationship among female adolescent athletes' perceptions of the motivational climate, goal orientation, refocusing, and peak ability*. International Society of Sport Psychology 14th World Congress, Sevilla, Spain.
- Tyler, E., Warlick, C., Cole, B., & **Fry, M. D.** (2017). *Collegiate student-athletes' perceptions of their sport team climate and level of hope*. Association for Applied Sport Psychology, Orlando, FL.
- Tyler, E., Warlick, C., Cole, B., & **Fry, M. D.** (2017). *Relationship among student-athletes' perceptions of the climate, locker room talk, and sexual behaviors*.

- Association for Applied Sport Psychology, Orlando, FL.
- Hogue, C. M., **Fry, M. D.**, & Fry, A. C. (2017). *Adolescents' Physiological Stress Responses to Motivational Climate in a Physical Education Setting*. Society for Physical Education and Health, Boston, MA.
- Claunch, J. & **Fry, M. D.** (2016). *Setting the stage for a motivational climate collaboration*. Association for Applied Sport Psychology, Phoenix, AZ.
- Chamberlin, J., **Fry, M. D.**, & Iwasaki, S. (2016). *High school athletes' perceptions of the motivational climate in their off-season Training Programs*. Association for Applied Sport Psychology, Phoenix, AZ.
- Easton, L., Iwasaki, S., & **Fry, M. D.** (2016). *The relationship of members' perceptions of the motivational climate to their Psychological well-being at a university medical center fitness facility*. Association for Applied Sport Psychology, Phoenix, AZ.
- Fry, M. D.**, Iwasaki, S., Vanorsby, H., & Breske, M. (2016). *Masters' swimmers' perceptions of the climate in their training facilities and their motivational responses*. Association for Applied Sport Psychology, Phoenix, AZ.
- Fry, M. D.**, Solomon, G., Iwasaki, S., Madeson, M., Vanorsby, H., Meisinger, R., & Haberer, J. (2016). *Division I athletes' perceptions of their team climate, mental skills, and mindfulness*. Association for Applied Sport Psychology, Phoenix, AZ.
- Hogue, C. M., **Fry, M. D.**, & Fry, A. C. (2016). *Physiological and psychological stress responses to*

- a motivational climate intervention*. Association for Applied Sport Psychology, Phoenix, AZ.
- Fontana, M., & **Fry, M. D.** (2016). *Creating and validating the Shame in Sport Questionnaire*. Association for Applied Sport Psychology, Phoenix, AZ.
- Hogue, C. M., & **Fry, M. D.** (2016). *Leader observations of participant behaviors during a motivational climate intervention: A qualitative investigation*. Association for Applied Sport Psychology, Phoenix, AZ.
- Iwasaki, S., & **Fry, M. D.** (2016). *Male High School Athletes' Perceptions of Their Team Climate and Mindful Engagement*. Association for Applied Sport Psychology, Phoenix, AZ.
- Iwasaki, S., **Fry, M. D.**, Vanorsby, H., Breske, M. (2016). *Master swimmers' perceptions of the climate in their training facilities and their motivational responses*. Association for Applied Sport Psychology, Phoenix, AZ.
- Brown, T. C., M. S., **Fry, M. D.**, Breske, M., Iwasaki, S., & Wilkinson, T. (2015). *High school athletes' perceptions of their sport team climate and their willingness to report concussion symptoms*. Association for Applied Sport Psychology, Indianapolis, IN.
- Fry, M. D.**, Brown, T. C., Iwasaki, S., Breske, M., & Wilkinson, T. (2015). *Middle school athletes' perceptions of their sport team climate and their willingness to report concussion symptoms*. Association for Applied Sport Psychology, Indianapolis, IN.
- Fry, M. D.**, & Easton, L. (2015). *Health in Action: Helping students design creative interventions*

- onsite*. Kansas Alliance for Physical Education, Health, Recreation, & Dance, Wichita, KS.
- Fontana, M. S., Iwasaki, S., Hogue, C., Claunch, J., Poux, K., & **Fry, M. D.** (2014). *Initiating mental skills training with a high school freshman baseball*. Association for Applied Sport Psychology, Las Vegas, NE.
- Fry, A.C., **Fry, M. D.**, Sterczala, A. J., Chiu, L. Z. F., Schilling, B., & Weiss, L. W. (2014). *High power resistance exercise overreaching can be monitored with a training questionnaire*. National Strength and Conditioning Association, Las Vegas, NE.
- Medina, R, **Fry, M. D.**, & Iwasaki, S. (2014). *Youngsters' perceptions of the climate and their experiences in recreational exercise classes*. Association for Applied Sport Psychology, Las Vegas, NE.
- Rosen, D., & **Fry, M. D.** (2014). *Motivational climate and seniors' experiences in group exercise classes*. Association for Applied Sport Psychology, Las Vegas, NE.
- Hogue, C. M., & **Fry, M. D.** (2013). *A qualitative examination of participant reactions to a motivational climate intervention*. Association for Applied Sport Psychology, New Orleans, LA.
- Kwon, S., & **Fry, M. D.** (2013). *Mediational role of interest and intrinsic motivation between perceived caring climate and satisfaction and attitudes among physical education students*. Association for Applied Sport Psychology, New Orleans, LA.
- Moore, E. W. G., & **Fry, M. D.** (2013). *PE teachers' perspective on a motivational climate professional development session*. Association for Applied Sport Psychology, New Orleans, LA.

- Claunch, J. & **Fry, M. D.** (2013). *Transformative learning experience: Collegiate football coaches' perceptions of participating in a motivational climate intervention*. Association for Applied Sport Psychology, New Orleans, LA.
- Moore, E. W. G., & **Fry, M. D.** (2012). *Goal orientations, motivational climate, and outcomes in physical education across one semester*. Association for Applied Sport Psychology to held in Atlanta, GA.
- Kwon, S., & **Fry, M. D.** (2012). *The change of physical educators' enjoyment and intrinsic motivation of track and field through PST*. Association for Applied Sport Psychology, Atlanta, GA.
- Iwasaki, S., & **Fry, M. D.** (2012). *Physical education students' perceptions of the climate and their psychological well-being*. Association for Applied Sport Psychology, Atlanta, GA.
- Hogue, CM., **Fry, M.D.**, Fry, A.C., & Pressman, S. D. (2012). *Participant salivary cortisol and psychological responses to a motivational climate intervention*. Association for Applied Sport Psychology, Atlanta, GA.
- Fry, M. D.**, Brown, T. C., & Iwasaki, S. (2012). *Girls' self perceptions after participating in a positive life skills/physical activity program*. Association for Applied Sport Psychology, Atlanta, GA.
- Brown, T. C., & **Fry, M. D.** (2012). *Results of a caring, task-involving climate intervention at a recreation center*. Association for Applied Sport Psychology, Atlanta, GA.
- Kwon, S., & **Fry, M. D.** (2011). *The effects of athletes' self-management on their self-confidence*. Association for Applied Sport Psychology, Honolulu, HI.

- Andre, M. J., Fry, A.C., Gallagher, P. M., Vardiman, P., **Fry, M. D.** Kudrna, B., Gandy-Moody, N., & McCartney, M. (2011). *The effects of a pre-workout caffeine supplement on endogenous growth hormone levels*. A presentation made at the meeting of the National Strength and Conditioning Association, Las Vegas, NE.
- Hogue, C. M., Iwasaki, S., & **Fry, M. D.** (2011). *A case study of a physical activity/mental skills training intervention with a young athlete*. Association for Applied Sport Psychology, Honolulu, HI.
- Iwasaki, S., & **Fry, M. D.** (2011). *The exploration of motivational climate in a youth sport basketball camp*. Association for Applied Sport Psychology, Honolulu, HI.
- Fry, M. D.** (2011). *From the Strong Girls' viewpoints: Research results from semester 1*. Association for Applied Sport Psychology, Honolulu, HI.
- Fry, M. D.** (2011). *The exercise climate: An introduction to the research on examining task-involving and caring climates in the exercise domain*. Association for Applied Sport Psychology, Honolulu, HI.
- Fry, M. D.**, Hogue, C. M., Sauer, S. (2011). *Using digital storytelling as a creative tool in health*. American Alliance of Health, Physical Education, Recreation, & Dance, San Diego, CA.
- Kwon, S., & **Fry, M. D.** (2010). *Relationship of exercisers' perceptions of the motivational climate to their flow experience*. Association of Applied Sport Psychology, Providence, RI.
- Iwasaki, S., Merczek, K., & **Fry, M. D.** (2010). *Young athletes' experiences in a volleyball camp*. Association of Applied Sport Psychology, Providence, RI.

- Iwasaki, S., Sogabe, A., *Fry, M. D.*, & Christensen, E. (2010, June). *Differences in aggression and social skills among judo and non-judo practitioners*. American College of Sports Medicine, Baltimore, MD.
- Hogue, C. M., **Fry, M. D.**, & Brown, T. C. (2010). *Incorporating team building activities in a summer day camp for children: Lessons learned*. Association of Applied Sport Psychology, Providence, RI.
- Brown, T. C., & **Fry, M. D.** (2010). *Caring climate intervention for sport skills and fitness camp leaders*. Association of Applied Sport Psychology, Providence, RI.
- Brown, T. C., & **Fry, M. D.** (2010). *Teaching life skills in a physical activity after-school program*. American School Health Association, Kansas City, MO.
- Moore, E. W., & **Fry, M. D.** (2009). *The effect of a caring and task-involving climate on student empowerment and ownership in physical activity classes*. Association for Applied Sport Psychology, Salt Lake City, UT.
- Kwon, S., & **Fry, M. D.** (2009). *Members' perceptions of their fitness club climate and their exercise flow*. Association for Applied Sport Psychology, Salt Lake City, UT.
- Hogue, C. M., **Fry, M. D.**, & Dodd, R. (2009). *Athletes' perceptions of the climate at their training centers and their motivational responses*. Association for Applied Sport Psychology, Salt Lake City, UT.
- Fry, M. D.** (2009). *From theory to practice: Creating positive and caring environments in the real world*. Association for Applied Sport Psychology, Salt Lake City, UT.

- Brown, T. C., & **Fry, M. D.** (2009). *Students' perceptions of their exercise class environment and their psychological well-being*. Association for Applied Sport Psychology, Salt Lake City, UT.
- Marshall, K., Stephens, L., Grindle, V., **Fry, M. D.**, & Li, Y. (2009). *Mental imagery and EEG activity in elite and novice collegiate soccer players*. Association for Applied Sport Psychology to be, Tampa, FL.
- Brown, T. C., & **Fry, M. D.** (2009). *Participants' perceptions of a caring and positive climate in their exercise classes*. American Alliance of Health, Physical Education, Recreation, & Dance, Tampa, FL.
- Fry, M. D.**, Dodd, R. K., & Brown, T. C. (2008). *Young athletes' perceptions of their coaches' and teammates' caring and uncaring behaviors*. Association for Applied Sport Psychology, St. Louis, MO.
- Binkley, S.E., & **Fry, M. D.** (2007). *The relationship of college students' perceptions of their BMI and weight status to their physical self-concept*. Association for Applied Sport Psychology, Louisville, KY.
- Smith, H., **Fry, M.D.**, Li, Y., & Weiss, L. (2006). *The relationship of anxiety and self-confidence to treadmill exercise tolerance tests performance by sedentary obese women*. Association for the Advancement of Applied Sport Psychology, Miami, FL.
- McCarty, L., **Fry, M.D.**, & Curly, C. (2006). *The relationship of a caring climate to motivational responses and psychological well-being in youth baseball*. Association for the Advancement of Applied Sport Psychology, Miami, FL.

- Gano-Overway, L. A., Newton, M., Magyar, AM., **Fry, M. D.**, Kim, M., & Guivernau, M. (2006). *Caring, self-regulatory efficacy, empathic efficacy, and prosocial/antisocial behaviors in a physical activity setting*. Association for the Advancement of Applied Sport Psychology, Miami, FL.
- Fry, A.C., Haneishi, K., Moore, C.A., Schilling, B.K., Li, Y., & **Fry, M.D.** (2006). *Cortisol and stress responses during a game and practice in female collegiate soccer players*. National Conference on Student Assessment, Washington, D.C.
- Bricker, J. B., & **Fry, M. D.** (2005). *The influence of injured athletes' perceptions of social support from their certified athletic trainers on athletes' beliefs about rehabilitation*. Association for the Advancement of Applied Sport Psychology, Vancouver, British Columbia, Canada.
- Magyar, M., Guivernau, M., Gano-Overway, L., Newton, M., **Fry, M.D.**, Kim, M., & Watson, D. (2005). *Exploring the relationship between the caring climate and achievement goal theory among underserved youth in physical activity*. American Alliance of Health, Physical Education, Recreation & Dance, Chicago, IL.
- Fry, M.D.**, & Newton, M. (2004, September). *The development of the Caring Climate Questionnaire*. Association for the Advancement of Applied Sport Psychology, Minneapolis, MN.
- Smith, S., **Fry, M.D.**, & Ethington, C. (2004, September). *The effect of female athletes' perceptions of their coaches' behaviors on their perceptions of the motivational climate*. Association for the Advancement of Applied Sport Psychology, Minneapolis, MN.

- McCay, K., & Fry, MD. (2004, September). *The examination of goal perspective theory in relationship to measures of psychological well-being*. Association for the Advancement of Applied Sport Psychology, Minneapolis, MN.
- McCay, K., & Fry, M.D. (2004, March). *Predictors of adolescent depression: The role of physical activity and body image*. Society of Behavioral Medicine, Baltimore, MD.
- Henry, H., & Fry, M.D. (2003, October). *Corporate fitness members' perceptions of the motivational climate, their intrinsic motivation, and perceptions of being valued by their employer*. Association for the Advancement of Applied Sport Psychology, Philadelphia, PA.
- Fry, M.D., Pittman, L., McCay, K., & Wendell, M. (2003, October). *A qualitative examination of underserved 4th grade girls' views about physical education*. Association for the Advancement of Applied Sport Psychology, Philadelphia, PA.
- Fry, M. D., Abma, C., Wood, J., & Melland, B. (2002, October). *The effects of an after-school physical activity and life skills program on 4th graders' self concept, motivational perspectives, and fitness levels*. Association for the Advancement of Applied Sport Psychology, Tucson, AZ.
- Abma, C., & Fry, M. D. (2002, October). *The effects of an imagery intervention on the trait confidence levels of female college volleyball players*. Association for the Advancement of Applied Sport Psychology, Tucson, AZ.
- Duda, J.L., Smith, M., & Fry, M. D. (2002, June). *An examination of learned helpless responses among young children engaged in physical tasks*. North

- American Society for the Psychology of Sport and Physical Activity, Baltimore, MD.
- Newton, M., **Fry, M.D.**, & Bernhardt, P. (2001, October). *Examination of the interactive relationship of goal orientations, perceptions of the motivational climate, and perceived ability in youth tennis players*. Association for the Advancement of Applied Sport Psychology, Orlando, FL.
- Abma, C. & **Fry., M. D.** (2001, May). *A qualitative examination of underserved 8th grade female students' attitudes about physical education*. 10th World Congress of Sport Psychology held in Skiathos, Greece.
- Lattimore, D., **Fry, M. D.**, & Balas, C. (2000, October). *Students' perceptions of the motivational climate and their motivational responses in physical education*. Association for the Advancement of Applied Sport Psychology, Nashville, TN.
- Fry, M. D.**, Lattimore, D., & Balas, C. (2000, October). *A developmental examination of children's accuracy in judging their physical ability in physical education*. Association for the Advancement of Applied Sport Psychology, Nashville, TN.
- Fry, M.D.**, & Newton, M. (1999, September). *Goal orientations, perceptions of the motivational climate, and motivational responses of urban youth tennis players*. Association for the Advancement of Applied Sport Psychology, Banff, Canada.
- Fry, M. D.**, Lattimore, D., & Balas, C. (1999, September). *A developmental analysis of conceptions of effort and physical ability among underserved youth*. Association for the

- Advancement of Applied Sport Psychology, Banff, Canada.
- Harber, M. P., **Fry, M. D.**, & Fry, A. C. (1998). *Sources of stress identified by elite collegiate weightlifters*. A paper presented at the annual meeting of the National Strength and Conditioning Association, Nashville, TN.
- Fry, M. D.**, Fry, A. C., & Newton, M. (1997, September). *Sources of stress identified by elite junior weightlifters*. Association for the Advancement of Applied Sport Psychology, San Diego, CA.
- Newton, M., **Fry, M. D.**, & Sandberg, J. (1997). *Goal orientations and purposes of sport and beliefs concerning success among senior Olympians*. North American Society for the Psychology of Sport and Physical Activity, Denver, CO.
- Fry, M. D.** (1997, March). *Symposium: Goal perspectives in physical education and sport: Theory into practice*. American Alliance for Health, Physical Education, Recreation, and Dance, St. Louis, MO.
- Fry, M. D.** (1996, October). *Children's understanding of luck and ability: A developmental analysis*. Association for the Advancement of Applied Sport Psychology, Williamsburg, VA.
- Fry, M. D.** (1996, October). *The motivational climate in sport and physical education: An introduction to theory and research*. Association for the Advancement of Applied Sport Psychology, Williamsburg, VA.
- Fry, M. D.**, & Fry, A. C. (1996, June). *Goal perspectives and motivational responses of elite junior weightlifters*. National Strength and Conditioning Association, Atlanta, GA.

- Fry, M. D., & Alexander, C.** (1996, June). *Children's understanding of task difficulty: A developmental analysis*. North American Society for the Psychology of Sport and Physical Activity, Cleveland's House, Canada.
- Duda, J. L., & **Walling, M. D.** (1995, October). *Views about the Motivational climate and their self perceptions/affective correlates: The case for young elite female gymnasts*. Association for the Advancement of Applied Sport Psychology, New Orleans, LA.
- Newton, M. L., & **Walling, M. D.** (1995, October). *Goal orientations and beliefs about the causes of success among senior Olympic games participants*. North American Society for the Psychology of Sport and Physical Activity, Asilomar, CA.
- Walling, M. D.** (1994, October). *Developmental differences in children's views regarding physical competence*. Association for the Advancement of Applied Sport Psychology, Lake Tahoe, NV.
- Walling, M. D., & Duda, J. L.** (1994, June). *Children's understanding of effort and ability in the physical domain*. North American Society for the Psychology of Sport and Physical Activity, Clearwater Beach, FL.
- Walling, M. D., Duda, J. L., Newton, M., & White, S.** (1993, October). *The Task and Ego Orientation in Sport Questionnaire: Further analysis with youth sport participants*. Association for the Advancement of Applied Sport Psychology, Montreal, CANADA.
- Walling, M. D., & Duda, J. L.** (1993, March). *Goals and their associations with beliefs about success in and perceptions of the purpose of physical education*. American Alliance for Health, Physical

Education, Recreation, and Dance, Washington, DC.

- Walling, M. D.** (1993, February). *Children's conceptions of effort and ability in the physical domain: A dissertation in progress*. Midwest Sport Psychology Symposium, Miami University, Oxford, OH.
- Walling, M. D.,** Duda, J. L., & Crawford, T. (1992, October). *The relationship between goal orientations and positive attitudes toward sport and exercise among young athletes*. Association for the Advancement of Applied Sport Psychology, Colorado Springs, CO.
- Walling, M. D.,** Duda, J. L., & Crawford, T. (1992, June). *The psychometric properties of the perceived motivational climate in sport questionnaire: Further investigation*. North American Society for the Psychology of Sport and Physical Activity, Pittsburgh, PA.
- Walling, M. D.,** Crawford, T., Duda, J. L., & Wigglesworth, J. (1992, April). *Are we having fun yet and will we want to play again?: The interrelationships between goal perspectives and other motivational variables in youth sport athletes*. American Alliance for Health, Physical Education, Recreation, and Dance, Indianapolis, IN.
- Walling, M. D.,** & Catley, D. (1992, April). *Jack and Jill in physical education class: Do they think their instructor treats them differently?* American Alliance for Health, Physical Education, Recreation, and Dance, Indianapolis, IN.
- Walling, M. D.,** & Catley, D. (1992, February). *Sex role stereotyping among college instructors and students' perceptions of instructor gender bias*.

Midwest Sport Psychology Symposium, Purdue University, West Lafayette, IN.

- Walling, M. D.**, Catley, D., & Taylor, A. (1991, June). *The interrelationships between goal perspectives, perceived competence, and indices of intrinsic motivation*. North American Society for the Psychology of Sport and Physical Activity, Asilomar, CA.
- Walling, M. D.** (1991, April). *Learned helplessness: A case study of a sixth-grade physical education student*. American Alliance for Health, Physical Education, Recreation and Dance, San Francisco, CA.

Webinar

- Fry, M. D., & Hogue, C. M. (2019). *Theories and Models in Sport Psychology: A Review*. Association for the Advancement of Applied Sport Psychology.

State/Regional Presentations

- Gray, R., & **Fry, M. D.** (2020). *Employing a buddy system to foster physical activity among college students with a physical disability*. Midwest Sport Psychology Symposium, Illinois State University.
- Wineinger, T., & **Fry, M. D.** (2020). A collaboration between a sport psychology lab with a youth sport organization: Helping WIN create an optimal sport experience. Midwest Sport Psychology Symposium, Illinois State University.
- Fry, M. D.** (2018). *Three ideas for incorporating sport psychology into practice and competition*. Greenbush Coaches' Workshop.
- Fry, M. D.** (2018). *Three more ideas for incorporating sport psychology into practice and competition*. Greenbush Coaches' Workshop.

- Fry, M. D.** (2017). *Sport Psychology: Setting a Positive Tone for the Team* (Sessions A & B, repeated). Greenbush Fall Coaches' Workshop.
- Fry, M. D.** (2016). *KU Graduate Programs in Health, Sport & Exercise Science*. Morehouse College Graduate Program Fair (February, 2016).
- Fry, M. D.** (2016, Fall). *Keys to Helping Athletes Develop Strong Mental Skills: The Role of Sport Psychology*. Keynote for Greenbush Coaching Conference, Eudora, KS.
- Fry, M. D.** (2016, Spring). *Working with and bringing out the best in difficult athletes*. Greenbush Coaching Conference, Eudora, KS.
- Fry, M. D.** (2015). *Bringing out the Best in Every Swimmer: The Contribution of Sport Psychology*. Keynote delivered to US Master Swim at their National Conference; Kansas City, KS.
- Fry, M. D.** (2015). *Caring Climates for Physical Activity Settings*. University of Milwaukee, Wisconsin.
- Fry, M. D.** (2015). *Creating a Caring Climate to Maximize Athletes' Potential On and Off the Field*. Keynote presented at the Positive Coaching Alliance Trainers' Institute.
- Fry, M. D.** (2015). *Maximizing Athletes' Potential On and Off the Field*. Keynote delivered to X's and O's Coaching Education Workshop, Emporia State University, Emporia, KS.
- Fry, M. D.** (2015). *Setting the Stage for Coaches to Optimize Athletes' Motivation*. Big XII invited lecture at Texas Christian University; Fort Worth, TX.
- Fry, M. D., Moore, E., W., G., Iwasaki, S., Fontana, M., Hogue, C., Claunch, J., & McGhee, R.** (2012). *Building Mentally Strong Athletes: Ideas for*

- Incorporating Mental Skills Training with Sport Teams*. Kansas Alliance for Health, Physical Education, Recreation, & Dance in Lawrence, KS.
- Fry, M. D.** (2012). *Strong Girls: Hearing About the Benefits of a Physical Activity/Positive Life Skills Program from the Leaders and Kids*. Kansas Alliance for Health, Physical Education, Recreation, & Dance in Lawrence, KS.
- Moore, E. W., & **Fry, M. D.** (2010). *Kids don't care what you know until they know that you care: Tips for building caring environments*. Kansas Alliance for Health, Physical Education, Recreation & Dance, Wichita, KS.
- Brown, T., **Fry, M. D.**, & Hogue, C. (2010). *Positive life skills for every walk of life*. Kansas Alliance for Health, Physical Education, Recreation & Dance, Wichita, KS.
- Fry, M. D.**, Brown, T., Moore, E. W., Hogue, C., Sauer, S., & Beyer, J. (2010). *Team time: Team building activities for any group to use and process*. Kansas Alliance for Health, Physical Education, Recreation & Dance, Wichita, KS.
- Williamson, K., & **Fry, M. D.** (2009). *Bringing out the best in your athletes: Making sport fun again while enhancing your team's competitive edge*. Kansas Alliance for Health, Physical Education, Recreation & Dance, Pittsburg, KS.
- Moore, W. E., & **Fry, M. D.** (2009). *Are we building character or characters?: Strategies for promoting integrity among young athletes*. Kansas Alliance for Health, Physical Education, Recreation & Dance held in Pittsburg, KS.
- Brown, T. C., & **Fry, M. D.** (2009). *Ideas to implement in a youth physical activity life skills program*.

Kansas Alliance for Health, Physical Education, Recreation and Dance held in Pittsburg, KS.

Fry, M. D., Dodd, R., Brown, T. C. (2008). *Getting them interested and coming back: Creating a positive and caring environment in exercise settings*. Kansas Association of Health, Physical Education, Recreation and Dance, Emporia, KS.

Fry, M. D. (2005). *Creating a Positive Climate and Optimizing Motivation in Physical Education & on Sport Teams*. An invited presentation for the Lutheran Schools Midsouthern Regional Conference held in Memphis, TN.

SUPPORT EXTERNAL FUNDING	AGENCY/SOURCE	AMOUNT	PERIOD
Rock Chalk, Zuni	Running Strong for American Indian Youth	\$5000	2017-2018
KU PCA Initiative	Positive Coaching Alliance/ David and Margaret Shirk Physical Education Programs Fund	\$25,000	2017-2018
Strong Girls: A positive life skills intervention for 3 rd -5 th girls	Kohl's Cares for Kids	\$4000	2011
Students' salivary stress responses when juggling in two distinct motivational climates	Association of Applied Sport Psychology	\$2800	2010-11
Effects of resistance exercise and a Pre-workout dietary supplement on Physiological adaptations	Labrada	\$5000	2010
Strong Girls: A positive life skills physical activity intervention for elementary school girls	Association of Applied Sport Psychology	\$3220	2009-10
Fostering & maintaining motivation among urban youth tennis players	United States Tennis Association	\$10,000	1997-98
EXTERNAL PROPOSALS NOT FUNDED	AGENCY/SOURCE	AMOUNT	PERIOD
Children's International Guatemala & US Collaboration	ASportsUnited: International Sports Programming Initiative	\$224,953	2012
Dare to Care: Tackling Childhood Obesity	Albert Foundation	\$46,000	2013
Strong Girls: A positive life skills/physical activity program	Live-Well Lawrence-Kansas Health Foundation	\$5000	2011
Strong Girls: A positive life skills/physical activity program for girls	Payless Foundation	\$15,000	2011
Strong Girls: A positive life skills/Physical activity program for children	Sprint Foundation	\$168,000	2011
SUPPORT INTERNAL FUNDING	AGENCY/SOURCE	AMOUNT	PERIOD
Research Excellence Initiative" A Collaboration to Train Biology Lab Instructors to Create a Caring & Task Involving Climate	University of Kansas; College of Liberal Arts & Sciences	\$30,000 (under review)	2019-2020
Strong Girls: A community life skills/physical activity research and service project for elementary girls in Lawrence.	University of Kansas KU SOE Academic Year Research Support	\$8000	2011
Examining the motivational climate in a national fitness company.	University of Kansas Faculty Research Grant	\$5000	2010

Strong Girls: A physical activity and life skills intervention for faculty adolescent girls.	University of Kansas Research Grant	\$6000	2009
A team building/mental skills intervention for children enrolled in a summer camp.	University of Kansas New Faculty Research Grant	\$8000	2008
The relationship between young athletes' perceptions of a caring climate on their sport teams to their motivational responses	University of Memphis Faculty Research Grant	\$6000	2005
Effect of a strength training intervention for underserved elementary students	University of Memphis Faculty Research Grant	\$4000	2000-02
An examination of black females' perceptions of physical activity	Center for Research on Educational Policy, University of Memphis	\$5000	2000
Children's perceptions of ability and their motivational responses in physical education class.	Center for Research on Educational Policy, University of Memphis	\$3800	1999
The motivational implications of students' understanding of effort and ability in the physical domain.	University of Memphis Faculty Research Grant	\$4000	1995
Children's understanding of luck and ability, and task difficulty.	University of Memphis Faculty Research Grant	\$3000	1994
Developmental differences in children's conceptions of ability, effort, and task difficulty in the physical domain.	Purdue Foundation Grant	\$9,900 (per year for 2 years)	1992-94

Memberships in Professional Organizations

American Psychological Association (2017-present)
 American Alliance for Health, Physical Education, Recreation, and Dance (1988-2017).
 Association for Applied Sport Psychology, Member (1991-present).
 Kansas Alliance for Health, Physical Education, Recreation, & Dance (2008-present).
 North American Society for the Psychology of Sport and Physical Activity, Member (1988-2000).
 Indiana Association for Health, Physical Education, Recreation, and Dance, Member (1993-1994).

Tennessee Association for Health, Physical Education, Recreation, and Dance, Member (1994-2000).

Teaching Responsibilities:

Undergraduate

- EXSS 3307 Psychosocial Aspects of Sport [UMemphis]
- EXSS 3450 Psychological Aspects of Exercise [UMemphis]*
- EXSS 4605 Internship in Exercise & Sport Science [UMemphis]
- EXSS 4999 Senior Project in Health, Physical Education, & Recreation [UMemphis]*
- HSES 385 Psychological Aspects of Exercise [KansasU]*
- HSES 440 Applied Sport Psychology [KansasU]*
Graduate
- EXSS 7173 Sport and Exercise Psychology [UMemphis]*
- EXSS 6903 Developmental Perspectives in Youth Sport [UMemphis]*
- EXSS 7133 Current Readings: Motivation in Physical Activity Settings [UMemphis]*
- EXSS 7907 Special Topics: Applied Sport Psychology [UMemphis]*
- HSES 798 Special Course: Creating a Positive Environment in Physical Activity Settings [KansasU]*
- HSES 798 Special Course: Sport Psychology Within Youth Sport [KansasU]*
- HSES 798 Special Course: Advanced Sport Psychology [KansasU]**

- HSES 804 Sport Psychology [KansasU]**
 HSES 806 Stress Management [KansasU]*
 HSES 823 Behavior Modification [KansasU]
 HSES 892 Psychological Foundations of Sport
 and Physical Activity [KansasU] *
 HSES 982 Research Ethics [KansasU]

*Courses I developed.

Community Presentations

- Fry, M. D.** (November, 2017). *Lead campus participation in celebration of World Kindness Day.*
- Fry, M. D.** (June, 2016). *Mental Skills: A Key Ingredient for Excellence in Cross Country.* Workshop for Eudora High School Cross Country Team; Eudora, KS.
- Fry, M. D.** (2016). *Creating a Caring and Task-Involving Climate in CI's Game On Program.* A presentation for CI Employees at the International Headquarters Office in Kansas City, KS.
- Fry, M. D.** (2016). *Team Building: The Potential for Children International.* Workshop for Children International Employees at the National Headquarters office in Kansas City, KS.
- Fry, M. D.** (2015). *Activities and Strategies to Help Children and Adolescents Thrive in Physical Activity Settings.* Topeka Parks and Recreation Conference; Topeka, KS.
- Fry, M. D.** (2015). *Fostering Wellness at the Worksite.* Live Well Lawrence; Lawrence, KS.
- Fry, M. D.** (2011, Nov.). Guest panelist for KU Alternative Breaks, University of KS
- Fry, M. D.** (2011, Nov.). Guest speaker for Multicultural Education, University of KS.
- Fry, M. D.** (2011, Nov.). Guest speaker for Coaching Football Class, University of KS.

- Fry, M. D.** (2011, Oct.). Guest speaker for KU Bowling Team, University of KS.
- Fry, M. D.** (2011, April). Guest speaker for Positive Psychology Class, University of KS.
- Fry, M. D.** (2011, March). Guest speaker for Coaching Softball Class, University of KS.
- Fry, M.D.** (2011, Feb.). Guest speaker for Coaches Meeting for Sunflower Soccer Association, Topeka, KS.
- Fry, M. D.** (2010). Guest speaker for Healthy Musicians Class (2-hour workshop), University of KS.
- Fry, M. D.** (2009). Guest speaker for Life Skills Class at Atchison Community High School, KS.
- Fry, M. D.** (2005, Feb.). Caring communities within physical activity settings. An invited presentation to a Memphis Chapter of the Philanthropic Educational Organization.
- Fry, M. D.** (2001-present). Coordinate mental skills and physical activities for youngsters (i.e., cancer patients & their siblings) at Target House in Memphis, TN. Have conducted approximately 12 1.5-2 hour sessions.
- Fry, M. D.** (2002, July 17th). The role of sport psychology in the prevention of and rehabilitation after injury. A presentation for coaches attending the Memphis Interscholastic Athletic Association Conference.
- Fry, M. D.** (May, 2002). Presented stress management session for Cancer Support Group at Pentecostal Church in Memphis, TN.
- Fry, M. D.** (2001-present). Coordinate mental skills and physical activities for youngsters (i.e., cancer patients & their siblings).

- Fry, M. D.** (2000 & 2001, March-April). Coordinator for Short Putts to Spring Workshops for the MidSouth Junior Golf Association. Presenter for 2 of the 5 workshops on team building skills.
- Fry, M. D.** (1996). Optimizing arousal levels in tennis. A presentation to the Women's tennis team at The University of Memphis.
- Fry, M. D.** (1995, October). *Mental skills training in track and field*. A presentation to the Women's track and cross country teams at The University of Memphis.
- Walling, M. D.** (1995, February). *Maximizing your children's motivation in swimming: An educational sport psychology perspective*. A presentation to the Booster Club parents of the University of Memphis Swim Club.
- Walling, M. D.** (1995, February). *Fostering effort and enjoyment with your tennis players: A sport psychology perspective*. An invited talk which was part of a workshop sponsored by the USTA, the National Umpires Association and the Memphis City Schools for high school tennis coaches.
- Walling, M. D.** (1994). *Sport psychology with a developmental twist*. An invited presentation to the Sport Psychology Colloquium, Department of Psychology, University of Memphis.
- Walling, M. D.** (1993, October). *The influence of parents on young gymnasts' levels of stress and motivation*. An invited presentation sponsored by the United States Gymnastics Federation, Indianapolis, IN.
- Walling, M. D.** (1992, October). *The mechanics of sport psychology: What we do and how it impacts you and your family*. Presentation to the Purdue Mechanical Engineering Advisory Board Spouses.

- Walling, M. D.** (1991, July). *Stress Management*. Invited presentation sponsored by the National Institute for Fitness and Sport.
- Walling, M. D., & Newton, M.** (1991, October). *Sport Psychology for the Weekend Athlete*. Invited presentation sponsored by the Eli Lilly Corporation, Indianapolis, IN.

Departmental/University Service

- Kansas Women's Leadership Institute, Net-Walk Mentor Participant (2016-2017).
- KU Certificate in Sport Committee (2017-2018).
- KU Center for Undergraduate Research, Advisory Board (2016-2018).
- KU Calendar Committee (2016-2018; Chair, 2017-2019).
- SOE Scholarship & Awards Committee (2013-2019).
- SOE Convocation Volunteer (2009-present).
- HSES Faculty Search Committees (2009, 2010, 2012, 2013, 2014, 2015).
- HSES Scholarship & Awards Committee (2010-2013), University of Kansas.
- HSES Personnel Committee (2011-present), University of Kansas.
- HSES Graduate Curriculum Committee (2008-2014), University of Kansas.
- SOE Diversity Committee (2013-2016), University of Kansas.
- SOE Technology Committee (2011-2013), University of Kansas.
- SOE Governance Committee (2011-2013), University of Kansas.
- SOE Personnel Committee (2007-2010), University of Kansas.

University of Kansas, Dean of the School of Education
5-year Review Committee (2014).
President's Tenure & Promotions Appeal Committee.
(2007-2009). The University of Memphis.
HSS Community Affairs Committee (2004-2006). The
University of Memphis.
Coordinator of Achievement Motivation Seminar
(2003). The University of Memphis, Dept. HMSE.
PETE Unit Head, Dept. of HMSE, University of
Memphis (2001-2003).
HMSE Tenure and Promotion Committee (1999-2000;
Chair 2000-2001), The University of Memphis.
HMSE Coordinator for the Science Olympiad
sponsored by The University of Memphis for high
school honor science students in the Western
portion of TN (1995-1999).
Dean's Council for Teacher Education (1994-1995),
University of Memphis.
HMSE Material Resources Committee (1994-1995;
1998-2000, 2002; 2000-2001, Chair), University of
Memphis.
HMSE Ad Hoc Committee on Internships (1994-
1995), University of Memphis.
HMSE Recruitment Committee (1995-1996).
HMSE Physical Education Teacher Education Unit
(1994-present; Unit Head-2001-2002), University
of Memphis.
HMSE Ad Hoc Committee on Proposing a PhD
Program (1995-1997).
HMSE Undergraduate Council (1994-95 & 1997-
1998)
HMSE Academic Council (1996-1998).
HMSE Graduate Studies and Research Council
(1995-2001; chair from 1996-1998)
College of Education Graduate Council (1996-1998).

Graduate Coordinator for the Department of Human Movement Sciences and Education, (1996-1998).

Service to National Organizations

Subject Matter Expert for the Certification Exam Committee, Association of Applied Sport Psychology (2018).

Member of Ad-Hoc Committee to Study Future of AASP, Association of Applied Sport Psychology (2012-2015).

Member of the Social Psychology Section Committee, Association for the Advancement of Applied Sport Psychology (AAASP). Appointed for a 3-year-term, 1996-99; 2001-2003.

Member of AAASP Dissertation Award Committee (1998 & 2002).

Member of Editorial Board for *Physical Activity Today* (American Alliance for Health, Physical Education, Recreation and Dance publication), 1997-2001.

Member of Sport Psychology Program Area Review Committee for the 1996 Annual Meeting of the North American Society for the Psychology of Sport and Physical Activity (NASPSPA).

Executive Board Member, Association for the Advancement of Applied Sport Psychology, (2004-2006).

Member of Program Review Committee, American Alliance of Health, Physical Education, Recreation & Dance (2009- 2017); Chaired committee in 2010.

Member of Program Review Committee, Association for Applied Sport Psychology (2008-present).

Reviewing/Editing Responsibilities

Associate Editor (2009-2012); Editorial Board Member (2000-2009; 2013-present) and Reviewer (1992-1999). *Journal of Applied Sport Psychology*.

Associate Editor. *Sport Psychology in Action* (2008-present).

Editorial Board Member. *Sport, Exercise, and Performance Psychology* (2011-present; American Psychological Association Journal).

Sport & Exercise Psychology Section Editor (2003-2006) and Reviewer (1994-present). *Research Quarterly for Exercise and Sport*.

Co-editor with David R. Black of Abstracts Column. *Peer Facilitator Quarterly* (1993-1994).

Reviewer. *Education and Treatment of Children* (1993-1995).

Reviewer. *Journal of Health Education* (1993-1995).

Reviewer. *The Sports Psychologist* (1997-present).

Reviewer. *International Journal of Sport Psychology*. (1997-present).

Reviewer. *Journal of Sport and Exercise Psychology* (1993-present).

Reviewer. *Journal of Strength and Conditioning* (1998-present).

Reviewer & Editorial Board Member. *Journal of Strength and Conditioning Research* (Reviewer, 1996-present; Editorial Board Member, 1996-1998).

Contributor to Community/National Forum

Fry, M. D. (Fall, 2017). *Participating in a Positive Sport Climate Reaps Many Benefits for Young People*. Column written for the National Dropout Prevention Coalition-Newsletter.

- Fry, M. D.** (2017). *The Power of the Positive*. Contributor to the Positive Coaching Alliance Video.
- DeAngelis, T. (2016) *Psychologists' research points ways to keep youth athletes in sports*. American Psychological Association Monitor Newsletter [KU Sport & Exercise Psychology Lab featured]
- Fry, M.D.** (2003). *Coaches' rant can bench kids for life*. Invited guest column in the Viewpoint Section of the Commercial Appeal, April 7, 2003.
- Fry, M.D.** (2003, March). *Strategies for creating a task-involving climate with underserved youth*. An invited presentation to the Dept. of EXSS at the University of Mississippi.
- Fry, M.D.** (2002). Presenter of workshop entitled: *The Climate Counts: Techniques and Strategies for Fostering a Task-Involving Motivational Climate*.
- Fry, M. D., & Newton, M. L.** (1997, December). *TARGETing success in volleyball: Creating a positive motivational climate*. Invited speaker at the American Volleyball Coaches Association (AVCA) National Convention preceding the NCAA Final Four Tournament in Spokane, WA.
- Fry, M. D.** (1996, April). Invited speaker at Colonial Junior High's Career Day.
- Fry, M. D.** (February, 1995 & October, 1996). Invited guest on Eddie Cantler's talk-show, "The Trainer's Corner" seen on the Library Channel, Memphis, TN.
- Walling, M. D.** (1995). Choosing quality youth sport programs for children: The critical role of parents. *Journal of Kinetic Arts*, 1 (5).

Applied Sport Psychology Experiences

- Fry, M. D. (2018-present). Mental Skills Interventions with high school & university athletes.
- Fry, M. D. (2013-2018). Mental Skills Intervention with a high school baseball team.
- Fry, M. D. (2009-2011). Mental Skills Intervention with a youth baseball team.
- Fry, M. D. (2008-2010). Mental Skills Intervention with a Division 1 collegiate volleyball team.
- Fry, M.D. (2006-2007). Mental Skills Intervention with a high school basketball team.
- Fry, M. D. (2006). Mental Skills Intervention with a Division 1 cross country team.
- Fry, M.D. (2005-2006). Mental Skills activities with a high school golfer.
- Fry, M.D. (2003). Mental Skills Activities provided to the Dolphins, a youth synchronized swim program in Memphis.
- Fry, M.D. (2001-2007). Mental Skills Games and Activities Sessions provided to residents of Target House (i.e., long-term treatment patients at St. Jude Hospital).
- Fry, M. D. (2001, Spring). The Strength Club. An after-school mental skills training program for elementary-aged children.
- Fry, M. D. (1996, Spring). Consultation with members of a Division 1 collegiate Track and Field Team.
- Walling, M. D. (1994, December). Member of Sport Psychology Coaching Staff for the Talent Opportunity Program (TOP) Camp sponsored by the United States Gymnastics Federation (USGF). Tulsa, OK

Walling, M. D. (1992, October). Effective Goal Setting in Volleyball. Presentation to the West Lafayette High School Volleyball Team.

Walling, M. D. (1992, April). Stress Management in Sport. Presentation to the Women's Crew Team, Purdue University.

Walling, M. D. (1992). Consultation with High School Tennis Player Over a Season.

Chair, Graduate Student Advisory Council, Department of Health, Kinesiology, and Leisure Studies at Purdue University, 1991-1992.

Richard Eppink (Bar No. 7503) AMERICAN CIVIL LIBERTIES UNION OF IDAHO FOUNDATION P. O. Box 1897 Boise, ID 83701 United States T: (208) 344-9750 ext. 1202 REppink@acluidaho.org	Elizabeth Prelogar* COOLEY LLP 1299 Pennsylvania Avenue, NW Suite 700 Washington D.C. 20004-2400 T: (202) 842-7800 F: (202) 842-7899 eprelogar@cooley.com
Gabriel Arkles* James Esseks* Chase Strangio* AMERICAN CIVIL LIBERTIES UNION FOUNDATION 125 Broad St., New York, NY 10004 T: (212) 549-2569 garkles@aclu.org jesseks@aclu.org cstrangio@aclu.org	Andrew Barr* COOLEY LLP 380 Interlocken Crescent, Ste. 900 Broomfield, CO 80021-8023 T: (720) 566-4000 F: (720) 566-4099 abarr@cooley.com
Kathleen Hartnett* COOLEY LLP 101 California Street 5th Floor San Francisco, CA 94111-5800 T: (415) 693-2000 F: (415) 693-2222 khartnett@cooley.com	Catherine West* LEGAL VOICE 907 Pine Street, Unit 500 Seattle, WA 98101 T: (206) 682-9552 F: (206) 682-9556 cwest@legalvoice.org

* Admitted *Pro Hac Vice*

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

LINDSAY HECOX, et al.,

Plaintiffs,

v.

BRADLEY LITTLE, et
al.,

Defendants.

No. 1:20-cv-00184-
CWD

**DECLARATION OF
PLAINTIFF
LINDSAY HECOX
IN SUPPORT OF
MOTION FOR
PRELIMINARY
INJUNCTION**

I, Lindsay Hecox, depose and say as follows:

1. I have personal knowledge of the facts herein. I am one of the plaintiffs in this case. I am nineteen years old and a freshman at Boise State University. I am a woman who is transgender.

2. I have a passion for running. I want to have the opportunity to be on a women's team and compete.

Experience running before college

3. I have always been a good runner. Even in grade school, I was noticed for my running ability and began to receive compliments. In middle school, I became more passionate about running. I wasn't on a team yet, but I was running as much as I could. It was my daily exercise. It has been a huge part of my life since then. Running has also helped my mental health.

4. My first experience running on a team was in high school, when I joined the track team my

freshman year and the cross-country team my sophomore year. The experience was life changing. That's when I realized how much I like running with others and competing.

5. Running became my trademark thing in high school. I was the "runner person." I was known for doing it.

6. I had poor grades my freshman year of high school, but once I started running on a team and competing, my grades improved. I felt more competent and had a better sense of my identity.

7. I've found the positive energy of team competition bleeds over to other areas of my life. I remember in high school, at first I didn't feel like doing homework. But I found that when I put all my internal motivation into an upcoming race, it would increase my ability to complete my homework on time. The only way I can describe it is that the positive energy passes on to other areas of my life.

8. The team aspect of sports was really great for me. My teammates and I would hang out together after running or after meets. Those activities really brightened my life. I really enjoy forming relationships with my teammates.

9. I'm more motivated on a team because I don't want to let my team down. I always run better when I have someone running with me – it makes me want to run faster. In high school, I always wanted to do my best for my coaches and teammates. I wanted to show my team that I tried my best during the meet.

Starting college and transition

10. When I was thinking about college, Boise State appealed to me partly because of its beautiful campus and running trails.

11. Since I have been in college, I have been able to publicly express myself and live as the woman that I am and to begin my medical transition. I have been taking hormone therapy and my peers see me as just one of the girls.

12. Since I came to college and started my transition, I have developed greater independence, self-discipline, and self-motivation.

13. I was assigned the sex of male at birth but knew from grade school that something was different about me. I did not have the words at the time, but I was experiencing gender dysphoria. I actively started feeling unhappy in my gender in middle or high school. I remember wishing I could wear girls' clothes to school around 8th or 9th grade.

14. I did not start receiving professional treatment for gender dysphoria until after I had fully accepted and come out to myself as transgender. That was during May 2019, after graduating high school. I have been taking medically prescribed hormone replacement treatment since September 2019. Before I began taking hormones, I was not looking forward to my future at all. I felt empty and directionless.

15. Taking hormones has drastically improved my body image and has made me feel better in other ways. I am calmer, feel more at peace with my identity, and can see a bright future ahead.

16. My body has changed, including breast development, skin softening, fat redistribution – mostly in the face, and decreased body hair and muscle mass. I am very happy about all of these changes.

17. My treatment for gender dysphoria means that my testosterone levels have decreased. I regularly have those levels tested. My hormone levels are almost compliant with the rules for women in the Olympics. I have less than five more months of hormone therapy to be compliant with the NCAA rule.

Running times

18. In high school, my personal track records were 2:09 for 800 meters, 4:51 for the 1600 meters and 10:48 for two miles. In cross-country, my best time on a 2.91-mile course was sixteen minutes flat.

19. Since I began hormone therapy, my times have gotten five to ten percent slower. My body is still changing from hormone therapy, but I'm training hard and trying to maintain or improve my times as much as possible. I'm pretty consistently doing my eight mile runs in sixty minutes, and I recently got 6 minutes and ten seconds in a time trial for a mile. I would expect to do a bit better in competition because of the motivation from running with other people. My goal is to run a mile in five minutes thirty seconds.

Running in college

20. I want to try out for the women's cross-country team at Boise State this fall and the women's track team at Boise State in the spring of 2021. My understanding is that the first tryout session for

cross-country is during the first week of school in late August.

21. I did not compete on any Boise State teams during my freshman year because I was focused on keeping my grades up, acclimating to college life, and making sure I met the NCAA eligibility rules for women who are transgender.

22. I did organize a running club where students get together to run for fun and exercise. I enjoyed it, but it is not the same as being on a team and competing. There isn't the same camaraderie or chance to really push myself to improve.

23. In preparation for trying out in the 2020-2021 school year, over the last year I have trained consistently, maintained a balanced diet, and mentally prepared to try out.

24. In order to be ready to try out for the Boise State teams, I've been using my high school trainings to inform my running plan this year. During the week, I usually run five miles per day.

25. On Mondays, Wednesdays and Fridays, I do a solid five-mile run, but it's more of a recovery run where I'm not trying to go as fast.

26. My training plan for Tuesdays and Thursdays alternates every other week. One week on Tuesdays, I do one-mile intervals, and on Thursdays, I do tempo runs for three-miles with a one-mile cooldown and one-mile warm up. The following week, on Tuesday I do five 1000-meter intervals instead of 3-4 one-mile intervals. The following Thursday, I do a five-mile tempo run with 400-meter intervals and a break in between.

27. On Saturday, I do a long distance run of eight miles. The long runs are good for endurance and stamina. On Sunday I do a three-mile run.

28. I've been in touch with the Boise State coaches about the dates and process to try out for the teams.

29. The coaches said students come together to do paperwork in the first week of the semester and have time trials a few weeks later.

30. Being a part of a team is an essential part of the running experience for me. Competing on a team helps to motivate me and push me to do my best. It also helps me socially.

31. I think running cross country and track competitively in college is going to make me more motivated in life in general. Like in high school, I expect that motivation from pushing to do well on a team will also push me in other areas of my life –like getting a college degree or getting a job. If I push myself to do really well at a meet, I'll push myself to do well in other areas of my life.

32. NCAA-level running will be competitive and push me physically and mentally, as well as provide me with teamwork and connection that will help me grow as a person.

33. Training to prepare to try out for and compete on the Boise State teams is a substantial commitment of my time and my mental and physical work and energy throughout the summer.

34. I want to see how fast I could get with a college team to help me train. Being in a non-competitive college running club is not at all be the

same as being on a college team. It would be a big honor to represent my school in athletics.

35. If I was not able to try out for the women's cross-country and track teams, it would feel like I have a hole in my heart from wanting to do something so badly that I have worked towards for so long – not only in my physical training, but in my mental planning. Being on a women's team would affirm who I am as a woman—I don't want that to be taken away.

36. My identity does not hinge on competing on a women's team – *I am a woman*.

37. I would not compete on a men's team. I am not a man, and it would be embarrassing and painful to be forced onto a team for men – like constantly wearing a big sign that says “this person is not a ‘real’ woman.” I would be an outcast on the men's team.

38. As a college athlete, you usually get four seasons of eligibility for each sport within a five-year period. I have four more years of eligibility left. If I miss this fall, I cannot get that period of eligibility back.

39. I just want to run. I want to compete. I want to be on a team. I have looked at the rules for the NCAA, trained hard and am really excited for an opportunity to join the women's teams.

40. I would be devastated if I were excluded from trying out for women's cross-country and track teams at Boise State.

I certify under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

Executed this 29 day of April, 2020.

Lindsay Hecox
Lindsay Hecox

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of April, 2020, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Dan Skinner
danskinner@cssklaw.com
cssklaw@cssklaw.com
*Attorney for Boise School District,
Individual members of the Board of Trustees of
Boise School District, Coby Dennis*

Steven L. Olsen
steven.olsen@ag.idaho.gov
W. Scott Zanzig
scott.zanzig@ag.idaho.gov
Dayton P. Reed
dayton.reed@ag.idaho.gov
*Attorneys for Bradley Little,
Sherri Ybarra,
Individual members of the State Board of
Education,
Boise State University,
Marlene Tromp,
Individual members of the Idaho Code
Commission*

DATED this 30th day of April, 2020.

/s/ Richard Eppink

Richard Eppink (Bar No. 7503) AMERICAN CIVIL LIBERTIES UNION OF IDAHO FOUNDATION P. O. Box 1897 Boise, ID 83701 T: (208) 344-9750 ext. 1202 REppink@acluidaho.org	Elizabeth Prelogar* COOLEY LLP 1299 Pennsylvania Avenue, NW Suite 700 Washington D.C. 20004-2400 T: (202) 842-7800 F: (202) 842-7899 eprelogar@cooley.com
Gabriel Arkles* James Esseks* Chase Strangio* AMERICAN CIVIL LIBERTIES UNION FOUNDATION 125 Broad St., New York, NY 10004 T: (212) 549-2569 garkles@aclu.org jesseks@aclu.org cstrangio@aclu.org	Andrew Barr* COOLEY LLP 380 Interlocken Crescent, Ste. 900 Broomfield, CO 80021-8023 T: (720) 566-4000 F: (720) 566-4099 abarr@cooley.com
Kathleen Hartnett* COOLEY LLP 101 California Street 5th Floor San Francisco, CA 94111-5800 T: (415) 693-2000 F: (415) 693-2222 khartnett@cooley.com	Catherine West* LEGAL VOICE 907 Pine Street, Unit 500 Seattle, WA 98101 T: (206) 682-9552 F: (206) 682-9556 cwest@legalvoice.org

* Admitted *Pro Hac Vice*

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

LINDSAY HECOX, et al.,

Plaintiffs,

v.

BRADLEY LITTLE, et
al.,

Defendants.

No. 1:20-cv-00184-
CWD

**DECLARATION OF
PLAINTIFF JANE
DOE IN SUPPORT
OF MOTION FOR
PRELIMINARY
INJUNCTION**

I, Jane Doe, depose and say as follows:

1. I am seventeen years old and have personal knowledge of the facts herein.

2. I will be entering my senior year at Boise High School.

3. I have played sports since I was four years old. Being a member of an athletic team and competing at my highest level has been, and is, a big part of my identity.

4. I am a very competitive athlete and compete on the Varsity soccer and track teams.

5. I plan on competing on my high school soccer and track teams during the 2020-2021 school year.

6. My soccer team competes in the fall season (Fall 2020) and my track team competes in the spring season (Spring 2021).

7. Competing on my high school soccer and track teams has helped me develop social skills that reach

beyond the playing field. I am a more confident person due to my athletic achievements and friendships made on the various teams of which I've been a member.

8. I am hoping to compete as an athlete in college, which will require that I have a strong upcoming senior season at Boise High School.

9. It is possible that I will earn scholarship funds as an athlete that will help with my college tuition and costs. It is very important to me to have the best chance of obtaining a scholarship and earning a chance to compete at the collegiate level.

10. I have never had to endure blood tests, genetic tests, or genital tests in order to participate in sports.

11. In the past, I have had a physical examination, but the doctor did test my blood or hormone levels or examine my vagina. I've never had a genetic test, hormone test, or transvaginal pelvic ultrasound at all.

12. It is my understanding that Idaho's new law may require me to get these sorts of tests to prove that I am a girl, and that if I refuse, I could be kept from participating on my high school soccer or track team.

13. I am a girl. I have an athletic build, and in the past others have jokingly referred to me as a boy. I don't often wear skirts or dresses, and most of my friends are boys. I am concerned that someone will use Idaho's new law to dispute my gender because of these qualities.

14. I do not want to undergo any sort of medical procedures or tests I don't need for a medical reason.

15. I think it is unfair that my ability to compete on my high school soccer or track team—something I love to do and am hoping helps pave a way for me to attend college—could be taken away if I am not willing to undergo invasive tests.

16. I am already concerned that Idaho's new law will require me to make a choice between competing with my friends and teammates as I have always done and consenting to invasive medical tests.

17. I also think it is unfair that my ability to compete with my teammates is based on these medical tests, when the boys in my class do not have to go through similar testing.

18. I am entering my last year of high school athletics. It is very frustrating that I am no longer able to focus on training for the season due to this unfair law that only impacts girls.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 28th day of April, 2020.

Jane Doe

Jane Doe

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of April, 2020, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Dan Skinner

danskinner@cssklaw.com

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Individual members of the Board of Trustees of
Boise School District, Coby Dennis*

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*Attorneys for Bradley Little,
Sherri Ybarra,
Individual members of the State Board of
Education,
Boise State University,
Marlene Tromp,
Individual members of the Idaho Code
Commission*

DATED this 30th day of April, 2020.

/s/ Richard Eppink

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* Admitted *Pro Hac Vice*

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

LINDSAY HECOX, et al.,

Plaintiffs,

v.

BRADLEY LITTLE, et
al.,

Defendants.

No. 1:20-cv-00184-
CWD

**DECLARATION OF
JEAN DOE IN
SUPPORT OF
MOTION FOR
PRELIMINARY
INJUNCTION**

I, Jean Doe, depose and say as follows:

1. I am over the age of eighteen and have personal knowledge of the facts herein.

2. My daughter, Jane Doe, is seventeen years old and she will be a senior at Boise High School in Fall 2020.

3. Since she was a young child, Jane has participated in athletic activities. Jane has a natural athleticism and has always excelled at sports.

4. Jane's involvement with sports has allowed her to develop as a young woman. She has taken the confidence and work ethic she developed on the playing field into the classroom. It is hard to imagine where Jane would be in her life if she didn't have the many positive experiences of playing and competing on teams.

5. Jane is a member of Boise High School's girls' soccer and track teams. In Idaho, the soccer season is in the fall and the track season is in the spring.

6. Jane is currently training to be ready for the fall soccer season.

7. In order to be ready to play soccer, Jane does the following:

- cardiovascular conditioning five days per week to improve her fitness level for games;
- private coaching two to three days per week to prepare her technical abilities;
- attends open plays and optional practices three days per week throughout the summer, which also helps to bond with her team and coaches;
- weight training three days per week in the off-and pre-season to increase her physical strength; and
- regular correspondence with college coaches as part of the college soccer recruiting process.

8. Jane's life is largely dominated by sports, her teammates, and competing. She derives great enjoyment from being on a team and competing.

9. Jane has pushed herself physically and been rewarded by what she has achieved athletically.

10. Jane has an athletic, masculine build.

11. At one point, in middle school, other students jokingly referred to her as a boy.

12. With her athletic build and performance in sports, I am concerned that someone will use Idaho's new law to dispute her gender. I am concerned this could be done simply to discourage Jane from playing even though the challenger knows that Jane is a girl.

13. As Jane's mother, I am concerned that she would be put in the position of getting invasive medical procedures and blood tests she doesn't need to play the sports she loves.

14. Jane is currently being recruited to play soccer in college. If she is unable to play her senior season, it is unlikely college coaches would offer her a position on their team, which could mean she would lose out on scholarship opportunities otherwise available to her.

15. It is very frustrating to me that Jane's ability to compete could be questioned or even prevented by anyone who wants to "verify" her "biological sex."

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 28th day of April, 2020.

Jean Doe
Jean Doe

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of April, 2020, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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Individual members of the Idaho Code
Commission*

DATED this 30th day of April, 2020.

/s/ Richard Eppink

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* Admitted *Pro Hac Vice*

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

LINDSAY HECOX, et
al.,

Plaintiffs,

v.

BRADLEY LITTLE, et
al.,

Defendants.

No. 1:20-cv-184-CWD

**EXPERT
DECLARATION OF
JOSHUA D. SAFER,
MD, FACP, FACE, IN
SUPPORT OF
PLAINTIFFS'
MOTION FOR
PRELIMINARY
INJUNCTION**

I, Joshua D. Safer, MD, FACP, FACE, have been retained by counsel for Plaintiffs Lindsay Hecox and Jane Doe, with her next friends, Jean Doe and John Doe, as an expert in connection with the above-captioned litigation.

1. The purpose of this declaration is to offer my expert opinion on: (1) medical and scientific concepts relevant to the attempted regulation of transgender and intersex girls and women playing sports; (2) policies of elite athletic organizations in limiting eligibility to compete in women's sports, including based on serum testosterone levels; (3) policies in non-elite contexts regarding eligibility to compete in women's sports; (4) the questions that have arisen when entities have attempted to define a person's sex for purposes of competing in women's sports; and (5) whether the available scientific evidence supports the assertion that transgender girls and women have an unfair "athletic advantage" if they compete in girls' and women's athletics in different contexts.

2. In preparing this declaration, I reviewed the legislative findings for H.B. 500, as enacted, and the sources cited therein.

3. I have knowledge of the matters stated in this declaration and have collected and cite to relevant literature concerning the issues that arise in this litigation in the body of this declaration and in the attached bibliography.

4. In preparing this declaration, I relied on my scientific education and training, my research experience, and my knowledge of the scientific literature in the pertinent fields. The materials I have relied upon in preparing this declaration are the same types of materials that experts in my field of study regularly rely upon when forming opinions on the subject. I may wish to supplement these opinions or the bases for them as a result of new scientific research or publications or in response to statements and issues that may arise in my area of expertise.

PROFESSIONAL BACKGROUND

5. I am a Staff Physician in the Endocrinology Division of the Department of Medicine at the Mount Sinai Hospital and Mount Sinai Beth Israel Medical Center in New York, NY. I serve as Executive Director of the Center for Transgender Medicine and Surgery at Mount Sinai. I also hold an academic appointment as Professor of Medicine in Mount Sinai's Icahn School of Medicine. A true and correct copy of my CV is attached hereto as Exhibit A.

6. I have been Board Certified in Endocrinology, Diabetes and Metabolism by the American Board of Internal Medicine since 1997.

7. I graduated from the University of Wisconsin in Madison with a Bachelor of Science degree in 1986. I earned my Doctor of Medicine degree from the University of Wisconsin in 1990. I completed intern and resident training at Mount Sinai School of Medicine, Beth Israel Medical Center in New York, New York from 1990 to 1993. From 1993 to 1994, I was a Clinical Fellow in Endocrinology at Harvard Medical School and Beth Israel Deaconess Medical Center in Boston, Massachusetts. I stayed at the same institution, serving as a Clinical and Research Fellow in Endocrinology under Fredric Wondisford, from 1994 to 1996.

8. Since 1997, I have evaluated and treated patients along with conducting research in endocrinology. Since 2004, my patient care and research has been focused on the medicine/science specific to transgender individuals. I have led several other programs either in transgender medicine or in general endocrinology. In particular, I served as the Medical Director of the Center for Transgender Medicine and Surgery, Boston Medical Center, Boston, MA (2016-2018); as the Director of Medical Education, Endocrinology Section, Boston University School of Medicine, Boston, MA (2007-2018); as the Program Director for Endocrinology Fellowship Training, Boston University Medical Center, Boston, MA (2007-2018); and as Director of the Thyroid Clinic, Boston Medical Center, Boston, MA (1999-2003).

9. I have authored or coauthored over 100 peer-reviewed papers including many critical reviews; textbook chapters; and case reports in endocrinology and transgender medicine.

10. Among my publications are the latest review of transgender medicine in the *New England Journal of Medicine* and the latest review of transgender medicine in the *Annals of Internal Medicine*. See Safer JD, Tangpricha V. Care of transgender persons. *N Engl J Med* 2019; 381:2451-2460; Safer JD, Tangpricha V. Care of the transgender patient. *Ann Intern Med* 2019; 171:ITC1-ITC16. I am also a co-author of the sections of UpToDate which relate to gender-affirming hormone treatment for transgender people. UpToDate is an evidence-based, physician authored on-line medical guide and is currently the most widely used such guide among medical providers.

11. I was the inaugural President of the United States Professional Association for Transgender Health (“USPATH”). I am also Secretary and Co-Chair of the Steering Committee of TransNet, the International Consortium for Transgender Medicine and Health Research. I have served in several other leadership roles in professional societies related to endocrinology and transgender health. These societies include the Alliance of Academic Internal Medicine, the American College of Physicians Council of Subspecialty Societies, the American Board of Internal Medicine, the Association of Program Directors in Endocrinology and Metabolism, and the American Thyroid Association.

12. Since 2014, I have held various roles as a member of the World Professional Association for Transgender Health (“WPATH”), the leading international organization focused on transgender health care. WPATH has approximately 2,000 members throughout the world and is comprised of

physicians, psychiatrists, psychologists, social workers, surgeons, and other health professionals who specialize in health care for transgender individuals. From 2016 to the present I have served on the Writing Committee for Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People.

13. I have served in various roles as a member of the Endocrine Society since 2014. I served as a Task Force member to develop the Endocrine Treatment of Transgender Persons Clinical Practice Guideline from 2014 to 2017. As part of this task force of nine experts, a methodologist, and a medical writer, I co-authored the “Endocrine Treatment of Gender-Dysphoria/Gender Incongruent Persons: An Endocrine Society Clinical Practice Guideline,” (“Endocrine Society Guidelines”), available at <https://academic.oup.com/jcem/article/102/11/3869/4157558>.

14. I have served as a Transgender Medicine Guidelines Drafting Group Member for the International Olympic Committee (“IOC”) since 2017.

15. I have also served since 2019 as a drafting group member of the transgender medical guidelines of World Athletics, formerly known as the International Amateur Athletic Federation (“IAAF”).

16. I have not previously testified as an expert witness in either deposition or at trial. I am being compensated at an hourly rate of \$250 per hour for preparation of expert declarations and reports, and \$400 per hour for time spent preparing for or giving deposition or trial testimony. My compensation does

not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

RELEVANT MEDICAL AND SCIENTIFIC BACKGROUND

17. “Gender identity” is the medical term for a person’s internal, innate sense of belonging to a particular sex/gender. *See* Endocrine Society Guidelines, Tbl.1 *and* Safer JD, Tangpricha V. Care of transgender persons. *N Engl J Med* 2019; 381:2451-2460, Tbl.1.

18. Although the detailed mechanisms are unknown, there is a medical consensus that there is a significant biologic component underlying gender identity. Safer JD, Tangpricha V. Care of transgender persons. *N Engl J Med* 2019; 381:2451-2460; Safer JD, Tangpricha V. Care of the transgender patient. *Ann Intern Med* 2019; 171:ITC1-ITC16. An individual’s gender identity is durable and cannot be changed by medical intervention.

19. “Gender” is an imprecise term that can cause confusion and should be avoided for the sake of clarity. The term “gender” is sometimes used interchangeably with the term “sex.” In addition, the term “gender” is sometimes used as shorthand for “gender identity” and sometimes used as shorthand for “gender roles” and “gender expression.” But “gender identity,” “gender roles” and “gender expression” are different things.

20. Gender roles are behaviors, attitudes, and personality traits that a society (in a given culture and historical period) designates as masculine or feminine and/or that society associates with or considers typical of the social role of men or women.

See Endocrine Society Guidelines Tbl.1. The convention that girls wear pink and have longer hair, or that boys wear blue and have shorter hair, are examples of socially constructed gender roles.

21. By contrast, “gender identity” does not refer to a set of socially contingent behaviors, attitudes or personality traits that a society designates as masculine or feminine. It is largely a biological phenomenon.

22. Gender expression is how a person communicates gender identity to others. See Safer JD, Tangpricha V. Care of transgender persons. *N Engl J Med* 2019; 381:2451-2460, Tbl.1. For example, a person with a female gender identity might express her identity through typically feminine outward expressions of gender like by wearing longer hair or more typically feminine clothing.

23. The phrase “biological sex” is an imprecise term that can cause confusion. A person’s sex encompasses the sum of several different biological attributes, including sex chromosomes, certain genes, gonads, sex hormone levels, internal and external genitalia, other secondary sex characteristics, and gender identity. Those attributes are not always aligned in the same direction. See Endocrine Society Guidelines; Safer JD, Tangpricha V. Care of transgender persons. *N Engl J Med* 2019; 381:2451-2460.

24. Before puberty, boys and girls have the same levels of circulating testosterone. After puberty, the typical range of circulating testosterone for non-transgender women is similar to before puberty (<1.7 nmol/L), and the typical range of circulating

testosterone for non-transgender men is 9.4-35 nmol/L. *See* Endocrine Society Guidelines (p 3888) *and* Safer JD, Tangpricha V. Care of transgender persons. *N Engl J Med* 2019.

25. Based on research comparing non-transgender pubertal and post-pubertal boys and men with non-transgender pubertal and post-pubertal girls and women, there is a medical consensus that the difference in testosterone is generally the primary known driver of differences in athletic performance between elite male athletes and elite female athletes. *See* Handelsman DJ, et al. Circulating testosterone as the hormonal basis of sex differences in athletic performance. *Endocrine Reviews* 2018; 39:803-829, (p 803).

26. Even though there are ranges of testosterone that are considered typical for non-transgender men and women, many non-transgender women have testosterone outside the typical range.

a. Approximately 6% to 10% of women have a condition called polycystic ovary syndrome (PCOS), which can raise women's testosterone levels up to 4.8 nmol/L.

b. Some women have "46,XY DSDs," a group of conditions where individuals have XY chromosomes but are born with typically female external genitalia and assigned a female sex at birth. Among individuals with 46,XY DSD some may have inactive testosterone receptors (a syndrome called "complete androgen insensitivity syndrome, CAIS") which means they don't respond to testosterone despite very high levels. Typically, these individuals have female gender identity and

have external genitalia that are typically female. They do not develop the physical characteristics associated with typical male puberty.

c. Other individuals with 46,XY DSD may have responsive testosterone receptors. These individuals may have female gender identity but at puberty they may start to develop higher levels of testosterone along with secondary sex characteristics that are typically masculine.

WORLD ATHLETICS AND IOC POLICIES FOR WOMEN WITH HYPERANDROGENISM

27. Beginning in 2011, World Athletics (then known as IAAF) began requiring that women with elevated levels of circulating testosterone lower their levels of testosterone below a threshold amount in order to compete in women's sports. Under the 2011 regulations, women with hyperandrogenemia (defined as serum testosterone levels above the normal range) were allowed to compete only if they demonstrated that they had testosterone levels below 10 nmol/L or that they had CAIS, preventing their bodies from responding to testosterone.

28. In 2014, the Court of Arbitration for Sport (CAS) suspended the IAAF regulations. CAS accepted the IAAF position that testosterone is a key factor for competitive athletic advantage but asked the IAAF to provide additional evidence to demonstrate that differences were relevant at the levels of testosterone being considered for determination of eligibility in the women's category of competition.

29. The IAAF then issued revised regulations in 2018 after a study that showed a significant improvement in athletic performance among women

with higher testosterone levels for some sports. See Bermon S, Garnier P-Y. Serum androgen levels and their relation to performance in track and field: mass-spectrometry results from 2127 observations in male and female elite athlete. *Br J Sports Med* 2017; 51:1309-1314.

30. The regulations also lowered the maximum testosterone threshold to 5 nmol/L.

31. The revised regulations were upheld by the Court of Arbitration for Sport in 2019.

WORLD ATHLETICS AND IOC POLICIES FOR TRANSGENDER WOMEN

32. Formal eligibility rules for the participation of transgender women in the Olympics were published in 2003. The rules required that transgender women athletes could compete in women's events only if they had genital surgery, a gonadectomy, and legal documentation of sex.

33. However, many transgender women are treated with medicines alone and don't have gonadectomy. As well, many jurisdictions do not have systems to document the sex of transgender people. In some jurisdictions, being transgender is illegal, and revelation that someone is transgender can be unsafe.

34. Therefore, in 2015, the IOC adopted new guidance modeled after the IAAF's 2011 regulations for non-transgender women with hyperandrogenism. Under the new IOC guidance, transgender women must demonstrate that their total testosterone level in serum has been below 10 nmol/L for at least one year prior to competition. The 10 nmol/L threshold

was the same threshold set by the IAAF's 2011 regulations.

35. In 2019, the IAAF adopted regulations based on the IOC guidance except that the testosterone threshold level was lowered to 5 nmol/L, which was the same threshold set by the IAAF's 2018 regulations for non-transgender women with hyperandrogenism that had been upheld by the CAS when contested.

36. The IOC and IAAF rules are consistent with the Endocrine Society Guidelines for the treatment of transgender women, which recommend that transgender women treated with hormone therapy target circulating testosterone levels to a typical female range at or below 1.7 nmol/L (Endocrine Society Guidelines, p 3887) and with the study of testosterone levels achieved by medically treated transgender women in practice (Liang JJ, et al. Testosterone levels achieved by medically treated transgender women in a United States endocrinology clinic cohort. *Endocrine Practice* 2018; 24:135-142).

TRANSGENDER AND INTERSEX ATHLETES IN NON-ELITE CONTEXTS

37. The policies developed by World Athletics and the IOC for transgender athletes were based on the particular context of elite international competition. Not all of the same considerations apply in other contexts.

38. Most of the athletes competing in elite international competitions have already completed puberty. But in high school, athletes' ages could typically range from 14-18, with different athletes in different stages of pubertal development. Increased testosterone begins to affect athletic performance at

the beginning of puberty, but those effects continue to increase each year of puberty until about age 18, with the full impact of puberty resulting from the cumulative effect of each year. As a result, testosterone provides less of an impact for a 14, 15, or 16-year old than it does for a 17 or 18-year old. The concerns that animated the World Athletics and IOC policies are more attenuated at the high school or junior high school level.

39. The NCAA allows transgender women to participate on the same teams as other women after one year of testosterone suppression as part of gender transition. The NCAA policy does not require ongoing testosterone testing, which is required at the elite levels. Under the NCAA policy, which has been in effect since 2011, transgender student-athletes certify that they have been on hormone therapy for a period of one year.

40. Unlike in scholastic contexts in the United States, World Athletics and the IOC have to develop policies that cannot be manipulated by different governments that are not bound by the rule of law. For example, there have been many well-known examples of state-sponsored doping scandals. The Russian Olympic team is currently banned from international competition due to an organized doping effort.

IDAHO'S EFFORTS TO BAR ATHLETIC COMPETITION BY TRANSGENDER WOMEN AND GIRLS

41. Under the newly passed Idaho law, an individual whose sex is disputed for purposes of competing in athletic activities for women and girls is

instructed to “verify the student’s biological sex” by providing a signed physician statement after an examination relying only on one or more of the following: the student’s reproductive anatomy, genetic makeup, or normal endogenously produced levels of testosterone. None of these physiological characteristics alone or in any combination can “verify” sex, nor are any of them alone or in any combination accurate proxies for athletic advantage.

42. As noted above, one does not verify sex by a examining these characteristics, alone or in combination. A person’s sex is made up of multiple biological characteristics and they may not all align as typically male or female in a given person.

43. A person’s genetic make-up and internal and external reproductive anatomy are not useful indicators of athletic performance and have not been used in elite competition for decades.

44. A blood test is generally used to test circulating testosterone. The blood test does not distinguish between exogenous and endogenous testosterone. Exogenously administered testosterone can be identified with a urine test. However, the urine test will only determine that there is current use of exogenous testosterone. The urine test is not relevant when the person is not taking exogenous testosterone. The urine test will not measure what endogenous testosterone levels would be absent suppression. For a person suppressing testosterone as part of a medically prescribed treatment plan for gender dysphoria, neither blood testing nor urine testing would specify testosterone levels without suppression. There is no way to test for “normally

produced” endogenous testosterone without taking people off of prescribed medication, which would be dangerous.

45. Though the IOC, World Athletics, and the NCAA require certain athletes with higher levels of endogenous testosterone to suppress their levels or at least undergo testosterone suppression treatment in order to compete in women’s athletics, Idaho’s new rule creates an outright bar based on endogenous testosterone without even specifying the endogenous serum testosterone level that one would need to demonstrate to “verify” sex. Under the Idaho rule, no amount of reduction of one’s testosterone level could ever be adequate. Further, as noted above, people without active testosterone receptors experience none of the athletic impact of the hormone despite having high levels of circulating testosterone. They too would appear to be disqualified under Idaho’s rule.

46. The legislative findings for H.B. 500 contend that even after receiving gender-affirming hormone therapy, women and girls who are transgender have “an absolute advantage” over non-transgender girls. This assertion is based on speculation and inferences that have not been borne out by any evidence.

47. First, these arguments overlook the population of transgender girls and women who, as a result of puberty blockers at the start of puberty and gender affirming hormone therapy afterward, never go through a typical male puberty at all. These girls never experience the effects of high levels of testosterone and accompanying physiological changes. They go through puberty with the same levels of hormones as other girls and develop typically

female physiological characteristics, including muscle and bone structure. Idaho's law would bar them from participation in female athletics with absolutely no medical or scientific basis even based on the standards set forth in the legislative findings.

48. A transgender woman who has not gone through a typical male puberty is similarly situated to a woman with XY chromosomes who has complete androgen insensitivity syndrome, and it has long been recognized that women with CAIS have no athletic advantage simply by virtue of having XY chromosomes. *See also* Handelsman DJ, et al. Circulating testosterone as the hormonal basis of sex differences in athletic performance. *Endocrine Reviews* 2018; 39:803-29, (p 820, summarizing evidence rejecting hypothesis that physiological characteristics are driven by Y chromosome).

49. The legislative findings also state that “benefits that natural testosterone provides to male athletes is not diminished through the use of puberty blockers and cross-sex hormones.” This is not true. As noted above, puberty blocking treatment completely blocks the production of testosterone and someone who has undergone both puberty blocking treatment and then gender affirming hormone therapy to initiate puberty consistent with gender identity would have none of the impacts of testosterone on the body that would be typical for a non-transgender male. It is also not true that gender-affirming therapy – even for those who have not undergone puberty blocking treatment – does nothing to minimize the impact of testosterone on the body. In fact, consistent use of testosterone blockers and estrogen has a significant impact on the body.

50. The legislative findings also note that “Men generally have ‘denser, stronger bones, tendons, and ligaments’ and ‘larger hearts, greater lung volume per body mass, a higher red blood cell count, and higher hemoglobin” and suggest that such characteristics lead to athletic advantage and cannot be altered by sustained gender-affirming hormone therapy. However, the noted higher red blood cell count and higher hemoglobin are both testosterone dependent. They are both reduced as part of sustained gender-affirming hormone therapy. And there is currently no evidence that the remaining noted physiological characteristics actually are advantages when not accompanied by high levels of testosterone and corresponding skeletal muscle.

51. The only study examining the effects of gender-affirming hormone therapy on the athletic performance of transgender female athletes is a small study of eight long-distance runners. The study showed that after undergoing gender-affirming interventions, which included lowering their testosterone levels, the athletes’ performance had reduced so that relative to non-transgender women their performance was now proportionally the same as it had been relative to non-transgender men prior to any medical treatment. In other words, a transgender woman who performed at about 80% as well as the best performer among men of that age before transition would also perform at about 80% as well as the best performer among women of that age after transition. See Harper J. Race times for transgender athletes. *Journal of Sporting Cultures and Identities* 2015; 6:1-9.

52. In fact, it may be that some of the body changes from endogenous puberty result in poorer net performance for transgender women relative to cisgender women.

53. For example, the fact that transgender women who go through typically male puberty will tend to have larger bones than non-transgender women may actually be a *disadvantage*. Having larger bones without corresponding levels of testosterone and muscle mass would mean that a runner has a bigger body to propel with less power to propel it.

54. Similarly, in a sport where athletes compete in different weight classes (*e.g.* weight lifting), the fact that a transgender woman has bigger bones may be a disadvantage because her ratio of muscle-to-bone will be much lower than the ratio for other women in her weight class who have smaller bones.

55. Even if it could be demonstrated that larger bones or lungs can slightly enhance the athletic performance of transgender women even after they lower their level of testosterone, that finding would have to be placed in context. Larger lungs and hearts generally correlate to a person's size, so there are significant intra-sex variations of heart and lung size even among women who are not transgender.

56. There are also myriad genetic variations among athletes that can enhance athletic performance. In the academic literature these are referred to as "performance enhancing polymorphisms" or "PEPs." A PEP is a variation in the DNA sequence that is associated with improved athletic performance. For example, variations in

mitochondrial DNA have been associated with greater endurance capacity and greater mitochondrial density in muscles. Other PEPs are associated with blood flow or muscle structure. See Ostrander EA, et al. Genetics of athletic performance. *Annu Rev Genomics Hum Genet* 2009; 10:407-429. These variations have proven to have a significant impact on athletic ability, unlike bone or lung size in transgender women.

57. After a transgender woman lowers her level of testosterone, there is no inherent reason why her physiological characteristics related to athletic performance should be treated differently from the physiological characteristics of a non-transgender woman.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 24, 2020

Joshua D. Safer

Joshua D. Safer, MD, FACP, FACE

BIBLIOGRAPHY

Bermon S, Garnier P-Y. Serum androgen levels and their relation to performance in track and field: mass-spectrometry results from 2127 observations in male and female elite athlete. *Br J Sports Med* 2017; 51:1309-1314.

Bhasin S, et al. Testosterone dose-response relationships in healthy young men. *Am J Physiol Endocrinol Metab* 2001; 281:E1172-E1181.

Hagmar M, et al. Hyperandrogenism may explain reproductive dysfunction in Olympic athletes. *Med Sci Sports Exercise* 2009; 41:1241-1248.

Handelsman DJ, et al. Circulating testosterone as the hormonal basis of sex differences in athletic performance. *Endocrine Reviews* 2018; 39:803-829.

Harper J. Race times for transgender athletes. *Journal of Sporting Cultures and Identities* 2015; 6:1-9.

Hembree WC, et al. Endocrine treatment of gender-dysphoria/gender incongruent persons: An Endocrine Society clinical practice guideline. *J Clin Endocrinol Metab* 2017; 102: 3869–3903.

Liang JJ, et al. Testosterone levels achieved by medically treated transgender women in a United States endocrinology clinic cohort. *Endocrine Practice* 2018; 24:135-142.

Ostrander EA, et al. Genetics of athletic performance. *Annu Rev Genomics Hum Genet* 2009; 10:407-429.

Rogol AD, Pieper LP. The interconnected histories of endocrinology and eligibility in women's sports. *Horm Res Paediatr* 2018; 90:213–220.

Safer JD, Tangpricha V. Care of the transgender patient. *Ann Intern Med* 2019; 171:ITC1-ITC16.

Safer JD, Tangpricha V. Care of transgender persons. *N Engl J Med* 2019; 381:2451-2460.

Wiik A, et al. Muscle strength, size and composition following 12 months of gender-affirming treatment in

transgender individuals. *J Clin Endocrinol Metab* 2020; 105:1-9.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of April, 2020, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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Individual members of the State Board of
Education,
Boise State University,
Marlene Tromp,
Individual members of the Idaho Code
Commission*

DATED this 30th day of April, 2020.

/s/ Richard Eppink

EXHIBIT A

CURRICULUM VITAE

Joshua D. Safer, MD, FACP, FACE

March 26, 2020

Office Address: 17 East 102nd Street, Room D-240

New York, NY 10029

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E-mail: jsafer0115@gmail.com

Academic Training

1990 MD University of Wisconsin School of
Medicine, Madison, WI

1986 BS University of Wisconsin, Madison, WI,
Economics

Postdoctoral Training

1994 - 1996 Clinical and Research Fellow,
Endocrinology, under Fredric
Wondisford, Harvard Medical School -
Beth Israel Deaconess Medical Center,
Boston, MA

1993 - 1994 Clinical Fellow, Endocrinology, Harvard
Medical School and Beth Israel
Deaconess Medical Center, Boston, MA

1990 - 1993 Intern and Resident, Department of
Medicine, The Mount Sinai School of
Medicine, Beth Israel Medical Center,
New York City, NY

Academic Appointments

2019 - present Professor of Medicine, Icahn School of
Medicine at Mount Sinai, New York, NY

- 2006 - 2018 Associate Professor of Medicine and
Molecular Medicine, Boston University
School of Medicine
- 1999 - 2005 Assistant Professor of Medicine, Boston
University School of Medicine
- 1996 - 1999 Instructor in Medicine, Harvard Medical
School
- 1993 - 1996 Fellow in Medicine, Harvard Medical
School

Hospital Appointments

- 2018 - present Staff Physician, The Mount Sinai
Hospital, New York City, NY
- 2018 - present Staff Physician, Mount Sinai Beth
Israel Medical Center, New York City,
NY
- 1999 - 2018 Staff Physician, Boston University
Medical Center, Boston, MA
- 2001 - 2006 Staff Physician, Veterans
Administration Boston Health Care,
Boston, MA
- 1996 - 1999 Staff Physician, Beth Israel Deaconess
Medical Center, Boston, MA
- 1990 - 1993 House Staff, Beth Israel Medical Center,
New York City, NY

Other Medical Staff Appointments

- 2004 - 2013 Staff Physician, Massachusetts Institute
of Technology Medical, Cambridge, MA
- 1994 - 1999 Physician, Harvard Vanguard Medical
Associates, Boston, MA
- 1987 - 1996 Captain, United States Army Reserve,
Medical Corps

Honors:

- 2019 Fellow, American College of Endocrinology

- 2019 Preaw Hanseree Memorial Lecture, University of Wisconsin-Madison
- 2017 Lesbian, Gay, Bisexual and Transgender Health Award, Massachusetts Medical Society
- 2012 Outstanding Service Award, Association of Program Directors in Endocrinology and Metabolism
- 2007 Fellow, American College of Physicians
- 2004 Boston University School of Medicine Outstanding Student Mentor Award
- 2001 Abbott Thyroid Research Advisory Council Award
- 1996 Knoll Thyroid Research Clinical Fellowship Award, Endocrine Society
- 1995 Trainee Investigator Award for Excellence in Scientific Research, American Federation for Clinical Research (AFCR)
- 1994 Trainee Investigator Award for Excellence in Scientific Research, AFCR
- 1990 The University of Wisconsin Medical Alumni Association Award
- 1988-1990 Senior Class President, University of Wisconsin, School of Medicine

Licensure and Certification

- 1997 Board Certification in Endocrinology, Diabetes and Metabolism, American Board of Internal Medicine, recertified 2007, 2017
- 1994 Board Certification in Internal Medicine, American Board of Internal Medicine, recertified 2007
- 1993 Massachusetts License Registration #77459, inactive 1990 New York License Registration #187263-1

Departmental and University Committees

Boston Medical Center

- 2016-2018 Physician Satisfaction Task Force,
Department of Medicine
- 2016-2018 Transgender Patient Task Force
- 2006-2017 Pharmacy and Therapeutics Committee,
Health Net Plan

Boston University School of Medicine

- 2009-2018 Admissions Committee
- 2005 Review Committee, Department of
Medicine Pilot Project Grants
- 2000 Residency and Fellowship Core
Curriculum Committee,
- 2000-2018 Internship Selection Committee,
Residency Program in Medicine

Boston University Goldman School of Dental Medicine

- 2003-2018 Course Directors Committee, Goldman
School of Dental Medicine

Teaching Experience and Responsibilities

Icahn School of Medicine at Mount Sinai

- 2019-present Lecturer in Endocrinology, Second-
year Pathophysiology Course

Tufts University School of Medicine

- 2016-2018 Lecturer in Endocrinology, Second-year
Pathophysiology Course

Boston University School of Medicine

- 2003-2018 Course Director, Disease and Therapy -
Endocrinology Section
- 1999-2018 Regular lectures to medical students,
residents, and fellows on thyroid

disease, diabetes insipidus, and transgender medicine

Boston University Goldman School of Dental Medicine

- 2002-2018 Course Director, General Medicine and Dental Correlations
 2002-2018 Course Director, Medical Concerns in the Dental Patient

Major Administrative Responsibilities

- 2018-present Executive Director, Center for Transgender Medicine and Surgery, Mount Sinai Health System, New York City, NY
 2016-2018 Medical Director, Center for Transgender Medicine and Surgery, Boston Medical Center, Boston, MA
 2007-2018 Director, Medical Education, Endocrinology Section, Boston University School of Medicine, Boston, MA
 2007-2018 Program Director, Endocrinology Fellowship Training, Boston University Medical Center, Boston, MA
 1999-2003 Director, Thyroid Clinic, Boston Medical Center, Boston, MA

Other Professional Activities

Professional Societies: Memberships

- 2016-present United States Professional Association for Transgender Health (USPATH)
 2014-present World Professional Association for Transgender Health (WPATH)

- 2007-present Association of Program Directors in Endocrinology and Metabolism (APDEM)
- 2007-present Association of Specialty Professors (ASP), Alliance of Academic Internal Medicine (AAIM)
- 1999-present American Association of Clinical Endocrinologists
- 1998-2018 American Thyroid Association
- 1995-present Endocrine Society
- 1994-present American College of Physicians
- 1994-1996 American Federation for Medical Research
- 1993-2018 Massachusetts Medical Society

Professional Societies: Offices Held and Committee Assignments

International

International Olympic Committee (IOC)

- 2017-present Drafting Group Member, Medical Guidelines, International Olympic Committee

World Professional Association for Transgender Health (WPATH)

- 2016-present Writing Committee Member, Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People
- 2016-2018 Co-Chair, Scientific Committee, International Meeting, Buenos Aires - 2018
- 2015-2016 Chair, Scientific Committee, International Meeting, Amsterdam - 2016

2015-present Task Force Member, Global Education Initiative

2015-present Media Liaison

TransNet – International Consortium for Transgender Medicine and Health Research

2014-present Secretary and Co-Chair, Steering Committee

National

United States Professional Association for Transgender Health (USPATH)

2018-2019 President

Alliance of Academic Internal Medicine

2016-2019 Chair, Compliance Committee

2016-2017 Committee member, Compensation

2015-2016 President, Association of Specialty Professors (ASP)

2014-2017 Council member

2014-2019 Task Force member, Program Planning

2014-2019 Work Group member, Survey Center

2013-2015 Chair, Program Planning Committee, ASP

2012-2017 Council member, ASP

2012-2013 Chair, Membership Services Committee, ASP

2010-2015 Chair, Program Directors Site Visit Training Seminar, ASP

2007-2013 Committee member, Membership Services, ASP

American College of Physicians

2016-2018 Council of Subspecialty Societies member

Endocrine Society

- 2017-present Advisory Board member,
Transgender/Disorders of Sex
Development
- 2017-present Committee member, Clinical
Endocrine Education
- 2014-present Media Liaison for Transgender
Medicine
- 2014-2017 Task Force member, Endocrine
Treatment of Transgender Persons
Clinical Practice Guideline

American Board of Internal Medicine

- 2013-2018 Task Force member, Endocrinology
Procedures
- 2013 Task Force member,
ASP/AAIM/ACGME/ABIM Joint Next
Accreditation System Internal Medicine
Subspecialty Milestones

***Association of Program Directors in
Endocrinology and Metabolism***

- 2017-2018 Secretary-Treasurer
- 2012-2018 Task Force member, Next Accreditation
System Endocrinology Milestones
- 2011-2012 Task Force member, Procedures
Accreditation
- 2010-2012 Council member
- 2009-2016 Chair, Site Visit/Curriculum Web-
Toolbox Committee

American Thyroid Association

- 2006-2009 Publications Committee member
- 2004 Program Committee member

Editorships and Editorial Boards

- 2018-present Associate Editor, *Transgender Health*
 2017-present Editorial Advisory Board, *Endocrine News*
 2016-present Transgender Section Co-Editor, *UpToDate*
 2015-present Editorial Board, *Transgender Health*
 2015-present Editorial Board, *International Journal of Transgender Health*
 2013-2018 Associate Editor, *Journal of Clinical & Translational Endocrinology*
 2007-present Editorial Board, *Endocrine Practice*

External Medical Advising and Consulting

International

- 2016-present International transgender athlete guidelines, Medical and Scientific Commission, International Olympic Committee

National

- 2017 Transgender medical and surgical treatment, National Collegiate Athletic Association,
 2017 Safety for transgender medical treatment, Food and Drug Administration, United States
 2015-present Transgender workforce and military readiness, Department of Defense, United States
 2014 Transgender prison population health, Federal Bureau of Prisons, United States

Regional

2011-2018 Transgender prison population health, Massachusetts Department of Correction

Past Other Support

2018-2020 Keith Haring Foundation, **PI: Joshua D. Safer**, Pilot Program to Develop Clinical Program in Transgender Medicine for Children and Adolescents

2015-2016 R13 HD084267, **Multi-PI: Joshua D. Safer**, TransNet: Developing a Research Agenda in Transgender Health and Medicine

2014-2015 Boston Foundation, Equality Fund, **PI: Joshua D. Safer**, Pilot Program to Educate Physicians in Transgender Medicine

2013-2014 Evans Foundation, **PI: Joshua D. Safer**, A Pilot Curriculum in Transgender Medicine

2001-2003 Thyroid Research Advisory Council, **PI: Joshua D. Safer**, Thyroid Hormone Action on Skin

2001-2002 Evans Foundation, **PI: Joshua D. Safer**, Thyroid Hormone Action on Skin

1996-2001 K08 DK02423, **PI: Joshua D. Safer**, Characterization of Central Resistance to Thyroid Hormone

Conferences Organized**International Conferences**

World Professional Association for Transgender Health

- November, 2020 Bi-annual meeting, Planning Committee, Hong Kong (scheduled)
- November, 2018 Bi-annual meeting, Scientific Co-Chair, Buenos Aires, Argentina
- June, 2016 Bi-annual meeting, Scientific Co-Chair, Amsterdam, Netherlands
- November, 2015 Global Education Initiative, inaugural conference, Chicago, IL

TransNet – International Consortium for Transgender Health and Medicine Research

- May, 2016 International meeting to set transgender medicine research priorities, Amsterdam, Netherlands
- May, 2015 NIH conference to set transgender medicine research priorities, Bethesda, MD
- June, 2014 Inaugural meeting, Chicago, IL

National Conferences

- May, 2020 Topics in Surgery Course for Gender Affirmation Procedures, Mount Sinai Hospital and WPATH, New York City, NY (scheduled)
- February, 2019 Live Surgery Course for Gender Affirmation Procedures, Mount Sinai Hospital and WPATH, New York City, NY
- April, 2018 Live Surgery Course for Gender Affirmation Procedures, Mount Sinai Hospital and WPATH, New York City, NY
- January, 2017 United States Professional Association for Transgender Health

- (USPATH) bi-annual meeting, Los Angeles, CA
- November, 2015 NIH/Alliance for Academic Internal Medicine - Physician Researcher Workforce Taskforce Meeting, Washington, DC
- October, 2015 National Internal Medicine Subspecialty Summit, Atlanta, GA
- June, 2013 Special Symposium: "Transgender Medicine – What Every Physician Should Know" Annual Meeting of the Endocrine Society, San Francisco, CA
- April, 2011 2011 ASP Accreditation Seminar "Meeting the ACGME and RRC-IM Standards for Successful Fellowship Programs" Arlington, VA

Alliance for Academic Internal Medicine

- April, 2015 2015 ASP Accreditation Seminar "Moving Your Fellowship Program Forward" Spring Meeting, Houston, TX
- April, 2014 2014 ASP Accreditation Seminar "NAS for Medical Subspecialties Is Almost Here" Spring Meeting, Nashville, TN
- May, 2013 2013 ASP Accreditation Seminar "A Changing Landscape in Subspecialty Fellowship Education" Spring Meeting, Lake Buena Vista, FL
- April, 2012 2012 ASP Accreditation Seminar "Meeting ACGME and RRC-IM Standards for Successful Fellowship Programs" Spring Meeting, Atlanta, GA

Invited Lectures and Presentations

International

- January, 2020 “Transgender Medicine”, World Professional Association for Transgender Health Global Education Initiative, Hanoi, Vietnam
- September, 2019 “Transgender Women” International Association of Athletics Federations (IAAF), Lausanne, Switzerland
- November, 2018 “Transgender Medicine”, World Professional Association for Transgender Health Annual Meeting, Buenos Aires, Argentina
- October, 2018 “Transgender Medicine”, Canadian Endocrine Diabetes Meeting, Halifax, NS, Canada
- June, 2018 “21st-Century Strategies: Transgender Hormone Care” CMIN Summit 2018, Porto, Portugal
- February, 2017 “A 21st-Century Framework to for Transgender Medical Care” Sheba Hospital, Tel Aviv, Israel
- October, 2016 “A 21st-Century Approach to Hormone Treatment of Transgender Individuals” EndoBridge, Antalya, Turkey
- May, 2016 “Transgender Women” International Olympic Committee Headquarters, Lausanne, Switzerland
- October, 2015 “Workshop on Guidelines for Transgender Health Care” Canadian Professional Association for Transgender Health, Halifax, NS
- March, 2015 “Endocrinology - Hormone Induced Changes” Transgender Health Care in Europe, European Professional

- Association for Transgender Health,
Ghent, Belgium
- June, 2014 “What to Know to Feel Safe Providing
Hormone Therapy for Transgender
Patients” International Congress of
Endocrinology, Chicago, IL
- September, 2011 “Transgender Therapy – The
Endocrine Society Guidelines” World
Professional Association for
Transgender Health, Atlanta, GA
- February, 2007 “Treating skin disease by
manipulating thyroid hormone action”
Grand Rounds, Meier Hospital, Kfar
Saba, Israel
- March, 2004 “New Directions in Thyroid Hormone
Action: Skin and Hair” Grand Rounds,
Meier Hospital, Kfar Saba, Israel

National

- June, 2020 “Transgender Medicine”, Inova Fairfax
Medicine Grand Rounds, Fairfax, VA
(scheduled)
- June, 2020 “Transgender Medicine”, Mount Sinai
Hospital Internal Medicine CME, New
York, NY (scheduled)
- May, 2020 “Transgender Medicine”, Mount
Sinai/World Professional Association for
Transgender Health Special Topics in
Surgical Care CME, New York, NY
(scheduled)
- March, 2020 “Transgender Medicine”, Science Hub
lecture, Endocrine Society Annual
Meeting, San Francisco, CA (scheduled)

- December, 2019 “Transgender Medicine”,
Vanderbilt University Surgery Grand
Rounds, Nashville, TN
- November, 2019 “Transgender Medicine”, Medical
College of Wisconsin CME, Milwaukee,
WI
- September, 2019 “Transgender Medicine”, Beth
Israel Deaconess Medicine Grand
Rounds, Boston, MA
- September, 2019 “Transgender Medicine”, United
States Professional Association for
Transgender Health Annual Meeting,
Washington, DC
- June, 2019 “Transgender Medicine”, Mount Sinai
Hospital Internal Medicine CME, New
York, NY
- April, 2019 “A 21st-Century Strategy for Hormone
Treatment of Transgender Individuals”
National Transgender Health Summit,
Oakland, CA
- March, 2019 “Transgender Medicine” National
Eating Disorders Meeting, New York,
NY
- January, 2019 “Transgender Medicine” Yale School
of Medicine Obstetrics and Gynecology
Grand Rounds, New Haven, CT
- January, 2019 “Transgender Medicine” Yale School
of Medicine Endocrinology Grand
Rounds, New Haven, CT
- January, 2019 “Transgender Medicine” Drexel
School of Medicine Medicine Grand
Rounds, Philadelphia, PA
- September, 2018 “Current Guidelines and Strategy
for Hormone Treatment of Transgender
Individuals” Minnesota-Midwest

- Chapter - American Association of Clinical Endocrinologists Annual Meeting, Minneapolis, MN
- July, 2018 “21st-Century Strategies for Transgender Hormone Care” Ohio River Valley Chapter - American Association of Clinical Endocrinologists Meeting, Indianapolis, IN
- June, 2018 “21st-Century Strategies: Transgender Hormone Care” University of Connecticut School of Medicine, Hartford, CT
- May, 2018 “A 21st-Century Strategy for Hormone Treatment of Transgender Individuals” American Association of Clinical Endocrinologists Annual Meeting, Boston, MA
- March, 2018 “21st-Century Strategies for Transgender Hormone Care” New Jersey Chapter – American Association of Clinical Endocrinologists Meeting, Morristown, NJ
- February, 2018 “A Strategy for the Medical Care of Transgender Individuals” Keynote Address for the International Society for Clinical Densitometry Annual Meeting, Boston, MA
- November, 2017 “A 21st-Century Strategy for Hormone Treatment of Transgender Individuals” National Transgender Health Summit, Oakland, CA
- September, 2017 “Transgender Therapy – The Endocrine Society Guidelines” Endocrine Society: Clinical Endocrinology Update, Chicago, IL

- May, 2017 “Transgender Medicine – a 21st Century Strategy for Patient Care” University of Arizona College of Medicine, Tucson, AR
- April, 2017 “Transgender Care Across the Age Continuum” Annual Meeting of the Endocrine Society, Orlando, FL
- March, 2017 “A 21st-Century Approach to Hormone Treatment of Transgender Individuals” Brown University School of Medicine, Providence, RI
- March, 2017 “What to Know: A 21st-Century Approach to Transgender Medical Care” United States Food and Drug Administration (FDA), Washington, DC
- February, 2017 “A 21st-Century Approach to Transgender Medical Care” United States Professional Association for Transgender Health, Los Angeles, CA
- February, 2017 “A 21st-Century Approach to Hormone Treatment of Transgender Individuals” Southern States American Association of Clinical Endocrinologists Annual Meeting, Memphis, TN
- December, 2016 “Transgender Medical Care in the United States Armed Forces” Global Education Initiative, World Professional Association for Transgender Health, Arlington, VA
- December, 2016 “Foundations in Hormone Treatment” Global Education Initiative, World Professional Association for Transgender Health, Arlington, VA
- November, 2016 “Developing a Transgender/Gender-Identity Curriculum for Medical Students” Association of American

- Medical Colleges National Meeting,
Seattle, WA
- September, 2016 “A 21st-Century Approach to
Hormone Treatment of Transgender
Individuals” Endocrine Society: Clinical
Endocrinology Update, Seattle, WA
- August, 2016 “A 21st-Century Approach to
Hormone Treatment of Transgender
Individuals” Oregon Health and Science
University Ashland Endocrine
Conference, Ashland, OR
- March, 2016 “State-of-the-Art: Use of Hormones in
Transgender Individuals” Annual
Meeting of the Endocrine Society,
Boston, MA
- October, 2015 “What Every Endocrinologist Should
Know to Feel Safe Providing Hormone
Therapy for Transgender Patients”
University of Utah School of Medicine,
Salt Lake City, UT
- April, 2015 “What to Know –to Feel Safe Providing
Hormone Therapy for Transgender
Patients” Pritzker School of Medicine,
University of Chicago, Chicago, IL
- March, 2015 “What to Know –to Feel Safe with
Hormone Therapy for Transgender
Patients” Annual Transgender Health
Symposium, Medical College of
Wisconsin, Milwaukee, WI
- May, 2014 “Transgendorinology” Annual Meeting
of the American Association of Clinical
Endocrinologists, Las Vegas, NV
- May, 2013 “Transgender Therapy – Hormone
Action and Nuance” National

- Transgender Health Summit, Oakland, CA
- April, 2013 “Transgender Therapy – What Every Provider Needs to Know” Empire Conference: Transgender Health and Wellness, Albany, NY
- April, 2013 “Transgender Therapy – What Every Endocrinologist Needs to Know” University of Maryland School of Medicine, Baltimore, MD
- November, 2012 “Transgender Therapy – What Every Endocrinologist Should Know” New York University School of Medicine, New York, NY
- May, 2010 “Transgender Treatment: What Every Endocrinologist Needs to Know” Brown University School of Medicine, Providence, RI
- November, 2009 “New Directions in Thyroid Hormone Action: Skin and Hair” Emory University School of Medicine, Atlanta, GA
- November, 2009 “Primary Care Update in the Treatment of Thyroid Disorders” Emory University School of Medicine, Atlanta, GA
- October, 2008 “Topical Iopanoic Acid Stimulates Epidermal Proliferation through Inhibition of the Type 3 Thyroid Hormone Deiodinase” Annual Meeting of the American Thyroid Association, Chicago, IL
- February, 2005 “New Directions in Thyroid Hormone Action: Skin and Hair” Endocrinology

- Grand Rounds, University of Minnesota,
Minneapolis, MN
- February, 2005 “Thyroid Hormone Action on Skin and
Hair: What We Thought We Knew”
Dermatology Grand Rounds, University
of Minnesota, Minneapolis, MN
- December, 2004 “Transgender Therapy: The Role
of the Endocrinologist” Endocrinology
Grand Rounds, Brown Medical Center,
Providence, RI
- November, 2003 “New Directions in Thyroid
Hormone Action: Skin and Hair”
Endocrinology Grand Rounds,
Dartmouth Medical Center, Hanover,
NH

Regional

- April, 2020 “Transgender Medicine”, New York
University Endocrinology CME, New
York, NY (scheduled)
- February, 2020 “Transgender Medicine”, Englewood
Hospital Medicine Grand Rounds,
Englewood, NJ
- February, 2020 “Transgender Medicine”,
Endocrinology Grand Rounds, Columbia
College of Physicians and Surgeons,
New York, NY
- January, 2020 “Transgender Medicine”, CEI, Lake
Placid, NY
- November, 2019 “Transgender Medicine”, Weill
Cornell Reproductive Endocrine Grand
Rounds, New York, NY
- November, 2019 “Transgender Medicine”, Acacia
Network Grand Rounds, New York, NY

- October, 2019 “Transgender Medicine”, American Association of Clinical Endocrinologists - New Jersey, annual meeting, Morristown, NJ
- October, 2019 “Transgender Medicine”, Community Health Network annual conference, New York, NY
- October, 2019 “Transgender Medicine”, Westchester Medical Center Medicine Grand Rounds, Valhalla, NY
- September, 2019 “Transgender Medicine”, Weill Cornell Reproductive Endocrine CME, New York, NY
- September, 2019 “Transgender Competency for Medical Providers”, Working Group on Gender, Columbia College of Physicians and Surgeons, New York, NY
- April, 2019 “Transgender Medicine”, Weill Cornell Urology Grand Rounds, New York, NY
- June, 2018 “21st-Century Strategies: Transgender Hormone Care” Medicine Grand Rounds, Staten Island University Hospital, Staten Island, NY
- February, 2018 “Transgender Medicine – 21st Century Strategies for Patient Care” Medicine Rounds, Newton-Wellesley Hospital, Newton, MA
- October, 2017 “Transgender Medicine – 21st Century Strategies for Patient Care” Medicine Rounds, Beth Israel-Milton Hospital, Milton, MA
- September, 2017 “Transgender Medicine – 21st Century Strategies for Patient Care” Obstetrics-Gynecology Grand Rounds,

- Brigham and Women's Hospital, Boston, MA
- June, 2017 "State-of-the-Art: Hormone Therapy for Transgender Patients" Reproductive Endocrinology Rounds, Massachusetts General Hospital, Boston, MA
- May, 2017 "A 21st-Century Strategy for Medical Treatment of Transgender Individuals" Boston Medical Center and Boston University School of Medicine, Boston, MA
- March, 2017 "A 21st-Century Strategy for Medical Treatment of Transgender Individuals" Tufts Medicine Grand Rounds, Boston, MA
- January, 2017 "What to Know: A 21st-Century Approach to Transgender Medical Care" Internal Medicine Rounds, Brigham and Women's Hospital, Boston, MA
- March, 2016 "State-of-the-Art: Hormone Therapy for Transgender Patients" Obstetrics-Gynecology Rounds, Brigham and Women's Hospital, Boston, MA
- November, 2015 "What Every Endocrinologist Should Know to Feel Safe Providing Hormone Therapy for Transgender Patients" Endocrinology Rounds, Tufts Medical Center, Boston, MA
- May, 2015 "What Every Endocrinologist Should Know to Feel Safe Providing Hormone Therapy for Transgender Patients" Endocrinology Rounds, Massachusetts General Hospital, Boston, MA
- December, 2014 "What to Know to Feel Safe Providing Hormone Therapy for

- Transgender Patients” Endocrinology Rounds, Beth Israel Deaconess Medical Center, Boston, MA
- November, 2013 “Transgender Therapy – What Every Physician Should Know” Medicine Grand Rounds, Boston Veterans Administration Hospital, Boston, MA
- May, 2005 “Transgender Therapy: The Role of the Endocrinologist”, Endocrinology Rounds, Tufts-New England Medical Center, Boston, MA
- January, 2004 “New Directions in Thyroid Hormone Action: Skin and Hair”, Endocrinology Rounds, Brigham and Women’s Hospital, Boston, MA
- October, 1999 “The Many Faces of Hypothyroidism”, Medicine Grand Rounds, Bedford Veterans Administration Hospital, Bedford, MA

Institutional, Icahn School of Medicine at Mount Sinai, New York, NY

- April, 2020 “21st-Century Strategies for Transgender Hormone Care”, Colorectal Medicine CME (scheduled)
- March, 2020 “Transgender Medicine”, Frontiers in Science (scheduled)
- October, 2019 “Transgender Medicine”, East Harlem HOP rounds, New York, NY
- October, 2019 “Transgender Medicine”, Mount Sinai HIV rounds, New York, NY
- August, 2019 “Transgender Medicine”, Mount Sinai Endocrinology Fellows Conference, New York, NY

- February, 2019 “Transgender Medicine”, Mount Sinai
Endocrinology Grand Rounds, New
York, NY
- February, 2019 “Transgender Medicine”, Mount Sinai
Ob-Gyn Grand Rounds, New York, NY
- April, 2018 “21st-Century Strategies for
Transgender Hormone Care”, HIV
Grand Rounds

**Institutional, Boston University School of
Medicine, Boston, MA**

- March, 2017 “State of the Art Hormone Therapy for
Transgender Patients”, Section of
Infectious Disease
- January, 2017 “What you need to know – to
supervise care for our transgender
patients at BMC”, Section of
Endocrinology
- February, 2016 “State of the Art Hormone Therapy
for Transgender Patients”, Department
of Medicine
- November, 2015 “What the Family Medicine
Physician Should Know to Feel Safe
Providing Hormone Therapy for
Transgender Patients”, Department of
Family Medicine
- November, 2014 “What the Anesthesiologist
Should Know to Feel Safe Providing
Hormone Therapy for Transgender
Patients”, Department of Anesthesia
- January, 2014 “Update on the Current Guidelines
for Transgender Hormone Therapy”,
Section of Endocrinology
- October, 2011 “Transgender Therapy – What Every
Physician Should Know”, Department of

- Medicine February, 2011 “Current Guidelines for Transgender Hormone Therapy: What Every Endocrinologist Should Know”, Section of Endocrinology
- November, 2005 “Thyroiditis and Other Insults to Thyroid Function” Core Curriculum in Adult Primary Care Medicine
- November, 2005 “Interpretation of Thyroid Function Tests Made Easy” Core Curriculum in Adult Primary Care Medicine
- January, 2005 “Transgender Therapy: The Role of the Endocrinologist” Endocrinology Grand Rounds
- December, 2004 "Update in Endocrinology: Thyroid" Medicine Grand Rounds
- January, 2004 “New Directions in Thyroid Hormone Action: Skin and Hair” Medicine Grand Rounds
- March, 2003 “Thyroid Hormone Action on Hair and Skin” Endocrinology Grand Rounds
- November, 1999 “Central Resistance to Thyroid Hormone – From Bedside to Bench” Endocrinology Grand Rounds

Curriculum development with external dissemination

2014-present Web site for Association of Program Directors of Endocrinology and Metabolism (APDEM), which serves as *the primary resource for endocrinology fellowship program directors throughout the United States and Canada.*

- Sample curricula

- Streaming lectures to support specific curricular needs to fill programmatic gaps at certain programs
- New assessment forms that map skills to milestones that conform to Next Accreditation System (NAS) standards of the Accreditation Council for Graduate Medical Education (ACGME)

2013-present Dissemination of Transgender Medicine Curriculum with local modification to institutions in the United States and Canada

Curriculum adopted

Johns Hopkins School of Nursing (sample video: <http://vimeo.com/jhunursing/review/97477269/abbcf6d33a>)

Ohio State University College of Medicine
University of British Columbia, Faculty of Medicine

University of Central Florida College of Medicine

Tufts University School of Medicine

Curriculum in development

Dartmouth School of Medicine

University of Vermont College of Medicine

Work in progress in preparation for sharing transgender curriculum

Albany Medical College

Emory School of Medicine

George Washington University Medical School

Hofstra School of Medicine
University of California – San Diego
School of Medicine
University of Kentucky College of
Medicine
University of Louisville School of
Medicine
University of Michigan Medical School
University of Minnesota Medical School
University of Nebraska School of
Medicine
University of Pennsylvania School of
Medicine
Washington University School of
Medicine

- 2013-2015 Co-author of the *Medical Subspecialty Reporting Milestones used for evaluation of Internal Medicine subspecialty medicine fellowship programs throughout the United States* by the Accreditation Council for Graduate Medical Education (ACGME).
<https://www.acgme.org/acgmeweb/Portals/0/PDFs/Milestones/InternalMedicineSubspecialtyMilestones.pdf>
- 2011-2014 Web site content expert for APDEM, which served as *the primary resource for endocrinology fellowship Program directors throughout the United States and Canada*. Materials included sample curricula, streaming lectures to support specific curricular needs to fill programmatic gaps at

certain programs, and guidance dealing with ACGME site-visits

Other curriculum development

- 2019-present Massive Open On-line Course (MOOC) curricular content. Transgender Medicine for General Medical Providers, Icahn School of Medicine at Mount Sinai (<https://www.coursera.org/courses?query=transgender%20medicine%20for%20general%20medical%20providers&>)
- 2016-2018 Curricular Content to teach transgender hormone therapy in the LGBT elective at Harvard Medical School
- 2016-2018 Curricular Content to teach transgender hormone therapy at Tufts University School of Medicine.
- 2011-2018 Fully revised curriculum for the Boston University Medical Center Fellowship Training Program in Endocrinology, Diabetes and Nutrition.
- 2010-2018 Curricula to teach transgender hormone therapy at Boston University School of Medicine.
- 2006-2014 Written examination in endocrinology to complement the multiple-choice examination for medical students — validation relative to success later in medical school is in progress.

Bibliography: (ORCID # 0000 0003 2497 8401)

Names of mentees are underlined throughout the bibliography section

** currently most influential papers are noted with double asterisks

Original, Peer-Reviewed Articles

1. **Safer JD**, Langlois MF, Cohen R, Monden T, John-Hope D, Madura J, Hollenberg AN, Wondisford FE. Isoform variable action among thyroid hormone receptor mutants provides insight into pituitary resistance to thyroid hormone. *Mol Endocrinol* 1997;11(1):16-26. PMID 8994184
2. Langlois MF, Zanger K, Monden T, **Safer JD**, Hollenberg AN, Wondisford FE. A unique role of the beta-2 thyroid hormone receptor isoform in negative regulation by thyroid hormone - mapping of a novel amino-terminal domain important for ligand-independent activation. *J Biol Chem* 1997;272(40):24927-24933. PMID 9312095
3. **Safer JD**, Cohen RN, Hollenberg AN, Wondisford, FE. Defective release of corepressor by hinge mutants of the thyroid hormone receptor found in patients with resistance to thyroid hormone. *J Biol Chem* 1998;273(46):30175-30182. PMID 9804773
4. **Safer JD**, O'Connor MG, Colan SD, Srinivasan S, Tollin SR, Wondisford FE. The TR-beta gene mutation R383H is associated with isolated central resistance to thyroid hormone. *J Clin Endocrinol Metab* 1999;84(9):3099-3109. PMID 10487671
5. **Safer JD**, Fraser LM, Ray S, Holick MF. Topically applied triiodothyronine stimulates epidermal proliferation, dermal thickening, and

- hair growth in mice and rats. *Thyroid* 2001;1(8):717-724. PMID 11525263
6. Tangpricha V, Chen BJ, Swan NC, Sweeney AT, de las Morenas A, **Safer JD**. Twenty-one gauge needles provide more cellular samples than twenty-five gauge needles in fine needle aspiration biopsy of the thyroid. *Thyroid* 2001;11(10):973-976. PMID 11716046
 7. **Safer JD**, Crawford TM, Fraser LM, Hoa M, Ray S, Chen TC, Persons K, Holick MF. Thyroid hormone action on skin: diverging effects of topical versus intraperitoneal administration. *Thyroid* 2003;13(2):159-165. PMID 12699590
 8. Santini F, Ceccarini G, Montanelli L, Rosellini V, Mammoli C, Macchia P, Gatti G, Pucci E, Marsili A, Chopra IJ, Chiovato L, Vitto P, **Safer JD**, Braverman LE, Martino E, Pinchera A. Role for inner ring deiodination preventing transcutaneous passage of thyroxine. *J Clin Endocrinol Metab* 2003;88(6):2825-2830. PMID 12788895
 9. **Safer JD**, Crawford TM, Holick MF. A role for thyroid hormone in wound healing through keratin gene expression. *Endocrinology* 2004;145(5):2357-2361. PMID 14736740
 10. **Safer JD**, Crawford TM, Holick MF. Topical thyroid hormone accelerates wound healing in mice. *Endocrinology* 2005;146(10):4425-4430. PMID 15976059
 11. Saha AK, Persons K, **Safer JD**, Luo Z, Holick MF, Ruderman NB. AMPK regulation of the growth of cultured human keratinocytes. *Biochem Biophys Res Co* 2006;349(2):519-24. PMID 16949049
 12. **Safer JD**, Ray S, Holick MF. A topical PTH/PTHrP receptor antagonist stimulates hair

- growth in mice. *Endocrinology* 2007;148(3):1167-1170. PMID 17170098
13. **Safer JD**, Persons K, Holick MF. A thyroid hormone deiodinase inhibitor can decrease cutaneous cell proliferation in vitro. *Thyroid* 2009;19(2):181-185. PMID 19191748
 14. Ariza MA, Loken WM, Pearce EN, **Safer JD**. Male sex, African-American race/ethnicity, and T3 levels at diagnosis are predictors of weight gain following medication and radioactive iodine treatment for hyperthyroidism. *Endocr Pract* 2010;16(4):609-616. PMID 20350916
 15. Abraham TM, de las Morenas A, Lee SL, **Safer JD**. In thyroid fine needle aspiration, use of bedside-prepared slides significantly increased diagnostic adequacy and specimen cellularity relative to solution-based samples. *Thyroid* 2011;21(3):237-242. PMID 21323589
 16. Huang MP, Rodgers KA, O'Mara R, Mehta M, Abuzahra HS, Tannenbaum AD, Persons K, Holick MF, Safer JD. The thyroid hormone degrading Dio3 is the primary deiodinase active in murine epidermis. *Thyroid* 2011;21(11):1263-1268. PMID 21936673
 17. Toraldo G, Bhasin S, Bakhit M, Guo W, Serra C, S, **Safer JD**, Bhawan J, Jasuja R. Topical androgen antagonism promotes cutaneous wound healing without systemic androgen deprivation by blocking beta-catenin nuclear translocation and cross-talk with TGF-beta signaling in keratinocytes. *Wound Repair Regen* 2012;20:61-73. PMID 22276587
 - 18**. **Safer JD**, Pearce EN. A simple curriculum content change increased medical student comfort with transgender medicine. *Endocr Pract*

- 2013;19(4):633-637. PMID 23425656 - First ever demonstration of the effectiveness of an evidence-based approach to teaching transgender medicine to medical students
19. Thomas DD, **Safer JD**. A simple intervention raised resident-physician willingness to assist transgender patients seeking hormone therapy. *Endocr Pract* 2015;21(10):1134-42. PMID 26151424
 20. Mundluru SN, **Safer JD**, Larson, AR. Unforeseen ethical challenges for isotretinoin treatment in transgender patients. *Int J of Womens Dermatol* 2016;2(2):46-48. PMID 28492004
 21. Eriksson SES, **Safer JD**. Evidence-based curricular content improves student knowledge and changes attitudes towards transgender medicine. *Endocr Pract* 2016;22(7):837-841. PMID 27042742
 22. Chan B, Skocylas R, **Safer JD**. Gaps in transgender medicine content identified among Canadian medical school curricula. *Transgender Health* 2016;1(1):142-150. PMID 29159305
 23. Myers SC, **Safer JD**. Increased rates of smoking cessation observed among transgender women receiving hormone treatment. *Endocr Pract* 2017;23(1):32-36. PMID 27682351
 24. Berli J, Knudson G, Fraser L, Tangpricha V, Ettner R, Ettner F, **Safer JD**, Graham j, Monstrey S, Schecter L. Gender confirmation surgery: What surgeons need to know when providing care for transgender individuals. *JAMA Surgery* 2017;152(4):394-400. PMID 28196182
 25. Kailas M, Lu HMS, Rothman EF, **Safer JD**. Prevalence and types of gender-affirming surgery among a sample of transgender endocrinology

- patients prior to state expansion of insurance coverage. *Endocr Pract* 2017;23(7):780-786. PMID 28448757
26. Liang JJ, Gardner IH, Walker JA, **Safer JD**. Observed deficiencies in medical student knowledge of transgender and intersex health. *Endocr Pract* 2017;23(8):897-906. PMID 28534684
27. Park JA, **Safer JD**. Clinical exposure to transgender medicine improves students' preparedness above levels seen with didactic teaching alone: A key addition to the Boston University model for teaching transgender health care. *Transgender Health* 2018;3(1),10-16. PMID 29344576
28. Liang JJ, Jolly D, Chan KJ, **Safer JD**. Testosterone levels achieved by medically treated transgender women in a United States endocrinology clinic cohort. *Endocr Pract* 2018; 24(2):135-142. PMID 29144822
29. Chan KJ, Jolly D, Liang JJ, Weinand JD, Safer JD. Estrogen levels do not rise with testosterone treatment for transgender men. *Endocr Pract* 2018; 24(4):329-333. PMID 29561193
30. Chan KJ, Liang JJ, Jolly D, Weinand JD, **Safer JD**. Exogenous testosterone does not induce or exacerbate the metabolic features associated with PCOS among transgender men. *Endocr Pract* 2018; 24(6):565-572. PMID 29624102
31. Bisson JR, Chan KJ, **Safer JD**. Prolactin levels do not rise among transgender women treated with estradiol and spironolactone. *Endocr Pract* 2018; 24(7):646-651. PMID 29708436
32. Getahun D, Nash R, Flanders D, Baird TC, Becerra-Culqui TA, Cromwell L, Hunkler E, Lash

- TL, Millman A, Quinn VP, Robinson B, Roblin D, Silverberg MJ, **Safer J**, Slovis J, Tangpricha V, Goodman M. Cross-sex hormones and acute cardiovascular events in transgender persons: A cohort study. *Ann Intern Med* 2018; 169(4):205-213. PMID 29987313
33. Martinson TG, Ramachandran S, Lindner R, Reisman T, **Safer JD**. High body-mass index is a significant barrier to gender confirmation surgery for transgender and gender-nonbinary individuals. *Endocr Pract* 2020; 26(1):6-15. PMID 31461357
34. Goldstein Z, Martinson TG, Ramachandran S, Lindner R, **Safer JD**. Improved rates of cervical cancer screening among transmasculine patients through self-collected swabs for high-risk human papillomavirus DNA testing. *Transgender Health* 2020; 5(1):10-17. PMID
35. Lichtenstein M, Stein L, Connolly E, Goldstein ZG, Martinson TG, Tiersten L, Shin SJ, Pang JH, **Safer JD**. The Mount Sinai patient-centered preoperative criteria meant to optimize outcomes are less of a barrier to care than WPATH SOC 7 criteria before transgender-specific surgery. *Transgender Health* 2020; In Press. PMID

Case Reports, Reviews, Chapters:

Editorials and Critical Reviews:

36. **Safer JD**, Colan SD, Fraser LM, Wondisford FE. A pituitary tumor in a patient with thyroid hormone resistance: A diagnostic dilemma. *Thyroid* 2001;11(3):281-291. PMID 11327621
37. **Safer JD**, Hennessey JV, Braverman LE. Substituting brand name levothyroxine preparations with generics would increase

- treatment cost. *Ann Intern Med* 2005; on-line available at <http://www.annals.org/cgi/eletters/142/11/891#1882>
38. Pietras SM, **Safer JD**. A spurious elevation of both total thyroid hormone and thyroid hormone uptake measurements in the setting of autoantibodies may result in diagnostic confusion: A case report and review of the related literature. *Endocr Pract* 2008;14(6):738-742. PMID 18996795
 39. **Safer JD**, Tangpricha V. Out of the Shadows: It is time to mainstream treatment for transgender patients. *Endocr Pract* 2008;14(2):248-50. PMID 18308667
 40. Feldman J, **Safer JD**. Hormone therapy in adults: Suggested revisions to the sixth version of the Standards of Care. *Int J Transgenderism* 2009;11(3):146-182.
 41. Bhasin S, **Safer JD**, Tangpricha V. The Hormone Foundation's patient guide to the endocrine treatment of transsexual persons. *J Clin Endocrinol Metab* 2009;94(9).
 42. **Safer JD**. Thyroid hormone action on skin. *Dermatoendocrinol* 2011;3(3):1-5. PMID 22110782
 43. Kannan S, **Safer JD**. Finding the right balance between resistance & sensitivity -- A case report and brief review of the cardiac manifestations of the syndrome of resistance to thyroid hormone and the implications for treatment. *Endocr Pract* 2012; 18(2):252-255. PMID 22068246
 44. **Safer JD**. Thyroid hormone action on skin. *Curr Opin Endocrinol Diabetes Obes* 2012;19(5):388-293. PMID 22914563

45. **Safer JD.** Thyroid hormone and wound healing. *J Thyroid Res* 2013;doi:10.1155/2013/124538. PMID 23577275
46. **Safer JD.** Transgender medical research, provider education, and patient access are overdue. *Endocr Pract* 2013;19(4):575-6. PMID 23337168
47. **Gardner IH, Safer JD.** Progress on the road to better medical care for transgender patients. *Curr Opin Endocrinol Diabetes Obes* 2013;20(6):553-558. PMID 24468757
48. Gitlin SD, Flaherty J, Arrighi J, Swing S, Vasiliadis J, Brater DC, Breida M, Caverzagie K, Kane GC, Nelson Grier C, Parsons P, Smith B, Morrison L, Radwany S, Quill T, Kapur V, Roberts B, Silber M, DiBisceglie A, Fix O, Koteish A, Palumbo P, Trencle D, Berkowitz L, Holmboe E, Hood S, Iobst W, Levin S, Yaich S, Foster J, Jackson M, Juvin J, Williams E, Addrizzo-Harris D, Buckley J, Markowitz P, Sessler C, Torrington K, Richter S, Szyjkowski R, Alguire P, Cooke M, Bolster M, Brown C, Jones T, Marks L, Pardi D, Rose Z, Shah B, Busby-Whitehead J, Granville L, Leipzig R, Collichio F, Raymond M, Von Roenn J, Albertson D, Coyle W, Sedlack R, Abbott B, Fessler H, Balasubramanian A, Danoff A, Gopalakrishnan G, Piquette C, Schulman D, Geraci M, Rockey D, **Safer J**, Armstrong W, Havlichek Jr D, Helmy T, Kolansky D, Patores S, Spevetz A, Biller B, Cantelmi A. The Internal Medicine Subspecialty Milestone Project, a joint initiative of the Accreditation Council for Graduate Medical Education and the American Board of Internal Medicine, in collaboration with the Alliance for Academic Internal Medicine. 2014; online

available at <https://www.acgme.org/acgmeweb/Portals/0/PDFs/Milestones/InternalMedicineSubspecialtyMilestones.pdf>

- 49**. Saraswat A, Weinand JD, **Safer JD**. Evidence supporting the biological nature of gender identity. *Endocr Pract* 2015; 21(2):199-204. PMID 25667367 - Review of the biological nature of transgender identity most referenced by popular media (Google)
- 50**. Weinand JD, **Safer JD**. Hormone therapy in transgender adults is safe with provider supervision; A review of hormone therapy sequelae for transgender individuals. *J Clin Transl Endocr* 2015; 2:55-60. PMID 28090436 - The most comprehensive review of the relative safety of transgender hormone therapy
51. Boh B, **Safer JD**. State-of-the-art: Use of hormones in transgender individuals. *Endocrine Society* 2016; online available at <http://dx.doi.org/10.1210/MTP5.9781943550043.ch55>
52. **Safer JD**, Coleman E, Hembree, W. There is reason for optimism: an introduction to the special issue on research needs in transgender health and medicine. *Curr Opin Endocrinol Diabetes Obes* 2016; 23(2):165-167. PMID 26702853
- 53**. **Safer JD**, Coleman E, Feldman J, Garofalo R, Hembree W, Radix A, Sevelius J. Barriers to healthcare for transgender individuals. *Curr Opin Endocrinol Diabetes Obes* 2016; 23(2):168-171. PMID 26910276 - The most cited review of barriers to delivery of transgender healthcare in the United States in the medical system, medical curriculum, and medical culture

54. Feldman J, Brown GR, Deutsch MB, Hembree W, Meyer W, Meyer-Bahlburg HFL, Tangpricha V, T'Sjoen G, **Safer JD**. Priorities for transgender medical and healthcare research. *Curr Opin Endocrinol Diabetes Obes* 2016; 23(2):180-187. PMID 26825469
55. Reisner SL, Deutsch MB, Bhasin S, Bockting W, Brown GR, Feldman J, Garofalo R, Kreukels B, Radix A, **Safer JD**, Tangpricha V, T'Sjoen G, Goodman M. Advancing Methods for U.S. Transgender Health Research. *Curr Opin Endocrinol Diabetes Obes* 2016; 23(2):198-207. PMID 26845331
56. **Safer JD**. The large gaps in transgender medical knowledge among providers must be measured and addressed. *Endocr Pract* 2016;22(7):902-903. PMID 27214166
57. Bouman WP, Suess Schwend A, Motmans J, Smiley A, **Safer JD**, Deutsch MB, Adams NJ, Winter S. Language and trans health. *Int J Transgenderism* 2017;18(1):1-6.
58. Safer JD. The recognition that gender identity is biological complicates some previously settled clinical decision making. *AACE Clinical Case Rep* 2017;3(3):e289-e290. PMID 27967232
- 59**. Hembree WC, Cohen-Kettenis P, Gooren L, Hannema SE, Meyer WJ, Murad M, Rosenthal S, **Safer JD**, Tangpricha V, T'Sjoen G. Endocrine treatment of gender-dysphoric/gender-incongruent persons: an endocrine society clinical practice guideline. *J Clin Endocrinol Metab* 2017; 102(11):1–35. PMID 28945902 - The most respected guideline for hormone treatment of transgender individuals

60. **Safer JD**. Transgender patients and health care providers. *Health Affairs* 2017;36(12):2213. PMID 29200359
61. Tangpricha V, Hannema SE, Irwig M, Meyer WJ, **Safer JD**, Hembree WC. 2017 American Association of Clinical Endocrinologists/Endocrine Society update on transgender medicine: case discussions. *Endocr Pract* 2017;23(12):1430-1436. PMID 29320643
62. **Safer JD**. Managing intersex and transgender health across the globe requires more than just understanding the science. *AACE Clinical Case Rep* 2018;4(3):e267-e268.
63. Narasimhan S, **Safer JD**. Hormone therapy for transgender men. *Clin Plast Surg* 2018;45(3):319-322. PMID 29908619
64. Korpaisarn S, **Safer JD**. Gaps in transgender medical education among health care providers: A major barrier to care for transgender persons. *Reviews in Endocrine and Metabolic Disorders* 2018;19(3):271-275. PMID 29922962
65. Klein P, Narasimhan S, **Safer JD**. The Boston Medical Center experience: An achievable model for the delivery of transgender medical care at an academic medical center. *Transgender Health* 2018;3(1),136-140. PMID 30065961
66. **Safer JD**. Continuing gaps in transgender medicine education among health care providers. *Endocr Pract* 2018; 24(12):1106-1107. PMID 30715908
67. Goodman M, Getahun D, Silverberg MJ, **Safer J**, Tangpricha V. Reply to letter to the editor: Cross-sex hormones and acute cardiovascular events in transgender persons. *Ann Intern Med* 2019; 170(2):142-143. PMID 30641565

68. Iwamoto SJ, T'Sjoen G, **Safer JD**, Davidge-Pitts CJ, Wierman ME, Glodowski MB, Rothman MS. Letter to the editor: Progesterone is important for transgender women's therapy – Applying evidence for the benefits of progesterone in ciswomen. *J Clin Endocrinol Metab* 2019; 104(8):3127-3128. PMID 30860591
69. Rosenthal SM, Hembree WC, Cohen-Kettenis PT, Gooren L, Hannema SE, Meyer WJ, Murad MH, **Safer JD**, Tangpricha V, T'Sjoen GG. Reply to letter to the editor: Endocrine treatment of gender dysphoric/gender incongruent persons: An Endocrine Society* clinical practice guideline. *J Clin Endocrinol Metab* 2019; 104(11):5102-5103. PMID 31046093
70. Moser SW, Schechter LS, Facque AR, Berli JU, Agarwal C, Satterwhite T, Bluebond-Langner R, Kuzon WM, Ganor O, **Safer JD**, Knudson G. Nipple areolar complex reconstruction is an integral component of chest reconstruction in the treatment of transgender and gender diverse people. *International J Transgenderism* 2019; In Press. PMID
71. Korpaisarn S, **Safer JD**. Etiology of gender identity. *Endocrinol Metab Clin N Am* 2019; 48(2):323-329. PMID 31027542
- 72**. **Safer JD**, Tangpricha V. Care of the transgender patient. *Ann Intern Med* 2019; 171(1):ITC1-ITC6. PMID 31261405
- The highest profile review of transgender medicine oriented to primary care providers
73. Goldstein Z, Khan M, Reisman T, **Safer JD**. Managing the risk of venous thromboembolism in transgender adults undergoing hormone therapy. *J Blood Med* 2019; 10:209-216. PMID 31372078

74. Rosen HN, Hamnvik OPR, Unnop J, Malabanan AO, **Safer JD**, Tangpricha V, Wattanachanya L, Yeap SS. Bone densitometry in transgender and gender non-conforming (TGNC) individuals: The 2019 ISCD official positions. *J Clin Densitometry* 2019; 22(4):544-553. PMID 31327665
75. **Safer JD**. Hurdles to health care access for transgender individuals. *Nat Hum Behav* 2019; 3:1132-1133. PMID 31406336
76. **Safer JD**. Greater rigor studying the incidence of sexually transmissible infections among transgender individuals. *Med J Aust* 2019; 211(9):401. PMID 31595513
77. **Safer JD**. Advancing knowledge of transgender medical intervention effects. *Nat Rev Urol* 2019; 16(11):642-643. PMID 31399706
78. Reisman T, Goldstein Z, **Safer JD**. A review of breast development in cisgender women and implications for transgender women. *Endocr Pract* 2019; 25:1338-1345. PMID 31412232
- 79**. **Safer JD**, Tangpricha V. Care of transgender persons. *N Engl J Med* 2019; 381(25):2451-2460. PMID 31851801 - The highest profile review of transgender medicine
80. Libman H, **Safer JD**, Siegel JR, Reynolds EE. Caring for the transgender patient: Grand rounds discussion from Beth Israel Deaconess Medical Center. *Ann Intern Med* 2020; 172(3):202-209. PMID 32016334
81. Pang JH, **Safer JD**. A beginning in the investigation of the metabolic consequences of transgender hormone treatment on young people. *J Clin Endocrinol Metab* 2020; 105(3):1-2. PMID 31803926

82. Hassett MJ, Somerfield MR, Baker ER, Cardoso F, Kansal KJ, Kwait DC, Plichta JK, Ricker C, Roshal A, Ruddy KJ, **Safer JD**, Van Poznak C, Yung RL, Giordano SH. Management of Male Breast Cancer: ASCO Guideline. *J Clin Oncol* 2020; In Press. PMID 32058842

Textbook Chapters:

83. **Safer JD**, Wondisford, FE. 1997 TSH, normal physiology, *Contemporary Endocrinology: Diseases of the Pituitary*, Wierman ME, ed., Humana Press Inc., Totowa, NJ, 283-293
84. **Safer JD**. 2003 Resistance to thyroid hormone, *Contemporary Endocrinology: Diseases of the Thyroid*, 2nd Edition, Braverman LE, ed., Humana Press Inc., Totowa, NJ, 199-216
85. **Safer JD**. 2005 The skin in thyrotoxicosis, *Werner and Ingbar's The Thyroid*, 9th Edition, Braverman LE and Utiger RD, eds., Lippincott Williams and Williams, Philadelphia, PA, 553-558
86. **Safer JD**. 2005 The skin and connective tissue in hypothyroidism, *Werner and Ingbar's The Thyroid*, 9th Edition, Braverman LE and Utiger RD, eds., Lippincott Williams and Williams, Philadelphia, PA, 769-773
87. **Safer JD**, Holick MF. 2008 Potential therapeutic uses of thyroid hormone, *Thyroid Disorders with Cutaneous Manifestations*, Heymann WR, ed., Springer-Verlag, London, UK, 181-186
88. Leung AM, **Safer JD**. 2012 Thyrotoxicosis of extra thyroid origin, *Werner and Ingbar's The Thyroid*, 10th Edition, Braverman LE and Cooper D, eds., Lippincott Williams and Williams, Philadelphia, PA, 429-433

89. Kurani PN, Goldberg LJ, **Safer JD**. 2017 Evaluation and management of hirsutism in postmenopausal women, *Essentials of Menopause Management: A Case-Based Approach*, Pal L and Sayegh RA, eds., Springer, London, UK, 209-221
90. Sloan CA, **Safer JD**. 2017 The high risk client: Comorbid conditions that affect care, *Adult Transgender Care: An Interdisciplinary Approach for Training Mental Health Professionals*, Kauth MR and Shipherd JC, eds., Routledge, Taylor and Francis, London, UK, 101-122
91. Webb R, **Safer JD**. 2018 Transgender hormonal treatment, *Yen and Jaffe's Reproductive Endocrinology, edition 8*, Strauss JS and Barbieri JL, eds., Elsevier, Maryland Heights, MO, 709-716
92. Myers SC, **Safer JD**. 2019 Hormone therapy in transgender adults, *Manual of Endocrinology and Metabolism, 5th Edition*, Lavin N, ed., Walters Kluwer, Philadelphia, PA, 893-899
93. **Safer JD**, Chan KJ. 2019 Review of medical, socioeconomic, and systemic barriers to transgender care. *Transgender Medicine, A Multidisciplinary Approach*, Poretsky L and Hembree WC, eds., Humana Press, Cham, Switzerland, 25-38
94. Qian R, **Safer JD**. 2019 Hormone treatment for the adult transgender patient. *Comprehensive Care of the Transgender Patient*, Ferrando CA, ed., Elsevier, Maryland Heights, MO, 34-96
95. Tangpricha V, **Safer JD**. 2020 Hormone therapy for transgender women. *Gender Confirmation Surgery*, Schechter LS, ed. Springer, Cham, Switzerland, 59-63

96. **Safer JD**, Tangpricha V. 2020 Hormone therapy for transgender men. *Gender Confirmation Surgery*, Schechter LS, ed. Springer, Cham, Switzerland, 65-67

Case Reports:

97. Koutkia P, **Safer JD**. Adrenal metastasis secondary to papillary thyroid carcinoma. *Thyroid* 2001;11(11):1077-1079. PMID 11762719
98. Choong K, **Safer JD**. Graves disease and gynecomastia in two roommates. *Endocr Pract* 2011;17(4):647-650. PMID 21613048
99. Safer DL, Bullock KD, **Safer JD**. Obsessive-compulsive disorder presenting as gender dysphoria/gender incongruence: a case report and literature review. *AACE Clinical Case Rep* 2016;2:e268–e271.
100. Stevenson MO, Wixon N, **Safer JD**. Scalp Hair Regrowth in Hormone-Treated Transgender Woman. *Transgender Health* 2017;1(1):202-204. PMID 28861534
101. Sullivan CA, Hoffman JD, **Safer JD**. 17- β -hydroxysteroid dehydrogenase type 3 deficiency: Identifying a rare cause of 46, XY female phenotype in adulthood. *J Clin Transl Endocr Case Reports* 2018; 7:5-7.

Dissemination Through Lay Press and Social Media

Mass Audience Programming:

“Transgender Health AMA” Reddit. July 24, 2017. Expert responses to questions about transgender medicine. https://www.reddit.com/r/science/comments/6p7uhb/transgender_health_ama_series_i

[m_joshua_safer/](#) over 150,000 views, over 4200 comments

“Gender Revolution with Katie Couric” National Geographic Channel. Couric, Katie. February 6, 2017. Extended interview with Katie Couric threaded into a 2-hour television special. Trailer: <https://www.youtube.com/watch?v=y93MsRaC6Zw> broadcast in 143 countries

“Is gender identity biologically hard-wired?” Judd, Jackie. PBS NewsHour. May 13, 2015. Extended interview for Jackie Judd <http://www.pbs.org/newshour/bb/biology-gender-identity-children/> estimated just over 1,000,000 viewers per Nielsen

Innovation	Significance/impact
<i>Development and leadership of the Transgender Medicine Clinical Center, Mount Sinai Health System and Icahn School of Medicine at Mount Sinai</i>	<ul style="list-style-type: none"> • The Center for Transgender Medicine and Surgery at Mount Sinai is the first comprehensive center for transgender medical care in New York and the most comprehensive program in the United States • The Center is one of only several such centers in North America that are housed in academic teaching hospitals where care can be integrated • The Center is a model for such care delivery in North America.
<i>Development and leadership of the Transgender Medicine Clinical Center at Boston Medical Center</i>	<ul style="list-style-type: none"> • The Center for Transgender Medicine and Surgery at BMC is the first comprehensive center for transgender medical care in New England • The Center is one of only several such centers in North America that are housed in academic teaching hospitals where care can be integrated • The Center is a model for such care delivery in North America.
<i>Development and dissemination of the seminal reviews that are most widely cited in the lay press that explain the concept that gender identity is a biological phenomenon (see bibliography section above, e.g. PMID: 25667367).</i>	<ul style="list-style-type: none"> • The concept that gender identity is a biological phenomenon has been a key component of the recent culture change in favor of mainstream medical care for transgender individuals (see media section above)
<i>Development and dissemination of new and influential curricular content to teach the biology of gender identity in conventional medical education (see curriculum section above)</i>	<p>The teaching of evidence-based approaches to transgender medical care to:</p> <ul style="list-style-type: none"> • Medical students (see bibliography section above, e.g. PMID 23425656 and PMID 27042742) • Physician trainees (see bibliography section above, e.g. PMID 26151424) • Practicing physicians (see invited lectures section above) serves as a crucial component to the gained credence given to care for transgender individuals in conventional medical settings.
<i>Development and dissemination of seminal reviews supporting the safety of transgender hormone treatment regimens (see invited lectures section above)</i>	<ul style="list-style-type: none"> • Once mainstream medical providers learn of the biology underlying gender identity, their biggest concern is the relative safety of the medical interventions relative to the benefit. • The development and dissemination of the seminal reviews and lectures supporting the safety of current treatment regimens serves as a further crucial component to the culture change among conventional medical providers in favor of routine medical care for transgender individuals

Richard Eppink (Bar No. 7503) AMERICAN CIVIL LIBERTIES UNION OF IDAHO FOUNDATION P. O. Box 1897 Boise, ID 83701 United States T: (208) 344-9750 ext. 1202 REppink@acluidaho.org	Elizabeth Prelogar* COOLEY LLP 1299 Pennsylvania Avenue, NW Suite 700 Washington D.C. 20004- 2400 T: (202) 842-7800 F: (202) 842-7899 eprelogar@cooley.com
Gabriel Arkles* James Esseks* Chase Strangio* AMERICAN CIVIL LIBERTIES UNION FOUNDATION 125 Broad St., New York, NY 10004 T: (212) 549-2569 garkles@aclu.org jesseks@aclu.org cstrangio@aclu.org	Andrew Barr* COOLEY LLP 380 Interlocken Crescent, Ste. 900 Broomfield, CO 80021- 8023 T: (720) 566-4000 F: (720) 566-4099 abarr@cooley.com
Kathleen Hartnett* COOLEY LLP 101 California Street 5th Floor San Francisco, CA 94111-5800 T: (415) 693-2000 F: (415) 693-2222 khartnett@cooley.com	Catherine West* LEGAL VOICE 907 Pine Street, Unit 500 Seattle, WA 98101 T: (206) 682-9552 F: (206) 682-9556 cwest@legalvoice.org

* Admitted *Pro Hac Vice*

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

LINDSAY HECOX, et
al.,

Plaintiffs,

v.

BRADLEY LITTLE, et
al.,

Defendants.

No. 1:20-cv-184-CWD

**EXPERT
DECLARATION OF
SARA SWOBODA, MD,
IN SUPPORT OF
PLAINTIFFS'
MOTION FOR
PRELIMINARY
INJUNCTION**

I, Sara Swoboda, MD, have been retained by counsel for Plaintiffs Lindsay Hecox and Jane Doe, with her next friends, Jean Doe and John Doe, as an expert in connection with the above-captioned litigation.

1. The purpose of this declaration is to offer my expert opinion on: (1) typical sports physicals for high school athletes in Idaho; (2) the impact of H.B. 500 on the sports physical process; and (3) the potential harms of H.B. 500 to student-athletes through the imposition of a “biological sex” verification procedure.

2. In preparing this report, I reviewed the legislative findings for H.B. 500, as enacted, and the sources cited therein.

3. I have knowledge of the matters stated in this declaration and have collected and cite to relevant literature concerning the issues that arise in this litigation in the body of this declaration and in the attached bibliography.

4. In preparing this report, I relied on my education and training, my clinical experience and my knowledge of the scientific literature in the pertinent fields. The materials I have relied upon in preparing this report are the same types of materials that experts in my field of study regularly rely upon when forming opinions on the subject. I may wish to supplement these opinions or the bases for them as a result of new scientific research or publications or in response to statements and issues that may arise in my area of expertise.

PROFESSIONAL BACKGROUND

5. I am a general practice pediatrician in the St. Luke's Health System, Treasure Valley Pediatrics, in Boise, ID. A true and correct copy of my CV is attached hereto as Exhibit A.

6. I am licensed to practice medicine in the state of Idaho. I am an American Board of Pediatrics certified pediatrician and a Fellow with the American Academy of Pediatrics.

7. I graduated from the Washington State University in Pullman, WA with a Bachelor of Art degree in Political Science in 2005. I earned my Doctor of Medicine degree from the University of Washington School of Medicine in 2010. I completed intern and resident training in Pediatrics at University of Washington School of Medicine/Seattle Children's Hospital in 2013. From 2013-2016, I was a general pediatrician with the Indian Health Services, Navajo Nation, in Chinle, Arizona. Since 2017, I have been a general practice pediatrician with the St. Luke's Health System, Treasure Valley Pediatrics, in Boise, ID.

8. Between 2014 and 2016, I served as a medical consultant to the Chinle area Suspected Child Abuse and Neglect (SCAN) Team during which time I worked closely with tribal child protective services, law enforcement, and medical providers to provide medical consultation and follow-up for children suspected to be victims of abuse and neglect.

9. Since 2018 I have served as a Board Member for Idaho Voices for Children, a policy organization that focuses on expanding healthcare access for families, foster care advocacy and early childhood advocacy, and literacy.

10. In my current practice, I have approximately 1,500 patients between the ages of 0 and 18 across Idaho.

11. I have not previously testified as an expert witness in either deposition or at trial. I am being compensated at an hourly rate of \$250 per hour for preparation of expert declarations and reports, and \$400 per hour for time spent preparing for or giving deposition or trial testimony. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

GENERAL PEDIATRIC PRACTICE

12. As a pediatrician, my job is focused on caring for the health and well-being of infants, children, adolescents, and young adults. Working with children and their families, I provide well child care and health surveillance, preventative care, management and treatment of complex chronic medical conditions, and urgent treatment of acute illness in children and adolescents.

13. General principals of pediatric medicine instruct that we do no harm and focus on the best interests of the child. As a general practice, we also conduct patient history taking and examinations of adolescents and young adults outside of the presence of their parents to ensure appropriate privacy and confidentiality and to increase accuracy of assessments.

SPORTS PHYSICAL PROCESS

14. As part of my regular pediatric practice, I conduct sports physicals for Idaho student-athletes. I conduct approximately 100 sports physicals per year. During July and August, my practice regularly includes these sports physicals to ensure that my patients are ready to participate in athletics in the fall.

15. The American Academy of Pediatrics (AAP) has clear guidelines on the purpose and testing that makes up a sports physical.

16. Under AAP guidelines, the sole purposes of the physical are to check for health conditions that could result in serious injury or death while a young person is participating in athletics, look for conditions that predispose to injury, provide an opportunity to discuss health, determine general health, and create an entry point into the health care system. These include obscure heart conditions, severe asthma, seizure disorders, a single kidney, and other serious medical conditions. The AAP instructs that the physical is intended to encourage participation not exclusion from athletics. American Academy of Pediatrics, Preparticipation Physical Evaluation 3 (5th ed. 2019) (“The purpose of the [Preparticipation

Physical Evaluation] PPE is to facilitate and encourage safe participation, not to exclude athletes from participation”).

17. A typical sports physical lasts 30 minutes, during which time I do the following: review a patient’s personal and family medical history, verbally screen for history or symptoms that could indicate a life-threatening medical condition, complete a physical exam looking for signs of medical conditions that could cause morbidity and mortality, and discuss and encourage general principals of wellness. This exam would be conducted with the patient clothed and would involve very little contact directly with the patient’s body beyond listening to the person’s heart and lungs and palpating the abdomen.

18. Sports physicals do not include blood tests for hormone levels or any other purpose. Sports physicals do not include genetic tests for chromosomes or any other purpose. It is also not part of a sports physical to conduct a genital or pelvic examination.

19. A sports physical does include a general question about whether a person has only one testicle, but that information can be collected through asking the patient. As part of an annual exam, testicular exams are more often conducted, but can also be done by history. Pediatricians are moving in this direction as we become more thoughtful as a profession about the necessity/utility of genital exams. Under the AAP guidelines for sports physicals, the purpose of the inquiry is to protect youth from the possibility of losing a remaining functional testicle for the purpose

of sperm production where relevant. *Preparticipation Physical Evaluation* at 119.

IMPACT OF H.B. 500 ON SPORTS PHYSICALS

20. The language of Idaho's newly passed law requires that student-athletes who have their sex disputed obtain verification of their sex from a physician. As a pediatrician who regularly conducts sports physicals and who has a large number of student-athlete patients, I would likely be called upon under the terms of the law to write sex verification statements for my patients.

21. The law instructs physicians to verify a student's "biological sex as part of a routine sports physical examination relying only on one (1) or more of the following: the student's reproductive anatomy, genetic makeup, or normal endogenously produced testosterone levels." None of these physiological characteristics would be tested for in any routine sports physical examination. There is also no procedure in medicine to verify an individual's "biological sex" by looking at a single physiological characteristic. I could not, as the law instructs, "verify biological sex" by examining a patient's genetic makeup, normal endogenously produced testosterone levels, or reproductive anatomy, either alone or in any combination. This would not be consistent with medical science.

22. Even if I were to certify a patient's sex characteristics related to their genes, hormones or reproductive anatomy, none of that testing is straightforward or ethical without a clear medical indication.

23. Genetic testing is complicated and personal as it reveals a significant amount of information. It is done by a specialist.

24. If a patient were to come to me and ask for genetic testing or endogenous testosterone testing, I would have to refer them to a pediatric endocrinologist. For patients in rural areas, it might be difficult to find and travel to a pediatric endocrinologist.

25. Where a patient presents with a constellation of medical concerns that indicate a need for genetic testing, I would refer to a pediatric endocrinologist and order a chromosomal microarray. This type of testing reveals a significant amount of very sensitive and private medical information. A chromosomal microarray looks at all 23 pairs of chromosomes that an individual has and would reveal things beyond just whether a person has 46-XX, 46-XY, or some other combination of sex chromosomes. In ordering genetic testing of this kind, a range of genetic conditions could be revealed to a patient and patient's family. I do not do genetic testing as a routine part of any medical evaluation and am not aware of any pediatric practice that would (absent specific medical indications). Even in cases where a patient presents with possible medical or genetic conditions based off of medical or family history that would warrant genetic testing, such testing is complex and often requires insurance pre-authorization.

26. Likewise, if a patient were presenting with certain medical concerns I might refer that person to a pediatric endocrinologist for hormone testing. I do not test a patient's hormone levels as a routine part

of any medical evaluation and am not aware of any pediatric practice where hormone testing would be done (outside of specific medical concerns).

27. I do not as a general practice conduct internal pelvic examinations on patients. Pelvic examinations in pediatric patients are limited to patients with specific concerns such as acute trauma or infection. In young patients, such an exam would often be done with sedation and appropriate comfort measures to limit psychological trauma. Routine pap smears are currently not indicated in pediatric populations, including adolescents. Pediatric consensus recognizes that genitalia exams are always invasive and carry the risk of traumatizing patients if not done with careful consideration of medical utility, discussion about the purpose and subsequent findings of any exam with the patient and their family, and explicit consent of the patient.

28. If a patient came to my office and asked me to examine their “reproductive anatomy,” from a medical perspective, it would not be clear what such an examination would entail. “Reproductive anatomy” is not a medical term. That could include internal reproductive organs, external genitalia, or other body systems.

29. A medically unnecessary pelvic examination would be incredibly intrusive and traumatic for a patient. I would not conduct such an examination.

30. Determining whether an individual has ovaries may, in some circumstances, require more intrusive testing including transvaginal ultrasounds and may require referral to pediatric gynecologists, endocrinologists, and geneticists. None of this testing

would be a necessary part of a sports physical or any standard medical examination absent medical concerns and indications of underlying health conditions necessitating treatment.

31. Subjecting a pediatric patient to any unnecessary testing is against medical guidelines. Specific testing of genetics, internal or external reproductive anatomy, and hormones could reveal information that an individual was not looking to find out about themselves and then could result in having to disclose information to a school and community that could be deeply upsetting to pediatric patients.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 29, 2020

Sara Swoboda
Sara Swoboda, MD

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of April, 2020, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Dan Skinner
danskinner@cssklaw.com
cssklaw@cssklaw.com
*Attorney for Boise School District,
Individual members of the Board of Trustees of
Boise School District, Coby Dennis*

Steven L. Olsen

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W. Scott Zanzig

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dayton.reed@ag.idaho.gov

Attorneys for Bradley Little,

Sherri Ybarra,

*Individual members of the State Board of
Education,*

Boise State University,

Marlene Tromp,

*Individual members of the Idaho Code
Commission*

DATED this 30th day of April, 2020.

/s/ Richard Eppink

EXHIBIT A

Sara Swoboda, MD

Education

2010 – 2013 Pediatrics Residency
**University of Washington School of
Medicine/Seattle Children’s Hospital, Seattle,
WA**

2006 – 2010 M.D.
**University of Washington School of Medicine,
Seattle, WA**

2001 – 2005 B.A., Political Science (with emphasis
on global politics); *Summa Cum Laude*
Washington State University, Pullman, WA

Clinical Experience

2017-current

General Pediatrician

**St. Luke's Health System, Treasure Valley
Pediatrics**

Boise, ID

2013-2016

**General Pediatrician, inpatient and outpatient
services**

Indian Health Services, Navajo Nation

Chinle, AZ

2010–2013

Pediatric resident

University of Washington

Seattle, WA

Community and Advocacy

2018-current

Board member, Idaho Voices for Children

Idaho Voices for Children serves as the voice for children and families to ensure their needs are met in lawmaker's decisions and state policy. Advocacy and legislative lobbying focus areas include expanding healthcare access for families, foster care advocacy and early childhood advocacy, and literacy.

2014-2016

**Medical consultant, Chinle area Suspected
Child Abuse and Neglect (SCAN) Team**

Worked closely with tribal child protective services, law enforcement and medical providers to provide medical consultation and follow-up for children suspected to be victims of abuse and neglect.

2015-2016

R.I.S.E.: Respond, Intervene, Support, Educate

Co-author and pediatric program advisor for IHS Domestic Violence Prevention Initiative grant award to increase sexual assault response resources to pediatric populations in Chinle, AZ.

Funding for \$220,000/year for clinical programs

2015-2016

Hooghan Be' Adhií noo glí: A Home with Dignity

Co-author of IHS Domestic Violence Prevention Initiative grant award to implement ACEs screening and trauma-informed care into healthcare services in Chinle, AZ.

Funding for \$170,700/year for community and clinical programs

Publications

Cantey, P., Weeks, J., Edwards, M., Rao, S., Ostovar, A., Dehority, W., Alzona, M., **Swoboda, S.**, et al.

The Emergence of Zoonotic Onchocerca Lupi Infection in the United States--A Case Series. *Clinical Infectious Diseases*. Nov 2015, 62(6):778-83.

Cantey, P., Eberhard, M., Weeks, J., **Swoboda, S.** and Ostovar, A. Letter to the Editor: Onchocerca lupi infection. *Journal of Neurosurgery: Pediatrics*. Published online Oct 2015.

Swoboda, S. and Feldman, K. Skeletal Trauma in Child Abuse. *Pediatric Annals*. Nov 2013, 42(11):458.

Awards

Chinle Medical Staff "Above and Beyond" Award, 2016.

Navajo Area IHS Director's Award for Outstanding Health Care Provider, 2015.

Licensure/Certifications

- State of Idaho Medical License
- American Board of Pediatrics certified pediatrician
- Fellow, American Academy of Pediatrics

References available upon request

EXHIBIT A

**Declaration of Madison Kenyon In Support of
Intervention**

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

LINDSAY HECOX, and
JANE DOE with her next
friends JEAN DOE and
JOHN DOE,

Plaintiffs,

v.

BRADLEY LITTLE, in his
official capacity as
Governor of the State of
Idaho; SHERRI YBARRA,
in her official capacity as
the Superintendent of
Public Instruction of the
State of Idaho and as a
member of the Idaho State
Board of Education; THE
INDIVIDUAL MEMBERS
OF THE STATE BOARD
OF EDUCATION, in their
official capacities; BOISE
STATE UNIVERSITY;
MARLENE TROMP, in her
official capacity as
President of Boise State
University;
INDEPENDENT SCHOOL

Case No. 1:20-cv-
00184-DCN

**DECLARATION
OF MADISON
KENYON IN
SUPPORT OF
INTERVENTION**

DISTRICT OF BOISE
 CITY #1; COBY DENNIS,
 in his official capacity as
 superintendent of the
 Independent School District
 of Boise City #1; THE
 INDIVIDUAL MEMBERS
 OF THE BOARD OF
 TRUSTEES OF THE
 INDEPENDENT SCHOOL
 DISTRICT OF BOISE
 CITY #1, in their official
 capacities; THE
 INDIVIDUAL MEMBERS
 OF THE IDAHO CODE
 COMMISSION, in their
 official capacities,

Defendants.

I, Madison Kenyon, declare as follows:

1. I am a nineteen-year-old resident of Johnstown, Colorado.

2. I am a rising sophomore and female athlete at Idaho State University in Pocatello, Idaho, where I compete in women's cross-country and track competitions. Running is my passion.

Athletics Background

3. Athletics has been my world from a very young age. Both of my parents were high school athletes and my mom even competed at the collegiate level, so my first encounter with sports was at a young age. At three years old I kicked my first soccer ball

which lead to 15 years of competition on various school and club soccer teams.

4. Through soccer, I learned that I love to compete and play sports. In 6th grade, I introduced myself to cross-country where I fell in love with running, and I have not stopped competing since. That love of running caused me to join the track team my freshman year of high school.

5. Running is my happy place. I love being able to push my body to its limits, to explore the great outdoors on foot, and to do it all with a sense of camaraderie and fun with my teammates who are not only my closest friends but are my family.

Competing in Women's Collegiate Athletics

6. I decided to attend college at Idaho State University (ISU) because it is a big university nestled in a small town with lots of opportunity for both outdoor activity and track competition. The track scholarship I received has not only helped finance my athletic career, but to finance my dream of becoming a doctor someday. I am currently pursuing a degree in biomedicine.

7. As an ISU freshman in the 2019-2020 academic year, I made the cross-country team and competed in the 4k (2.49-mile), 3-mile, 5k (3.12-mile), and 6k (3.73-mile) events.

8. Going into the fall 2019 cross-country season, I was informed that I would be competing against a male who identifies as female on the University of Montana cross-country team. At first, I was incredulous at the idea that any biological male would be permitted to compete in the women's category.

9. I did some research concerning this student—June Eastwood—a biological male who competed on the UM male cross-country team for three years before identifying as June and competing in the women’s division. I learned that while competing in the men’s division, Eastwood had recorded times in several events faster than the college women’s national record.

10. These facts were discouraging, and my heart sank when I began attending cross-country meets and watched Eastwood placing and medaling in the women’s cross-country races. I not only watched Eastwood beat other women, Eastwood bested me in competition, too.

11. In cross-country, I competed against Eastwood in these races:

- a. 2019 Montana State Cross-Country Classic in the 3-mile event.
- b. 2019 Big Sky Cross-Country Championships in the 5k event.
- c. 2019 NCAA Division I Mountain Region XC Championships in the 6k event.

12. In all three races, Eastwood beat me by a significant margin and bumped me down to a lower placement than I would have received had I only competed against other women. That may not seem like a big deal to some, but placements matter to athletes. I want to know that I earned my placement fair and square. A one place difference can be the deciding factor on if my team takes second or third, fourth or fifth place, etc. Fair competition pushes me

to better myself and try harder; unfair competition leaves me feeling frustrated and defeated.

13. Cross-country athletes like me usually also compete in indoor and outdoor track. So, during the winter 2020 indoor track season, I competed in the 3k (1.86-mile), the mile, and the distance medley relay events.

14. In the indoor track season, again I raced Eastwood. At the 2020 Stacy Dragila Open Women's Indoor Mile, Eastwood took 2nd place and I took 8th. Eighth place is nothing to be ashamed of if won fairly, especially as a freshman competing in a race dominated by juniors and seniors, but the competition is not fair when one of the athletes in the women's category is a male with the strength and speed advantages that come from male physiology.

15. And at the 2020 Indoor Big Sky Championship, I along with three other ISU teammates competed in the distance medley relay against Eastwood's relay team. A distance medley relay is made up of a 1200-meter leg, a 400-meter leg, an 800-meter leg, and a 1600-meter leg. Montana State's relay team was in 6th place before Eastwood began the final 1600-meter leg of the race. During Eastwood's leg, Eastwood advanced the Montana team not one or two, but *four* positions to finish in 2nd place. My team took 5th, though we would have placed 4th if not for Eastwood's participation. We lost not only a placement, but team points as well.

16. Also, at the Big Sky Championship, I watched as one of my teammates lost her bronze medal and spot on the championship podium because Eastwood took first place in my teammate's event, bumping her

to fourth place. It was heartbreaking and frustrating to witness.

17. Sadly, the spring 2020 outdoor track season was canceled due to the COVID-19 pandemic, but I was training to compete in the 1500m, steeplechase, 5k, and distance medley relay. I intend to compete in these events next outdoor season.

18. I have four years of NCAA eligibility left. In the near-term, I intend to compete in fall 2020 cross-country, winter 2021 indoor track, and spring 2021 outdoor track competitions.

Fairness in Women's Sports

19. When I first heard that the Idaho legislature was considering H.B. 500, the Fairness in Women's Sports Act, I read the bill for myself to better understand how it would impact me and my athletic career. I knew from personal experience how it feels to compete against—and lose to—a male athlete in women's sports. And I researched how female athletes in other states and other sports were losing out to males who identify as female. This, to me, looked like an increasing problem. I am convinced that H.B. 500 is necessary to keep fairness in female sports and protect the broader interests of girls and women.

20. I believe that allowing males to enter women's sports defeats an entire aspect of sports: it eliminates the connection between an athlete's effort and her success (which is often the reason athletes love to compete in the first place). Sex separation in sports helps ensure that males and females each enjoy opportunities for fair competition and victory. It helps ensure that if women like me work hard that hard work pays off and we have a shot at winning.

21. I am a biology major. Scientifically, the biological differences between male and female are not matters of personal opinion, or features that can be changed or chosen. I *am* female, not because I chose to be female, or identify as female, but because every nucleated cell in my body is genetically marked female and my entire body developed in alignment with those female markers.

22. But you do not need to be a biology major to understand this, or to understand that males and females are different in essential ways. I'm in this world because I have a mom and a dad. And with respect to sports, I know from everyday experience that males around me are generally bigger, faster, and stronger than the females. The rules of sport implicitly acknowledge this. For example, men's cross-country races are often longer than women's cross-country races.

23. I fear that if we are no longer allowed by law to recognize the objective existence of women, that it will be a huge loss to women's rights. In researching the Fairness in Women's Sports Act, I also spent some time looking into how Title IX benefited women. From my perspective, it was a big turning point that helped women flourish. After Title IX passed in 1972, historic numbers of women began competing in the Olympics, in the World Cup, and receiving athletic scholarships. I benefit from Title IX's legacy. But putting men in women's sports dials back that progress and threatens to eliminate it.

24. Also, when sports authorities or the law permit males to compete under the name of female, it sends a disturbing message about who we are as

women. I don't agree with what this says about myself and my fellow female competitors. Women are unique. But if men can be women, it doesn't really mean anything to be a woman.

25. When male athletes are classified as "women" and allowed to compete in women's sports, we real female athletes lose not only opportunities for success, we also lose the words we need to protest this change in our sports. Those of us who really are females lose our name along with our fair competitions.

26. I strongly support the Fairness in Women's Sport Act. I want my races to be fair and a test of skill and hard work. I do not want to wonder whether I am training countless hours for inevitable losses or a lower race placement, or whether I will miss out on even the opportunity to win because I face physically advantaged male athletes.

27. Sports was the air I breathed growing up, and the air I breath now. I want my future daughters and other young girls to be able to have the same experiences and opportunities that I had. I want my teammates' and my hard work to pay off. I work to be competitive, I do not want to see women's sports fade away as a separate category because males who identify as females are allowed to compete in women's divisions as if they were women. Under the NCAA's current rules, I fear that we will soon effectively have men's sports and co-ed sports, but no dedicated category for females only.

28. I do not want to see women lose their legal protection and progress under the law because we can no longer identify what a woman is.

29. To my knowledge, Eastwood has graduated. But I have now learned through this lawsuit that another biological male, Lindsay Hecox, wants to compete on the women's team at Boise State University. Idaho State and Boise State occasionally compete at the same invitationals. For example, in the indoor 2020 track season, both universities competed at the UW Invitational in Seattle, Washington on January 31, 2020. Both universities were scheduled to compete at the Long beach Invitational in Long Beach, CA on April 18, 2020 (an event that was cancelled due to the COVID-19 pandemic). So, if the Fairness in Women's Sports Act is not upheld, it is possible that my teammates and I would compete against Hecox at future cross country or track events. And because NCAA rules do not promise female athletes any advance notice if a male is registered to compete on the women's team, it is entirely possible that I and other female runners could face competition from other male athletes in the upcoming season.

30. I believe everyone should be able to compete, but it must be done fairly. It is not fair for women's competitions to be open to biological male athletes. Women's sport itself will lose its meaning, and its specialness, if males can be redefined as females.

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

Madison Kenyon
Madison Kenyon
Signed May 20, 2020

EXHIBIT B

**Declaration of Mary Marshall In Support of
Intervention**

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

LINDSAY HECOX, and
JANE DOE with her next
friends JEAN DOE and
JOHN DOE,

Plaintiffs,

v.

BRADLEY LITTLE, in his
official capacity as
Governor of the State of
Idaho; SHERRI YBARRA,
in her official capacity as
the Superintendent of
Public Instruction of the
State of Idaho and as a
member of the Idaho State
Board of Education; THE
INDIVIDUAL MEMBERS
OF THE STATE BOARD
OF EDUCATION, in their
official capacities; BOISE
STATE UNIVERSITY;
MARLENE TROMP, in her
official capacity as
President of Boise State
University; INDEPEN-
DENT SCHOOL DISTRICT
OF BOISE CITY #1; COBY

Case No. 1:20-cv-
00184-DCN

**DECLARATION
OF MARY
MARSHALL IN
SUPPORT OF
INTERVENTION**

DENNIS, in his official capacity as superintendent of the Independent School District of Boise City #1; THE INDIVIDUAL MEMBERS OF THE BOARD OF TRUSTEES OF THE INDEPENDENT SCHOOL DISTRICT OF BOISE CITY #1, in their official capacities; THE INDIVIDUAL MEMBERS OF THE IDAHO CODE COMMISSION, in their official capacities,

Defendants.

I, Mary Marshall, declare as follows:

1. I am a twenty-year old resident of Twin Falls, Idaho.

2. I am a rising junior and female athlete at Idaho State University in Pocatello, Idaho, where I compete in cross-country and track and field athletic competitions.

Athletics Background

3. I first started playing basketball at seven or eight years old, and I continued through my sophomore year of high school. I enjoyed the competition, the adrenaline rush, and the sheer fun of the game.

4. In 8th grade, I started running track. And in my sophomore year of high school, I also took up cross-

country to get in shape for basketball. But to my surprise, I realized that I loved running *more* than playing basketball! So, I kept running cross-country and track, and dropped basketball my junior year.

5. I discovered that I am good at running. In two back-to-back years, my high school medley relay team won the State championship in our division. And in my senior year of high school, I won the State championship in the 800-meter for my division.

6. I love to run. It gives me confidence, improves my mood, and allows me to better myself while also taking in the sights of our beautiful state. But being a competitive female athlete is about more than just running long distances. It is about community. My teammates have become my closest friends. We push each other to be our best, help one another through disappointments and losses, and cheer one another on as we celebrate victories. We travel together for sporting events and share hotel rooms. It's like a sisterhood! We enjoy one another so much that we even spend our free time together. Through running competitively, I have made some of my closest friends.

Competing in Women's Collegiate Athletics

7. I chose to attend college at Idaho State University (ISU) because it is close to home and I really liked my track coaches. I am grateful to be one of the lucky ones to benefit from a women's track scholarship.

8. In college, I am primarily a mid-distance track athlete, focusing on shorter distances like the 800-meter and the mile. But I also compete in cross-country to stay in shape. In cross-country, I generally compete in the 5k.

9. Training is hard work. On Tuesdays and Thursday, I usually have a two-hour workout with my team. On the alternate days, my teammates and I get together for a five-to-six mile run. Additionally, we have an hour-long weightlifting session on Mondays and Wednesdays.

10. But in the fall of my sophomore year of college, I learned that I would be racing against a male who identifies as female, who was competing on the University of Montana women's team. I was appalled. I do not know how anyone could think this is fair to female athletes. Male runners are naturally faster than females.

11. I raced against male athlete June Eastwood not once, but twice. The first was in the Montana State Cross-Country Classic 3-mile event in the fall of 2019. The second was in January 2020 at the Stacy Dragila Indoor mile event. I lost both times.

12. When I lose to another woman, I assume that she must train harder than I do and it drives me to work harder. If I lose to a man, it feels completely different. It's deflating. I wonder whether he has to work as hard as I do, whether he was even trying, or was that an easy race for him. It makes me think that no matter how hard I try, my hard work and effort will not matter.

13. Members of the men's track team sometimes do easy runs with me and my teammates on the women's track team. But we women are under no illusion that we would be competitive in a race against these men. Even our easy runs are at different paces. For example, an easy run for women is usually at an 8:30 pace, while an easy pace for men is around 7:30.

14. I have previously competed against Boise State University's women's track team. I now understand through this litigation that male athlete Lindsay Hecox intends to try out for the Boise State women's track team this fall. Without legal protections for the female category, I fear this will continue.

15. I have three more years of track and cross country NCAA eligibility, and I intend to compete in cross-country during fall 2020, and track during winter and spring 2021. I plan to use all remaining years of my NCAA eligibility.

Fairness in Women's Sports

16. I first heard about Idaho's H.B. 500 Fairness in Women's Sports Act over Christmas break in 2019. I was really excited and wanted it to pass.

17. I have personally seen the negative impact on women when Eastwood was allowed to compete against them, and I fear that if men only need to "identify" as women in order to compete in the women's category, it will have many harmful effects on women's sports, and on women in general. I want to stop this before it becomes popular. I enthusiastically support Idaho's Fairness in Women's Sport Act.

18. I want to preserve the camaraderie and sisterhood that comes from competing with and against females only. I want to see our sports hold on to the real category of girls and women, and to specially protect those who are in that group. Having males in our teams and competitions will change the whole experience and meaning of women's sports.

19. I want other young women to benefit from sports as I did. I did well in high school sports. But if a boy had decided to compete against me in basketball, or track, or cross-country, I am not sure that I would have kept on competing. The hope for success drives effort. If I knew that I could not win, or would have to compete against boys, I might have dropped out of sports altogether. I'm certain that many female athletes would feel the same.

20. That idea concerns me. Sports have played such an important role in my life. It taught me how to work in groups and as a team. It taught me how to persist through disappointment. It taught me that if I put in the work, I will get the results. It taught me to respect rules and see the importance of them. It has taught me how to interact with people I do not know, and how to respond to those in authority over me. It has given me the confidence to pursue business and economics studies at ISU, to think I can succeed as an entrepreneur and business owner someday, and to make plans to do so. These are the benefits that I want to preserve for the next generation of women. These are the benefits that I think will not be available in the way they were for me if females are demoralized by having their sports altered by opening them to male athletes.

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

Mary Marshall

Mary Marshall

Signed May 20, 2020

APPENDIX 1

**RESPONSE TO MOTION FOR PRELIMINARY
INJUNCTION – OCR LETTER OF IMPENDING
ENFORCEMENT ACTION**



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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May 15, 2020

Sent via email only to:

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Re: Case No. 01-19-4025
Connecticut Interscholastic Athletic Conference
Case No. 01-19-1252
Glastonbury Public Schools
Case No. 01-20-1003
Bloomfield Public Schools
Case No. 01-20-1004
Canton Public Schools
Case No. 01-20-1005
Cromwell Public Schools
Case No. 01-20-1006
Danbury Public Schools
Case No. 01-20-1007
Hartford Public Schools

Dear Attorneys Mizerak, Monastersky, Murphy,
Yoder, and Zelman:

The U.S. Department of Education, Office for Civil
Rights (OCR) issues this Letter of Impending

Enforcement Action¹ in the above-referenced cases. The Complainant filed complaints against the Connecticut Interscholastic Athletic Conference (CIAC) and the Glastonbury Board of Education (Glastonbury) on behalf of three high school student-athletes and their parents. The Complainant alleged that the CIAC’s policy permitting certain biologically male student-athletes to participate in interscholastic athletics (Article IX, Section B of the CIAC By-Laws, adopted May 9, 2013, and titled, “Transgender Participation” (hereinafter referred to as the Revised Transgender Participation Policy)) discriminated against female student-athletes competing in interscholastic girls’ track in the state of Connecticut on the basis of their sex.² Specifically, the Complainant alleged that the Revised Transgender Participation Policy denied girls opportunities to compete, including in state and regional meets, and to receive public recognition critical to college recruiting and scholarship opportunities. The Complainant further alleged that implementation of the Revised Transgender Participation Policy by Glastonbury, the school attended by one of the complainant student-

¹ Section 305 of OCR’s *Case Processing Manual* states as follows: “When following the expiration of the 10 calendar day period referenced in CPM subsection 303(g) . . . the recipient does not enter into a resolution agreement to resolve the identified areas of non-compliance, OCR will prepare a Letter of Impending Enforcement Action.”

² For the purposes of this letter, the terms “male” and “female” are defined by biological sex. See *Mem. from U.S. Attorney General to U.S. Attorneys Heads of Department Components* (Oct. 4, 2017), available at <https://www.justice.gov/ag/page/file/1006981/download>; and Brief for the Federal Respondent, *Harris Funeral Homes, Inc. v. EEOC, et al.*, No. 18-107, 2019 WL 3942898 (U.S.) (2019).

athletes (Student 1), denied opportunities to girls competing in interscholastic girls' track on the basis of their sex. In addition, the Complainant alleged that the CIAC retaliated against one of the complainant parents (Parent 1), after Parent 1 complained about the Revised Transgender Participation Policy; and that a Glastonbury track coach retaliated against Student 1 for her and her parent's (Parent 2's) advocacy against the Revised Transgender Participation Policy.

Pursuant to OCR's *Case Processing Manual* (the *Manual*),³ Section 103, OCR also opened an investigation of Bloomfield Public Schools (Bloomfield) and Hartford Public Schools (Hartford), based on allegations that these school districts allowed a biologically male student-athlete (Student A) to participate on their girls' track teams. OCR also opened an investigation of Cromwell Public Schools (Cromwell), based on allegations that this school district allowed a biologically male student-athlete (Student B) to participate on its girls' track team. Additionally, OCR opened an investigation of Canton Public Schools (Canton) and Danbury Public Schools (Danbury), the school districts attended by the other two complainant student-athletes (Students 2 and 3, respectively), following a determination that these school districts may have been involved in alleged acts of discrimination related to the complaints filed against the CIAC and Glastonbury. OCR investigated whether these school districts denied athletic benefits and opportunities to female student-athletes competing in interscholastic girls' track through

³ <https://www2.ed.gov/about/offices/list/ocr/docs/ocrspm.pdf>.

implementation of the Revised Transgender Participation Policy, or limited the eligibility or participation of any female student-athletes competing in interscholastic girls' track through implementation of the Revised Transgender Participation Policy.

Summary of Findings

As detailed below, the actions of the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury resulted in the loss of athletic benefits and opportunities for female student-athletes. One complainant student-athlete explained to OCR that no matter how hard she trained, she felt that she could never be good enough to defeat Students A and B. She also stated that female student-athletes were missing out on great opportunities to succeed and felt that female student-athletes could be "completely eradicated from their own sports." Another complainant student-athlete explained to OCR that she felt that she could not fairly compete against Students A and B, because they had a physical advantage over her. In this sense, they were denied the opportunities that Connecticut male student-athletes had of being able to compete, on a level playing field, for the benefits that flow from success in competitive athletics. OCR determined that the participation of Students A and B in girls' track events resulted in lost benefits and opportunities for female student-athletes.

OCR determined that the CIAC, by permitting the participation of certain male student-athletes in girls' interscholastic track in the state of Connecticut, pursuant to the Revised Transgender Participation

Policy, denied female student-athletes athletic benefits and opportunities, including advancing to the finals in events, higher level competitions, awards, medals, recognition, and the possibility of greater visibility to colleges and other benefits. Accordingly, OCR determined that the CIAC denied athletic benefits and opportunities to female student-athletes competing in interscholastic girls' track in the state of Connecticut through the Revised Transgender Participation Policy, in violation of the regulation implementing Title IX of the Education Amendments of 1972 (Title IX), at 34 C.F.R. § 106.41(a).

OCR determined that the participation of Glastonbury, Canton, and Danbury in athletic events sponsored by the CIAC, consistent with the CIAC's Revised Transgender Participation Policy, which resulted in Students 1, 2, and 3, and other female student-athletes competing against Students A and B, denied athletic benefits and opportunities to Students 1, 2, and 3, and other female student-athletes, in violation of the regulation implementing Title IX, at 34 C.F.R. § 106.41(a). Glastonbury, Canton, and Danbury placed female student-athletes in athletic events against male student-athletes, resulting in competitive disadvantages for female student-athletes. The athletic events in which the female student-athletes competed were coeducational; female student-athletes were denied the opportunity to compete in events that were exclusively female, whereas male student-athletes were able to compete in events that were exclusively male. Accordingly, the districts' participation in the athletic events sponsored by the CIAC denied female student-athletes athletic opportunities that were

provided to male student-athletes. Glastonbury's, Canton's, and Danbury's obligations to comply with the regulation implementing Title IX are not obviated or alleviated by any rule or regulation of the CIAC. 34 C.F.R. § 106.6(c).

Student A participated in girls' outdoor track during school year 2017-2018 on the Bulkeley (Hartford) team; and participated in girls' indoor and outdoor track during school year 2018-2019 on Bloomfield's team. OCR determined that the participation of Hartford and Bloomfield in athletic events sponsored by the CIAC, consistent with the CIAC's Revised Transgender Participation Policy, which resulted in Student A's participating in events against Students 1, 2, and 3, and against other female student-athletes, denied athletic benefits and opportunities to Students 1, 2, and 3, and other female student-athletes, in violation of the regulation implementing Title IX, at 34 C.F.R. § 106.41(a). Student B participated in girls' indoor and outdoor track during school years 2017-2018 and 2018-2019 on Cromwell's team. OCR determined that the participation of Cromwell in athletic events sponsored by the CIAC, consistent with the CIAC's Revised Transgender Participation Policy, which resulted in Student B's participating in events against Students 1, 2, and 3, and against other female student-athletes, denied athletic benefits and opportunities to Students 1, 2, and 3, and other female student-athletes, in violation of the regulation implementing Title IX, at 34 C.F.R. § 106.41(a). Hartford's, Bloomfield's, and Cromwell's obligations to comply with the regulation implementing Title IX are not obviated or alleviated by any rule or regulation of the CIAC. 34 C.F.R. § 106.6(c).

For the aforementioned reasons, OCR also determined that the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury treated student-athletes differently based on sex, by denying benefits and opportunities to female students that were available to male students.

With respect to the retaliation allegation filed against the CIAC, there was insufficient evidence to substantiate the Complainant's allegation that the CIAC retaliated against Parent 1 after Parent 1 complained about the Revised Transgender Participation Policy. With respect to the retaliation allegation filed against Glastonbury, there was insufficient evidence to substantiate the Complainant's allegation that Glastonbury retaliated against Student 1.

Nothing in this letter should be interpreted to impute misconduct on the part of any biologically male students who participated in these competitions.

Investigation and Issuance of Letter of Impending Enforcement Action

During the course of the investigation, OCR interviewed the Executive Director of the CIAC; administrators and staff from Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury; and the students and parents on whose behalf the complaint was filed. In addition, OCR reviewed documentation that the Complainant, the CIAC, the school districts, and some of the students and parents submitted. OCR also reviewed publicly available information regarding the CIAC and its member school student-athletes.

At the conclusion of the investigations, OCR informed the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury of its findings and determinations that the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury had discriminated against female student-athletes. OCR requested that the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury enter into resolution agreements to remedy the violations. Because the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury did not enter into resolution agreements, OCR issued letters of impasse to the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury on March 17, 2020, in which it advised the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury that it would issue this letter if each did not reach an agreement with OCR within 10 calendar days of the date of its impasse letter.⁴ OCR issues this Letter of Impending Enforcement Action because the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury have to date failed to voluntarily enter into resolution agreements to remedy the identified violations.

Jurisdiction

OCR is responsible for enforcing Title IX, as amended, 20 U.S.C. § 1681 et seq., and its implementing

⁴ In emails dated March 27, 2020, OCR informed the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury that in view of their COVID-19-related duties and responsibilities, OCR was extending the 10-calendar-day deadline to respond to OCR's proposed resolution agreement for a period of 30 days, to April 27, 2020.

regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities receiving financial assistance from the U.S. Department of Education (the Department).

OCR has jurisdiction over the CIAC as follows:

- a) The CIAC is a direct recipient of Federal funding from the Department through a grant awarded by the Department's Office of Special Education Programs (OSEP) to support the the Special Olympics Unified Champion Schools program administered by the CIAC.
- b) The CIAC is also an indirect recipient of Federal funding. The CIAC is governed by member school representatives who devote official time and district resources to the CIAC (e.g., determine athletic eligibility, make rules for athletic competitions, run state boys' and girls' tournaments, and control state championships). In addition, the CIAC receives revenue through the sale of tickets to tournament contests—revenue that would otherwise go to the schools—and by the assessment of entry fees on schools for participation in various tournaments. The CIAC is also an indirect recipient of Departmental financial assistance through Special Olympics of Connecticut (which receives grant money from OSEP) because several employees of Special Olympics of Connecticut provide to the CIAC technical assistance in the administration of the Special Olympics Unified Champion Schools program.

- c) The CIAC's member schools also have ceded controlling authority over Connecticut's high school athletic program to the CIAC, whose purpose is to supervise, direct, and control interscholastic athletics in Connecticut. In addition to the CIAC's governance by local school representatives (noted above), the Connecticut General Assembly's Office of Legislative Research stated that school districts have the power to organize athletic programs and decide in what sports to compete, adding, "Boards have delegated authority over the organization of interscholastic high school athletics to [the CIAC]. CIAC regulates high school sports, promulgates eligibility and safety and health rules for teams, and organizes and controls games and championships."

OCR has jurisdictional authority under Title IX to investigate Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury, because each is a recipient of financial assistance from the Department.

I. ATHLETIC BENEFITS AND OPPORTUNITIES

Findings of Fact

The CIAC's Organizational Structure

The CIAC is the only association governing interscholastic athletic programs for secondary schools in Connecticut.⁵ The CIAC is a division of the

⁵ See CIAC Handbook 2019-2020, Section 2.2 ("The CIAC is the only Association which governs interscholastic athletic programs for secondary schools in Connecticut.").

Connecticut Association of Schools (CAS). Any public or parochial school accredited by the Connecticut State Department of Education, as well as any private school or academy, and any private school holding associate institutional membership in the CAS can become a member of the CIAC. The CIAC currently has 188 member schools. Member schools sign an annual Membership Agreement, pay annual dues, and agree to abide by the CAS Constitution and the CIAC By-Laws and Eligibility Rules. During school year 2018-2019, the CIAC authorized its member schools to participate in 14 boys' sports and 13 girls' sports. The CIAC By-Laws allow female athletes to participate on boys' teams, but do not permit male athletes to participate on girls' teams. The CIAC administers its athletics programs by way of the CAS Constitution, by-laws, and tournament regulations.⁶

The CIAC has 27 committees corresponding to each of the CIAC-sanctioned sports. Each committee includes representatives from member schools, including principals, coaches, and athletic directors, as well as former coaches. These committees coordinate the activities of the sports, including game rules, playing conditions, tournament policies, and sportsmanship initiatives. The by-laws, along with the CAS constitution, are published every year as part of the CIAC Handbook, which is available on the CIAC

⁶ The by-laws constitute the general rules and policies for athletic administration and participation in the CIAC. Specific policies, such as the Revised Transgender Participation Policy, are contained within the by-laws. Further policies regarding sport-specific tournament participation ("tournament regulations") are published each season in a sports information packet.

website.⁷ The Handbook includes detailed rules and regulations governing athletic administration, scheduling, and eligibility, among other topics. The CAS Legislative Body is authorized to make changes to the CAS Constitution and the bylaws. The principals of the CIAC member schools are the voting delegates to the Legislative Body. The CAS Constitution states that any voting member school may submit a proposed change to the by-laws/regulations through its representative. The CIAC Board of Control is the governing body for high school interscholastic sports in Connecticut and has 14 voting and 3 non-voting members; the Board of Control has representatives from large, medium, and small schools, urban and rural schools, as well as public, parochial, and technical schools.⁸ The by-laws require that the Board of Control consider any proposed change to a by-law/regulation, act upon it, and submit any proposed by-law/regulation change to member schools for a vote at the annual meeting of the Legislative Body. The by-laws, including the rules, regulations, and policies contained therein, as well as the tournament regulations are binding on its

⁷ http://www.casciac.org/pdfs/ciachandbook_1920.pdf (site last visited on April 24, 2020).

⁸ The CIAC Board of Control is elected each year by the Legislative Body at the Annual Meeting of the CAS. The CIAC Board of Control meets monthly during the school year.

member schools,⁹ and the CIAC has the authority to penalize schools for violation of the by-laws.¹⁰

During interviews, district staff members confirmed that the districts regarded the by-laws, rules, and regulations, including the Revised Transgender Participation Policy, as binding. The witnesses further stated that they regarded the CIAC as the only athletic association in Connecticut that could provide sufficient competitive opportunities for their students.¹¹ Witnesses told OCR that if their schools

⁹ See the CIAC Handbook 2019-2020, Section 2.4 (“Each member school has the responsibility of knowing and adhering to all CIAC rules and regulations and administering its athletic programs according to those rules.”).

¹⁰ See the CIAC Handbook 2019-2020, Section 3.0, CIAC By-Laws, Article III, Section C (“The Board of Control shall have the power to assess and to enforce such penalties, including fines, against member schools, principals, athletic directors, coaches and/or members of the coaching staff, as it deems suitable for violations of its Bylaws, Regulations, Rules, Standards of Courtesy, Fair Play and Sportsmanship, Code of Ethics, or any other standard of conduct or any other provision of this Handbook.”). Witnesses OCR interviewed, including the CIAC Executive Director and administrators of member schools, stated that, in general, member schools are responsible for ensuring their own compliance with the CIAC’s rules and for self-reporting any violations of those rules. Member schools can also report other schools for potential violations. The CIAC Executive Director informed OCR that, to date, no member school has self-reported or reported another member school for a violation of the Revised Transgender Participation Policy.

¹¹ The CIAC Executive Director stated that there are private schools within Connecticut, such as Taft, Choate, and Kent, that do not belong to the CIAC. These schools belong to the Founders League, whose website describes the league as comprising “highly selective college preparatory schools.” The Founders League includes ten schools from Connecticut and one school from New York. The Founders League holds its Championship

were to withdraw from the CIAC, they likely would encounter difficulties scheduling games against other schools and would be unable to participate in statewide competitions. An Athletic Director for one of the Districts advised OCR that a CIAC member school would not benefit from playing against a nonmember school because it would not add to the school's record for purposes of qualifying for the state championship. The same Athletic Director also stated that having a state-wide association makes all of the athletics programs stronger and more consistent with set rules for play and eligibility.

The CIAC's Adoption of its Revised Transgender Participation Policy

The CIAC stated that its Board of Control began discussions regarding transgender participation in athletics during school year 2007-2008. During its 56th Annual Meeting, held on May 8, 2008, the CIAC membership adopted a by-law change concerning the eligibility of transgender athletes, adding new language to Article IX of the CIAC by-laws (the 2008 policy). Specifically, the 2008 policy allowed transgender student-athlete participation only in accordance with the gender stated on the student's birth certificate unless the student had undergone "sex reassignment."¹² The 2008 policy set forth

in 13 boys' sports and 12 girls' sports separately, and the CIAC precludes any Founders League schools from competing in any post-season events hosted by the CIAC. Witnesses opined that they did not know if the Founders League was a feasible alternative for a public school in lieu of becoming a member of the CIAC.

¹² https://www.casciac.org/pdfs/ciachandbook_1213.pdf (site last visited on April 24, 2020)

specific requirements for post-pubescent sex reassignment, including surgery; legal recognition of the reassignment by proper governmental authorities; hormonal therapy; and a two-year waiting period post-surgical and anatomical changes.¹³ The 2008 policy also provided that a student-athlete seeking participation as a result of a sex reassignment would be able to appeal eligibility determinations through the CIAC's eligibility appeal process. The stated rationale for the 2008 policy was that “[w]hile the eligibility of transgendered students has not yet been a ‘live’ issue in Connecticut, the CIAC Board felt that it should be pro-active and have a policy in place for any future eventualities.”¹⁴ The 2008 policy remained in effect until 2013. The CIAC advised OCR that, during that time period, the CIAC did not receive any requests for a student-athlete to participate on a team that was different from the student's “assigned gender at birth.”

The CIAC stated that in 2012, after the Connecticut Legislature passed Public Act 11-55, expanding the scope of Connecticut's anti-discrimination laws to prohibit discrimination on the basis of “gender identity or expression,”¹⁵ the CIAC decided to review and revise the 2008 policy.

¹³ Under the 2008 policy, a student-athlete who had undergone sex reassignment before puberty was not subject to the requirements detailed above.

¹⁴ The CIAC Annual Meeting minutes. https://www.casciac.org/pdfs/adopted_bylaw_changes_CIAC.pdf (site last visited on April 24, 2020).

¹⁵ P.A. 11-55, which became effective on October 1, 2011, defines “gender identity or expression” as follows:

The CIAC did so at its Annual Meeting, held on May 9, 2013, when the current Revised Transgender Participation Policy was enacted. This Policy states, in relevant part:

[T]his policy addresses eligibility determinations for students who have a gender identity that is different from the gender listed on their official birth certificates. . . . Therefore, for purposes of sports participation, the CIAC shall defer to the determination of the student

“Gender identity or expression” means a person’s gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person’s core identity or not being asserted for an improper purpose.

See Conn. Gen. Stat. § 46a-51. Specifically, with respect to the public schools, P.A. 11-55 amended § 10-15c of the Connecticut General Statutes to prohibit discrimination on the basis of gender identity or expression, among other bases. The legislative history of P.A. 11-55 indicates that the topic of athletics was briefly raised during the Connecticut House proceedings on May 19, 2011, in a discussion between Rep. Fox (the bill’s proponent) and Rep. Shaban. In response to Rep. Shaban’s question concerning whether, under the bill, a high school boy who wanted to play on the school’s girls’ basketball team could not be prohibited from doing so, Rep. Fox indicated that he believed, but was not certain, that in that context the intent of the bill was to apply only to a male athlete who had undertaken what Rep. Shaban had described as “affirmative physical changes.” Conn. Gen. Assembly House Proceedings 2011, Vol. 54, Part 12 (May 19, 2011) at 4017-4022.

and his or her local school regarding gender identification. In this regard, the school district shall determine a student's eligibility to participate in a CIAC gender specific sports team based on the gender identification of that student in current school records and daily life activities in the school and community at the time that sports eligibility is determined for a particular season. Accordingly, when a school district submits a roster to the CIAC it is verifying that it has determined that the students listed on a gender specific sports team are entitled to participate on that team due to their gender identity and that the school district has determined that the expression of the student's gender identity is bona fide and not for the purpose of gaining an unfair advantage in competitive athletics. . . . The CIAC has concluded that [these] criteria [are] sufficient to preclude the likelihood that a student will claim a particular gender identity for the purpose of gaining a perceived advantage in athletic competition.¹⁶

¹⁶ The CIAC informed OCR that the Revised Transgender Participation Policy has been in effect since its adoption on May 9, 2013. The CIAC stated to OCR that the policy contained in the revised by-law no longer required student-athletes to undergo medical treatment or sex reassignment surgery in order to participate in athletics consistent with their gender identity, nor would a student-athlete be required to seek permission from the CIAC in order to participate under the policy in accordance with the student's gender identity; rather, the policy required member schools to submit rosters that reflected the gender identities of their students. The CIAC further stated that this decision was based on "a determination that a member school is

Thus, the Revised Transgender Participation Policy eliminated any requirement that transgender student-athletes provide any medical information or documentation to the CIAC or its member schools.

The Connecticut State Department of Education (CSDE) issued a document entitled, “Guidance on Civil Rights Protections and Supports for Transgender Students – Frequently Asked Questions,” dated September 2017 (the 2017 FAQs).¹⁷ The 2017 FAQs state, in relevant part:

For issues concerning participation in interscholastic competitive sports, schools and districts should consult their counsel and the Connecticut Interscholastic Athletic Association (“CIAC”).¹⁸

On October 11, 2018, the CAS Board of Directors requested that an ad hoc committee examine all the CIAC rules and regulations that relate to gender. The meeting minutes of the CIAC stated that the purpose of the review was to ensure that the regulations were

in the best position to identify and confirm that a student-athlete’s gender is consistent with the student’s gender identity at school and to place the student on the correct team roster.” Accordingly, the Board of Control determined that students would not be required to disclose their transgender status to the CIAC.

¹⁷ https://portal.ct.gov/-/media/SDE/Title-IX/transgender_guidance_faq.pdf?la=en (site last visited on April 24, 2020). This guidance indicates that the CIAC is responsible for establishing statewide policies for transgender participation in interscholastic competitive sports.

¹⁸ 2017 FAQs, p. 7. See https://portal.ct.gov/-/media/SDE/Title-IX/transgender_guidance_faq.pdf?la=en (site last visited on April 24, 2020).

in alignment with state law.¹⁹ The CIAC established a Gender By-Law Subcommittee in December 2018 to review all of the bylaws relating to gender in order to confirm the current policies and practices or make recommendations for improvements. In its report to the CIAC Board of Control, dated April 4, 2019, the Subcommittee concluded that the by-laws reviewed were “in alignment with Connecticut law and the CAS-CIAC mission.”²⁰

The CIAC’s and School Districts’ Implementation of the Revised Transgender Participation Policy

School district witnesses interviewed stated that none of the districts had a specific written procedure or practice in place to implement the Revised Transgender Participation Policy, but that they followed or would follow the plain language of the policy. Districts that had not had a transgender student request to participate in athletics stated that should they receive a request from a transgender

¹⁹ https://portal.ct.gov/-/media/SDE/Title-IX/transgender_guidance.pdf?la=en (site last visited on April 24, 2020).

²⁰ The CAS mission statement is as follows: “The Connecticut Association of Schools provides exemplary programs and services that promote excellence in the education of all children.” The CIAC mission statement is as follows: “The CIAC believes that interscholastic athletic programs and competition are an integral part of a student’s academic, social, emotional and physical development. The CIAC promotes the academic mission of schools and honorable competition. As such, the CIAC serves as the regulatory agency for high school interscholastic athletic programs and exists to assure quality experiences that reflect high ethical standards and expectations for fairness, equity and sportsmanship for all student-athletes and coaches. The CIAC provides leadership and support for member schools through the voluntary services of dedicated school administrators, athletic directors, coaches and consultants.”

student to participate in athletics, they would look at the gender identity listed in the student's current school records and then whether the gender identity the student is expressing during the day is consistent with the gender identity listed in the student's school records; e.g., whether the student has requested to use a name and pronouns consistent with that sex. Witnesses stated that often this process would involve the student's parents, particularly if the student were a minor and school records needed to be changed; but that once the student had established his or her gender identity, the school would place the student on the roster of the team associated with that gender. Witnesses from districts that have had transgender students request to participate in athletics detailed a similar internal process; namely, that upon a request from a transgender student, they would review the student's records, speak with the student's teachers/counselors, meet with the student's parents, and if all was consistent, thereafter, place the student on the team roster associated with the student's gender identity.

Every district confirmed to OCR that it believed that no specific documentation, medical or otherwise, was required in order for the district to comply with the policy. District administrators reported that they had not received specific training regarding implementation of the Revised Transgender Participation Policy, although some stated that they had attended workshops or presentations on the topic of transgender athletes generally. Principals and athletics directors interviewed by OCR indicated that transgender student-athlete participation had been discussed either formally or informally at annual

professional development conferences, as well as during professional association meetings, and through their respective regional conferences. Witnesses from the districts stated, and the CIAC confirmed to OCR, that the CIAC has not questioned any decisions made by a member school under the policy, nor has it investigated any rosters submitted by member schools with respect to the policy. Glastonbury noted that, in the past, when it had a transgender student wish to participate in athletics, the student's parent offered to provide medical documentation to support their request under the Revised Transgender Policy; however, the CIAC advised Glastonbury that the information was not required.

Additionally, multiple district witnesses stated to OCR that, according to their understanding of the Revised Transgender Participation Policy, it is not the school's or district's role to determine a student's gender. Witnesses from Bloomfield, Danbury, Glastonbury, and Hartford stated that the student initiates the process and informs the district of the student's gender identity; and the district's role is to review the current school records, speak with school staff regarding the student's current gender expression during the school day, and then place the student on the appropriate roster. Witnesses from Bloomfield and Cromwell also stated that if a student were to initially register with the school under a gender identity that differed from the student's biological sex, the school would place the student on the roster of the gender identified in the school registration records; i.e., the district and student would not need to have a discussion or review the

student's participation under the Revised Transgender Participation Policy. Both Cromwell and Bloomfield have used this process in their districts.

*Concerns Raised by Parents and Others to the CIAC
Regarding the Policy and the Participation of
Biologically Male Students in Track Events*

In 2019, the CIAC received several emails from parents of Connecticut high school students, in which the parents expressed concerns about the policy and specifically about the participation in female track events of biologically male students.

From January 2019 to March 2019, the CIAC received four emails from the father of a female student-athlete at Glastonbury High School (Parent 3). On January 29, 2019, Parent 3 sent an email to the CIAC stating that he and many parents of other female track athletes, as well many of the athletes themselves, believed that the policy was unfair to female track athletes²¹ and that the policy raised safety concerns as well, particularly with respect to sports involving physical contact.²² With respect to

²¹ In part, Parent 3 stated as follows: "Should a boy who identifies as a girl with all of the physiological and anatomical advantages of a boy be able to compete in Connecticut Girls Indoor Track, obtain medals over other girls who have trained hard and care deeply about the results, eradicate existing girls event and state track records and push what would have been the final girl qualifier out of selection for All-Conference and All-State honors?"

²² In part, Parent 3 stated as follows: "Should safety be compromised in girls high school track or other girls sports such as basketball, soccer or lacrosse to accommodate a boy who identifies as a girl with all of the physiological and anatomical advantages of a boy?"

track, he suggested that a compromise could be reached whereby a boy identifying as a girl would be able to compete but would not have the results used for purposes of conference or state records or for all-conference or all-state selection. Parent 3 requested a meeting with the CIAC officials to discuss the topic.²³

On February 17, 2019, Parent 3 sent an email to the CIAC stating that the transgender policy affected the outcome of the CIAC State Open Girls Indoor Track Championship held on February 16, 2019. Specifically, he stated that the performance of a transgender athlete with all the physiological and anatomical attributes of a male athlete in the Championship had enabled Bloomfield High School to win the team championship over Glastonbury. Parent 3 again urged the CIAC to change the policy. On February 25, 2019, the Executive Director of the CIAC responded to Parent 3, stating that Parent 3's correspondence would be provided to a CIAC subcommittee reviewing the policy.

On March 3, 2019, Parent 3 sent an email to the CIAC again urging the CIAC to change the policy. He further stated that at the New England Regional Indoor Track Championship, held on March 2, 2019, a biologically male athlete finished first in the 55-meter and 300-meter sprints and had helped Bloomfield win first place over Glastonbury in the

²³ In addition, Parent 3 attached a copy of an email dated January 27, 2019, that he had sent to officials from the Glastonbury District. In this email, Parent 3 expressed his concerns about the policy's fairness and safety, and he described several recent track meets in which a transgender athlete had finished ahead of other athletes. Parent 3 asked the Glastonbury officials to make efforts to have the policy changed.

girls' 4 x 400 meter relay. On March 10, 2019, Parent 3 sent an email to the CIAC stating that the National Scholastic Athletic Foundation, an organization that hosts the New Balance National high school track and field competition, had established a policy whereby female transgender athletes are required to meet applicable rules established by the National Scholastic Athletics Foundation, USA Track & Field, and International Olympic Committee, which required such athletes to demonstrate that they had undergone hormone treatment. Parent 3 stated that when Bloomfield's girls' 4 x 400 team recently competed in the New Balance Nationals, it did so without the participation of its biologically male athlete, and that this resulted in a slower time than Bloomfield's team had achieved at the New England championships, when the biologically male athlete had competed.

From February 2019 to March 2019, the CIAC received three emails from a parent (Parent 4). On February 25, 2019, Parent 4 sent an email to the CIAC expressing concerns about the fairness of the policy.²⁴ He stated that as a result of the participation of transgender girl track athletes, seven cisgender girl athletes had been deprived of the opportunity to compete at the New England Regional Championship

²⁴ Specifically, he stated that "there are many, myself included, who cannot begin to fathom the policy of the CIAC that has allowed the competitive record of Connecticut Girls High School Track and Field Competitions to be altered by the tabulation and classification of results that include transgender athletes that has now spread its impact to not only athletes that have competed directly in these events, but now also their teammates, especially 75 members of the Glastonbury Girls Indoor Track Team, when team records and scoring are impacted."

and to gain additional exposure to college coaches and recruiters. He stated that “[a]t the heart of the competitive fairness issue regarding competition between transgender girls and cisgender girls is the abundance of testosterone present in young biological males.”

Further, Parent 4 stated that the CIAC maintains different qualifying standards for girls’ and boys’ track, which he contended was an acknowledgment that there was a measurable difference in the performance capabilities between genders. He requested that the CIAC adjust the results of the 2019 State Girls Open Competition so as not to include the results of the transgender athletes, and he requested that the policy be changed going forward. He offered several suggestions for a new policy (e.g., establishing a new competitive category for transgender athletes).

The Executive Director of the CIAC responded the same day, stating that Parent 4’s correspondence would be shared with the subcommittee reviewing the Revised Transgender Participation Policy. On March 1, 2019, Parent 4 sent an email to the CIAC, stating that he would like to arrange a meeting with the members of the subcommittee reviewing the policy. On March 5, 2019, Parent 4 sent an email to the CIAC stating that, during the New England Indoor Regional Championships on March 2, 2019, spectators from other states had expressed “surprise and concern” that Connecticut permitted transgender athletes to participate.

On June 20, 2019, the CIAC received an email from the mother of a rising female high school student in Connecticut (Parent 5). Parent 5 expressed her

concern that the policy was unfair to female athletes because it would allow “genetic males (no matter how they identify themselves) to usurp genetically female athletes in competition.”

In a letter to the CIAC, dated April 11, 2017, a head track coach at a Connecticut high school stated that Student B was at a great advantage unless or until the student began taking hormone blockers. He also referred to average high school testosterone levels according to the Mayo Clinic. He then argued that Student B had gender characteristics that females cannot compete with, and that Student B was taking advantage of the CIAC’s policies and rules. He requested that the CIAC find a solution that allowed Students A and B to compete but also protected female athletes.

The CIAC’s Rules for Girls’ Indoor and Outdoor Track Competition

The CIAC is organized into various boards and committees, including one committee for each CIAC-sanctioned sport. Each year, the CIAC committee for the respective sport publishes a “Sports Packet/Information Sheet” for the season. The Sports Packet/Information Sheets for girls’ indoor and outdoor track set forth, among other things, the procedures for entering student-athletes in events; how many events a student-athlete may participate in;²⁵ submitting qualifying performances; entrance

²⁵ For both girls’ indoor and outdoor track, the sport packets state that a competitor shall not compete in more than three events including relays, and any athlete on the tournament roster shall not be entered in more than three events excluding relays; e.g., an athlete may be entered in the 4 x 800, 1600, 3200,

fees; rules regarding electronic devices; protest procedures; scrimmages; and, regular season score reporting.

The CIAC sets the rules for athletic eligibility and competition across the state. Each sport is divided into divisions/classes, based on the size of the school. The CIAC sports committees determine the tournament or championship class divisions for each sport based on the grade 9-12 enrollments of each school as of October 1 of the past school year. A school can have different classes for each of its sports, and a school's class/division can change depending on the year. The Sports Packet/Information Sheet for each sport sets forth the class/divisions for the current year. For example, during school year 2018-2019, for indoor track, the CIAC had the following classes, from smallest school enrollment to largest: Class S, Class M, Class L, and Class LL. For girls' outdoor track, the CIAC had the following classes: Class S, Class M, Class MM, Class L, and Class LL.

There are eleven conferences/leagues²⁶ that are based mostly on geographic location, which can include

and 4 x 400 events, but can only run or be a competitor in three events. A contestant becomes a competitor when the contestant reports to the clerk of course. The rules also state that a competitor who competes in three events at any of the class meets cannot enter any other event at the State Open Championship. The stated rationale is that class championship meets and the State Open are really one meet because advancing to the State Open Championship is predicated on class meet performance. Athletes listed as alternates for relay events may only run if they ran two events or fewer at the class meet; i.e., they are still limited to three events.

²⁶ http://ciacsports.com/site/?page_id=131 (site last visited on April 24, 2020).

schools from the different CIAC classes. The CIAC does not set regular season competitive schedules; these are set by the individual member schools, individually or through conferences/leagues.²⁷ However, the CIAC does mandate certain “season limitations,” including when the opening day of practice occurs, the minimum number of required practice days prior to the first contest, the maximum number of games or meets played per week, and the maximum number of contests scheduled per season.²⁸

For post-season competition, if they met qualifying standards,²⁹ participants in girls’ indoor and outdoor track can participate in a conference/league championship; a class statewide championship; the State Open Championship; and the New England Regional Championship. Each of the eleven conferences/leagues holds a conference/league championship at the end of the indoor and outdoor seasons; and each class holds a class statewide championship at the end of the indoor and outdoor seasons. A student-athlete’s eligibility to compete at the indoor and outdoor track State Open Championships is determined by the finish order at the respective class statewide championships as set

²⁷ See CIAC Handbook, Section 5.0 (“The CIAC has no jurisdiction over regular season interscholastic scheduling problems except as these relate to violation of CIAC policies. Schedul[ing] of interscholastic contests within CIAC season limitations is the responsibility of individual schools and/or leagues.”)

²⁸ See *id.* at page 47.

²⁹ Schools may only enter athletes who meet the minimum requirements for the event as established by the sports committee for that year, as set forth in the sports information packet.

forth in the Sports Packet/Information Sheet.³⁰ For example, for indoor track for school year 2018-2019, the top 14 finishers in all events in class statewide championships for Classes LL, L, M, and S were eligible to compete in the indoor State Open Championship. For outdoor track for school year 2018-2019, the top 5 finishers in each of the class statewide championships automatically qualified for the outdoor State Open Championship, as well as all athletes who obtained the special (automatic) standard for their event at the class statewide championship.³¹

The CIAC awards medals to the top 6 competitors based on the order of finish in events at the State

³⁰ The Sports Packet/Information Sheet provides information about the Class/Division Championships and the State Open Championship; including qualifying distances and times for entry into the class championships, as well as eligibility to compete in the State Open Championship.

³¹ From at least school years 2012-2013 through 2016-2017, the outdoor sports packet set a CIAC State Open Championship qualifying standard for each event. For the 100-meter dash, the qualifying standard was 12.60 for all years and for the 200-meter dash, the qualifying standard was 26.70 for all years except 2016-2017, when it was lowered to 26.14. The sports packets during those years stated that the automatic standard approximated the 8th place finish established in the prior year State Open. Starting in school year 2017-2018, and continuing in school year 2018-2019, per the Sports Packet, "The special standard will be set each year after the class meets have ended. The special standard will be determined by looking at the performance rankings for each event that includes the top five (5) qualifying performances from each of the class meets. The 12th place performance from the qualifiers will become the automatic standard for that year. All athletes who meet that standard during the current year's class championship will advance to the open."

Open Championships (both indoor and outdoor), and the top 6 competitors also qualify for the New England Regional Championships.³² Thereafter, a student may go on to compete at the national championships, held by the National Scholastic Athletics Foundation (the New Balance Indoor and Outdoor Championships), based on the student's qualifying time.³³

The CIAC uses a point system to award points by school to determine a school state champion for indoor and outdoor track. For indoor track, the CIAC uses team scoring based on six places (from first to sixth place, the CIAC awards 10, 8, 6, 4, 2 and 1 points, respectively) for all events. For outdoor track, the CIAC uses team scoring based on eight places (from

³² For outdoor track, the 7th and 8th place finishers in the final for any event will be considered as alternates.

³³ The National Scholastic Athletics Foundation's Transgender Participation Policy & Procedure, updated December 2019, allows for a transgender student-athlete to submit a qualified entry into a National Scholastic Athletics Foundation competition or make a written request for participation, which the National Scholastic Athletics Foundation then evaluates on a case-by-case basis, including evaluation by an Eligibility Committee comprising at least one medical professional, event director, active age-appropriate coach, and lawyer. The Eligibility Committee can request any information it believes relevant to the application, including but not limited to interviews with the athlete and/or parents/guardians and coaches, and a review of relevant medical and legal records. The policy states that a male-to-female athlete who is not taking hormone treatments related to gender transition may not compete in female competitions, but that a female-to-male athlete not taking testosterone related to gender transition may compete in female competitions, but that a female-to-male athlete not taking testosterone related to gender transition may compete in male competitions.

first to eighth; 10, 8, 6, 5, 4, 3, 2 and 1 points) only when an eight lane track is used; otherwise the CIAC uses team scoring based on six places (from first to sixth; 10, 8, 6, 4, 2 and 1 points) for the event. The points earned by each school are then tallied, and the CIAC ranks schools in the order of points from highest to lowest to determine the state champion.³⁴

Complainant Students and Competition Against Students A and B

The complaint was filed on behalf of three high school female students competing in girls' track in the state of Connecticut: Student 1, attending Glastonbury High School (School 1); Student 2, attending Canton High School (School 2); and Student 3, attending Danbury High School (School 3). The Complainant specifically complained about two students who participated in girls' track in the state of Connecticut: Student A, who competed for Bulkeley High School in the Hartford School District (School A1) in the spring of school year 2017-2018, and Bloomfield High School (School A2) during school year 2018-2019 to the present; and Student B attending Cromwell High School (School B). The CIAC's list of sanctioned sports includes boys' track. Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury each maintained boys' track teams.

³⁴ In the outdoor State Open Championship, seeding is done electronically based on an athlete's performance at the Class meets. An athlete's seed determines the athlete's lane assignment; the athlete with the fastest projected time based on performance at the Class meets is assigned to a middle lane (usually lane 4) and athletes are then placed in lanes in order of seed, working towards the outside lanes.

In order to determine the impact of the Revised Transgender Participation Policy on Students 1, 2, and 3, OCR reviewed the participation of Students 1, 2, 3, A, and B in post-season conference/league championships, class championships, State Open Championships, and the New England Regional Championships. OCR reviewed information for school years 2017-2018 and 2018-2019.

Student 1

OCR determined that Student 1 was enrolled at School 1 as a 10th grade student during school year 2017-2018, and as an 11th grade student during school year 2018-2019. Student 1 was a student-athlete on School 1's girls' varsity indoor and outdoor track teams. Regionally, School 1 participated in the Central Connecticut Conference (CCC). Statewide, School 1 participated in Class LL for indoor and outdoor track.

The Complainant asserted that pursuant to the Revised Transgender Participation Policy, and the resulting participation of Students A and B, the CIAC denied Student 1 opportunities to advance to the finals in an event, to advance to higher levels of competition, and/or win titles at events such as the CIAC Outdoor State Open Championship, held on June 4, 2018; the CIAC Indoor State Open Championship, held on February 16, 2019; and the Indoor New England Regional Championship, held on June 8, 2019.

During an interview with OCR, Student 1 stated that she and other female student-athletes with whom she had spoken found it very difficult to go into a race knowing that no matter what they do, they would

never be good enough to win. In a video provided by the Complainant, Student 1 asserted that by permitting transgender athletes to participate in girls' track competitions, she and other athletes had lost opportunities to compete at track meets, to win titles, and to gain attention from college coaches. She further stated that women have fought hard for many years to have opportunities and a voice in sports; and that it is upsetting to realize that no matter how hard she and other female student-athletes train, they will never be good enough to compete against transgender athletes. Student 1 also stated: "I respect these transgender athletes, and I understand that they are just following CIAC policy. But at the same time, it is demoralizing and frustrating for me and for other girls."

The Athletic Director for School 1 acknowledged that some parents had complained that their children did not place at certain meets, but she stated that she was unaware of whether any female students had lost out on competitive opportunities, awards, or wins. School 1's Athletic Director denied that any of the female student-athletes on the girls' indoor or outdoor track teams were denied participation opportunities as a result of having transgender athletes participate in track events. She stated that student-athletes were eligible to participate in all meets that the District participated in if they met the requirements. School 1's Assistant Athletic Director stated that she is aware of Student 1's complaining that she felt she was deprived of an opportunity to advance to the New England Regional Championship due to the participation of transgender athletes.

Student 2

Student 2 was enrolled at School 2 as a 10th grade student during school year 2017-2018, and as an 11th grade student during school year 2018-2019. During the school years 2017-2018 and 2018-2019, Student 2 was a student-athlete on School 2's varsity girls' indoor and outdoor track teams. Regionally, School 2 participated in the North Central Connecticut Conference (NCCC). Statewide, School 2 participated in Class S for indoor and outdoor track.

The Complainant asserted that, pursuant to the Revised Transgender Participation Policy and the resulting participation of Students A and B, the CIAC denied Student 2 opportunities to advance to higher levels of competition and/or win titles at events such as the 2017 Outdoor State Open Championship, held on June 6, 2017; the New England Regional Championship, held on June 10, 2017; the Class S Indoor Championship held on February 10, 2018; the Outdoor State Open Championship, held on June 4, 2018; the Class S Indoor Championship, held on February 7, 2019; the Indoor State Open Championship, held on February 16, 2019; the Class S Outdoor Championship, held on May 30, 2019; and the Outdoor State Open Championship, held on June 3, 2019.

During an interview with OCR, Student 2 stated that, in addition to the impact the participation of Students A and B had on her and other female student-athletes' ability to win titles and awards, their participation also has had an impact on her and other female student-athletes' ability to obtain recognition from media and college coaches. Student 2's mother

(Parent 1) noted that some biologically female track student-athletes had lost out on media recognition because the winner of an event at the state championships gets the opportunity to be interviewed by reporters, while the second and third place finishers do not. Specifically, Parent 1 stated that at the state championships there is a bank of reporters waiting to interview the winners and the winners names are put in the local papers, and that student-athletes typically do not receive any media recognition when they come in second. Further, Student 2 stated that the participation of Student A, in particular, had an impact on her ability to set class records for the CIAC Class S 100-meter and 200-meter races.

School 2's principal stated that no student-athletes were prohibited from participating; student-athletes went to every meet that the school participated in, and all student-athletes who qualified for state tournaments had the opportunity to compete. However, the principal acknowledged that, at the state level, some people might argue that a transgender athlete defeated a District student (i.e., Student 2); therefore, that student lost out on an award.

Student 3

OCR determined that Student 3 was enrolled at School 3 as a 9th grade student during school year 2018-2019. Regionally, School 3 participated in the Fairfield County Interscholastic Athletic Conference (FCIAC). Statewide, School 3 participated in Class LL for indoor and outdoor track. During school year 2018-

2019, Student 3 was a student-athlete on School 3's girls' varsity outdoor track team.

The Complainant asserted that, pursuant to the Revised Transgender Participation Policy and the resulting participation of Students A and B, the CIAC denied Student 3 opportunities to advance to higher levels of competition and/or win titles at events, such as the Outdoor State Open Championship, held on June 3, 2019. During an interview with OCR, Student 3 stated that when competing against transgender athletes, it was frustrating for her to know that she would not be able to do as well as she otherwise could do. In a video the Complainant provided, Student 3 asserted that even before she gets to the track, she already knows that she is not going to win first or second place if she races against transgender athletes; and that no matter how hard she works, she will not be able to win the top spot.

Competition Against Students A and B

Descriptions of some of the girls' track indoor and outdoor post-season events in which Students 1, 2, and/or 3 participated with Students A and/or B during school years 2017-2018 and 2018-2019 are set forth below.

1. During school year 2017-2018, in the Indoor State Open Championships, Student B participated in the 55-meter dash. In the preliminary for the 55-meter dash, Student B placed 2nd and Student 2 placed 16th. The top 8 finishers advanced to the finals; however, even though Student 2 would not have advanced to the finals even absent Student B's participation, Student B's finish in the top 8 in

the preliminary denied an opportunity for the 9th place finisher to advance to the finals. See chart summarizing the results:

2017-2018 Indoor State Open Championships Girls 55-Meter Dash Preliminaries (Top 7 Advance to Finals)					
Place	Student	Time	School	Seed	Heat
1	*	7.26q	*	7.31	1
2	Student B	7.30q	School B	7.31	1
3	*	7.34q	*	7.39	3
4	*	7.35q	*	7.28	2
5	*	7.40q	*	7.39	3
6	*	7.42q	*	7.48	3
7	*	7.43q	*	7.38	2
8	*	7.44	*	7.44	1
9T	*	7.53	*	7.47	3
9T	*	7.53	*	7.40	2
...
16	Student 2	7.78	School 2	7.46	2

- During school year 2017-2018, in the Outdoor State Open Championships, Student A and Student B participated in the 100-meter dash. In the preliminary for the 100-meter dash, Student A placed 1st and Student B placed 4th. The top 8 finishers advanced to the finals, including Student 2 (who placed 2nd) and Student 1 (who placed 8th); however, Student A's and Student B's finishes in the top 8 in the preliminary denied an opportunity for two female student-athletes to advance to the finals. In the finals of the 100-meter dash, Student A placed 1st, Student B placed 2nd; Student 2 placed 4th; and Student 1 placed 6th. The top six finishers were awarded medals and advanced to the New England Regional Championships, including Student 1 and Student 2; however, Student A's and Student B's finishes in 1st and 2nd place, respectively, denied an opportunity for two female student-athletes to advance to the New England

Regional Championships, along with the benefit of receiving a medal for the Outdoor State Open Championships.³⁵ Student A placed 1st at the preliminaries of the 100-meter dash at New England Regional Championships. The top 8 finishers advanced to the finals, including Student 2 (who placed 7th);³⁶ however, Student A's finish in the top 8 in the preliminary denied an opportunity for a female student-athlete to advance to the finals.³⁷ See charts summarizing the results below:

³⁵ Student A, Student B, and Student 2 also participated in the 200-meter dash, and finished 1st, 7th and 10th, respectively, in the final. Student A's 1st place finish denied an opportunity for one female student-athlete to advance to the New England Regional Championships in the 200-meter dash, along with the benefit of receiving a medal for the Outdoor State Open Championships.

³⁶ Student 1 placed 25th.

³⁷ In the finals of the 100-meter dash, Student A placed 1st, while Student 2 placed 7th.

2017-2018 Outdoor State Open Championships Girls 100-Meter Dash Preliminaries (Top 8 Advance to Finals)					
Place	Student	Time	School	Seed	Heat
1	Student A	11.75q	School A1	11.77	3
2	Student 2	12.26q	School 2	12.61	2
3	*	12.38q	*	12.33	1
4	Student B	12.39q	School B	12.22	2
5	*	12.46q	*	12.57	3
6	*	12.52q	*	12.74	2
7	*	12.54q	*	12.34	1
8	Student 1	12.58q	School 1	12.91	3
9	*	12.63	*	12.73	3
10	*	12.64	*	12.68	2
...
25	*	13.17	*	12.98	

2017-2018 Outdoor State Open Championships Girls 100-Meter Dash Finals				
Place	Student	Time	School	Points
1	Student A	11.72#	School A1	10
2	Student B	12.29	School B	8
3	*	12.36	*	6
4	Student 2	12.39	School 2	5
5	*	12.47	*	4
6	Student 1	12.67	School 1	3
7	*	12.71	*	2
8	*	12.80	*	1

2017-2018 Outdoor New England Regional Championships Girls 100-Meter Dash Preliminaries (Top 8 Advance to Finals)						
Place	Student	Time	School	Heat	Tie-breaker	State
1	Student A	12.46q	School A1	5		CT
2	*	12.59q	*	4		MA
3	*	12.64q	*	3		MA
4	*	12.65q	*	1		MA
5	*	12.81q	*	1	12.805	CT
6	*	12.81q	*	2	2.809	CT
7	Student 2	12.82q	School 2	2		CT
8	*	12.92q	*	5		RI
9	*	12.94	*	3		MA
10	*	12.95	*	5		MA
...
25	Student 1	13.5010	School 1	3	13.497	CT
33	*	13.84	*	1		RI

2017-2018 Outdoor New England Regional Championships 100-Meter Dash Finals					
Place	Student	Time	School	Tie breaker	State
1	Student A	11.97	School A1		CT
2	*	12.26	*		MA
3	*	12.31	*		MA
4	*	12.50	*		MA
5	*	12.56	*	12.554	CT
6	*	12.56	*	12.559	CT
7	Student 2	12.58	School 2		CT
8	*	12.69	*		RI

3. During school year 2018-2019, in the Indoor Class S Statewide Championships, Student A and Student B participated in the 55-meter dash. In the preliminary for the 55-meter dash, Student A placed 1st and Student B placed 2nd. The top 7 finishers advanced to the finals, including Student 2 (who placed 3rd); however, Student A's and Student B's finishes in the top 7 in the preliminary denied an opportunity for two female student-athletes to advance to the finals. In the finals of the 55-meter dash, Student A placed 1st, Student 2 placed 2nd, and Student B placed 3rd. The top 14 finishers advanced to the State Open Championship. While all three student-athletes advanced to the State Open Championship, Student A's and Student B's participation denied an opportunity to two female student-athletes to participate in the State Open Championship for the 55-meter dash.³⁸ See charts summarizing results below:

³⁸ Student A also placed 1st in the finals of the 300-meter dash, which denied an opportunity to one girl to participate in the State Open Championship for the 300-meter dash.

2018-2019 Indoor Class S Statewide Championships Girls 55-Meter Dash Preliminaries (Top 7 Advance to Finals)				
Place	Athlete	Time	High School	Heat
1	Student A	7.16g	School A2	8
2	Student B	7.30g	School B	6
3	Student 2	7.38g	School 2	7
4	*	7.61g	*	1
5	*	7.63g	School A2	1
6	*	7.63g	*	5
7	*	7.68g	*	3
8	*	7.70	*	5
9	*	7.71	*	2
10	*	7.74	*	4
....
48	*	8.37	*	3

2018-2019 Indoor Class S Statewide Championships Girls 55-Meter Dash Finals				
Place	Athlete	Time	High School	Points
1	Student A	7.03	School A2	10
2	Student 2	7.27	School 2	8
3	Student B	7.33	School B	6
4	*	7.48	*	4
5	*	7.51	School A2	2
6	*	7.53	*	1
7	*	7.54	*	-

4. During school year 2018-2019, in the Indoor State Open Championship, Student A and Student B participated in the 55-meter dash. In the preliminary for the 55-meter dash, Student A placed 1st and Student B placed 2nd. The top 7 finishers advanced to the finals, including Student 2 (who placed 4th); however, Student A's and Student B's finishes in the top 7 in the preliminary would have denied an opportunity for two female student-athletes to advance to the finals, including Student 1 (who placed 8th). In the finals of the 55-meter dash, Student A placed 1st, Student B placed 2nd, and Student 2 placed 3rd. The top six finishers are awarded medals and advance to the New England Regional Championships; however, Student A's and Student B's finishes in 1st and 2nd place, respectively, denied an opportunity for two female student-athletes to advance to

the New England Regional Championships, along with the benefit of receiving a medal for the Outdoor State Open Championships.³⁹ Further, since Student 2 placed 3rd, Student A's and Student B's participation denied an opportunity to Student 2 to place 1st in the 55-meter dash and receive the benefit of a 1st place medal. In the Indoor New England Regional Championship, in the preliminaries for the 55-meter dash, Student A placed 2nd, Student B placed 3rd, and Student 2 placed 8th. The top 8 finishers advanced to the finals. Although all three advanced to the finals, Student A's and Student B's 2nd and 3rd place finishes, respectively, denied an opportunity to two female student-athletes to advance to the finals. In the finals of the 55-meter dash, Student A placed 1st, Student B placed 3rd and Student 2 placed 8th. See charts summarizing results below:

³⁹ Student A also placed 1st in the finals of the 300 meter dash in the Indoor State Open Championships, which denied an opportunity to a female student-athlete to advance to the New England Regional Championships, along with the benefit of receiving a medal for the Indoor State Open Championships.

2018-2019 Indoor State Open Championships Girls 55-Meter Dash Preliminaries (Top 7 Advance to Finals)				
Place	Athlete	Time	High School	Heat
1	Student A	7.00q	School A2	3
2	Student B	7.07q	School B	3
3	*	7.24q	*	2
4	Student 2	7.27q	School 2	1
5	*	7.27q	*	1
6	*	7.29q	*	2
7	*	7.34q	*	3
8	Student 1	7.37	School 1	2
9	*	7.41	*	3
10	*	7.45	*	2
....
16	*	7.85	School A2	2

2018-2019 Indoor State Open Championships Girls 55-Meter Dash Final				
Place	Athlete	Time	High School	Points
1	Student A	6.95	School A2	10
2	Student B	7.01	School B	8
3	Student 2	7.23	School 2	6
4	*	7.24	*	4
5	*	7.26	*	2
6	*	7.33	*	1
7	*	7.39	*	-

2018-2019 Indoor New England Regional Championships Girls 55-Meter Dash Preliminaries (Top 8 Advance to Finals)				
Place	Athlete	Time	High School	Heat
1	*	7.08q	* MA	2
2	Student A	7.09q	School A2- CT	4
3	Student B	7.24q	School B- CT	3
4	*	7.28q	*- MA	3
5	*	7.29q	*- MA	4
6	*	7.30q	*- CT	1

2018-2019 Indoor New England Regional Championships Girls 55-Meter Dash Preliminaries (Top 8 Advance to Finals)				
Place	Athlete	Time	High School	Heat
7	*	7.30q	*- MA	1
8	Student 2	7.30q	School 2 - CT	1
9	*	7.39	*- MA	1
10	*	7.40	*- RI	4
....
30	*	7.92	*- VT	3

2018-2019 Indoor New England Regional Championships Girls 55-Meter Dash Finals			
Place	Athlete	Time	High School
1	Student A	6.94	School A2- CT
2	*	7.04	*- MA
3	Student B	7.17	School B- CT
4	*	7.23	*- MA
5	*	7.27	*- MA
6	*	7.27	*- CT
7	*	7.31	*- MA
8	Student 2	7.32	School 2 - CT

5. During school year 2018-2019, in the Outdoor Class S Statewide Championships, Student A participated in the 100-meter dash and the 200-meter dash; and Student B participated in the 100-meter dash. In the preliminary for the 100-meter dash, Student A placed 2nd and Student B placed 3rd. The top 8 finishers advanced to the finals, including Student 2 (who placed 1st); however, Student A's and Student B's finishes in the top 8 in the preliminary denied an opportunity for two female student-athletes to advance to the finals. In the finals of the 100-meter dash, Student A placed 1st, Student 2 placed 2nd, and Student B placed 3rd. While all three student-athletes advanced to the State Open Championship, Student A's participation denied Student 2 the benefit of a 1st place finish in the Class S Statewide Championship for the 100-meter dash. Similarly, in the finals of the 200-meter dash, Student A placed 1st and Student 2 placed 2nd.⁴⁰ While both students advanced to the State Open Championship, Student A's participation denied Student 2 the benefit of a 1st place finish in the Class S Statewide Championship for the 200-meter dash. See charts summarizing results below:

2018-2019 Outdoor Class S Statewide Championships				
Girls 100-Meter Dash Preliminaries (Top 8 Advance to Finals)				
Place	Student	Time	School	Heat
1	Student 2	12.14	School 2	4
2	Student A	12.18	School A2	5
3	Student B	12.50	School B	3

⁴⁰ Student B scratched.

2018-2019 Outdoor Class S Statewide Championships Girls 100-Meter Dash Preliminaries (Top 8 Advance to Finals)				
Place	Student	Time	School	Heat
4	*	12.73	*	1
5	*	13.05	*	1
6	*	13.08	*	2
7	*	13.16	School A2	4
8	*	13.22	*	5
9	*	13.27	*	3
10	*	13.30	*	4
...
35	*	14.28	*	5

2018-2019 Outdoor Class S Statewide Championships Girls 100-Meter Dash Finals				
Place	Student	Time	School	Points
1	Student A	11.93#	School A2	10
2	Student 2	12.02	School 2	8
3	Student B	12.28	School B	6
4	*	12.82	*	5
5	*	12.86	*	4
6	*	13.13	*	3
7	*	13.14	*	2
8	*	13.31	School A2	1

2018-2019 Class S Statewide Championships Girls 200-Meter Dash Finals					
Place	Student	Time	School	Heat	Points
1	Student A	24.47#	School A2	6	10
2	Student 2	24.79	School 2	6	8
3	*	25.92	School A2	6	6
4	*	26.17	*	6	5
5	*	26.30	*	3	4
6	*	26.41	*	6	3
7	*	26.76	School A2	6	2
8	*	26.85	*	3	1
9	*	26.93	*	5	
10	*	27.02	*	6	
...
32	*	28.95	*	2	
...
--	Student B	SCR	School B		

6. During school year 2018-2019, in the Outdoor State Open Championship, Student A and Student B participated in the 100-meter dash. In the preliminary for the 100-meter dash, Student A placed 1st and Student B placed 5th. The top 8 finishers advanced to the finals, including Student 2 (who placed 3rd) and Student 3 (who placed 4th)⁴¹; however, Student A's and Student B's finishes in the top 8 in the

⁴¹ Student 1 placed 14th.

preliminary denied an opportunity for two female student-athletes to advance to the finals. In the finals of the 100-meter dash, Student 2 placed 1st, Student 3 placed 3rd, and Student B placed 4th.⁴² The top 6 finishers were awarded medals and advanced to the New England Regional Championships; however, Student B's finish in 4th place denied an opportunity for a female student-athlete to advance to the New England Regional Championships, along with the benefit of receiving a medal for the Outdoor State Open Championships. Student A, Student 2 and Student 3 also participated in the 200-meter dash and finished 1st, 4th, and 3rd, respectively, in the final. Student A's 1st place finish denied an opportunity for one female student-athlete to advance to the New England Regional Championships, along with the benefit of receiving a medal for the Outdoor State Open Championships. Student A placed 1st in the finals of the 200-meter dash at the Outdoor New England Regional Championships; Student 3 placed 3rd and Student 2 placed 5th. See charts summarizing results below:

⁴² Student A had a false start and was disqualified.

2018-2019 Outdoor State Open Championships Girls 100-Meter Dash Preliminaries (Top 8 Advance to Finals)					
Place	Student	Time	School	Heat	Tie
1	Student A	11.64q	School A2	3	
2	*	11.98q	*	1	
3	Student 2	12.07q	School 2	2	
4	Student 3	12.11q	School 3	3	
5	Student B	12.20q	School B	1	
6	*	12.44q	*	2	12.433
7	*	12.44q	*	1	12.436
8	*	12.45q	*	3	
9	*	12.50	*	3	
10	*	12.56	*	1	

14	Student 1	12.79	School 1	3	

24	*	13.25	*	3	

2018-2019 Outdoor State Open Championships Girls 100-Meter Dash Finals					
Place	Student	Time	School	Points	Tie
1	Student 2	11.67	School 2	10	
2	*	11.92	*	8	

2018-2019 Outdoor State Open Championships Girls 100-Meter Dash Finals					
Place	Student	Time	School	Points	Tie
3	Student 3	12.04	School 3	6	
4	Student B	12.22	School B	5	
5	*	12.36	*	4	
6	*	12.38	*	3	12.375
7	*	12.38	*	2	12.378
--	Student A	FS	School A2		

2018-2019 Outdoor State Open Championships Girls 200 Meter Dash Finals					
Place	Student	Time	School	Heat	Points
1	Student A	24.33	School A2	3	10
2	*	24.75	*	3	8
3	Student 3	25.01	School 3	3	6
4	Student 2	25.24	School 2	3	5
5	*	25.38	*	3	4
6	*	25.55	*	3	3
7	*	25.63	*	2	2
8	*	25.79	*	2	1
9	*	26.28	*	2	
10	*	26.44	*	2	
...
--	Student 1	DNS	School 1	2	

Team School Championships Involving Students A and B

OCR reviewed the race results for the 2018-2019 Indoor State Open Championship and confirmed the following order of finish of schools for the state championship:

- School A2 – 54 points
- School 1 – 39 points
- School 3 – 34 points
- Hillhouse – 34 points
- Norwich Free Academy – 21 points

OCR further confirmed that School A2 earned 10 points for each of Student A's 1st place finishes. OCR determined that other School A2 student-athletes at the meet earned the team the following points:

- 2nd place in the 300-meter dash, earning School A2 8 points,
- 1st place in the 600-meter run, earning School A2 10 points;
- 5th place in the 4 x 200 relay, earning School A2 2 points; and
- 3rd place in the shot put, earning School A2 6 points

OCR also reviewed the results for the 2018-2019 Outdoor State Open Championships, held on June 3, 2019. OCR determined that School A2 placed 3rd (38 points) in the team championship, a full 20 points behind School 2, which placed first (58 points) and Windsor, which placed 2nd (43 points). The top 5 finishers were as follows:

- School 3 – 58 points
- Windsor – 43 points
- School A2 – 38 points
- Norwich Free Academy – 32 points
- Immaculate – 30 points

Student A participated in the 100-meter dash, the 200-meter dash, and the 4 x 400 relay in the 2018-2019 indoor State Open Championship, and earned

10 points for School A2 for Student A's first place finish in the 200-meter dash; and was also on School A2's 4 x 400 relay team, which placed 1st and also earned 10 points for School A2.

School Districts Investigated by OCR

Glastonbury:

Glastonbury advised OCR that as a CIAC member school, it must comply with all of the CIAC's by-laws, policies, rules, and regulations, including the Revised Transgender Participation Policy. Glastonbury reported that it does not currently have any transgender students of which it is aware participating in its athletics program. Glastonbury stated that it must allow students to participate on the athletics team consistent with their gender identity because of state law and the Revised Transgender Participation Policy. Glastonbury stated that it has not challenged the CIAC's Revised Transgender Participation Policy because it is consistent with the requirements of state law, with which Glastonbury already must comply.

Glastonbury's Athletic Director stated that no female athletes were denied participation on any of their athletic teams as a result of having transgender athletes participate, and that student-athletes were eligible to participate in all meets that the District participated in if they met the requirements (i.e., qualifying marks, selection for relay team which is a determination made at the coaching level). The Athletic Director stated that the complaint filed with OCR addresses what is perceived as an inability to win.

Glastonbury's Principal stated that some district parents complained that a female student was affected by having a transgender student from another team participate in track events. The principal advised OCR that she never verified the times or records brought to her attention, nor did she make a determination regarding the allegations.

In emails dated May 2-10, 2018, Parent 2 requested guidance from the Athletic Director regarding the participation of Student A in girls' track events and whether it was consistent with the CIAC' Revised Transgender Participation Policy. The Athletic Director stated that she had spoken with someone at the CIAC who indicated that Student A would have had to declare her gender identity prior to the start of the school year in August. Parent 2 stated that she informed the CIAC that Student A participated as a male during the indoor season and then as a female during the outdoor season in 2017-2018; and stated that the CIAC advised her that it would be following up with School A1. On May 10, 2018, the Athletic Director advised Parent 2 that she was following up and had placed a call to the CIAC. In an email dated May 11, 2018, the Athletic Director responded to Parent 2, advising her that based on her reading of the CIAC rule, as well as confirmation she received from the CIAC, Student A's participation was in compliance with the Revised Transgender Participation Policy. She noted that if Parent 2 had been told Student A had to declare prior to the start of the school year, that was misinformation, as that requirement is nowhere in the language of the policy. The Athletic Director advised Parent 2 that she also shared this information with the track coach.

On May 23, 2018, Parent 2 advised the Athletic Director via email that she had been discussing transgender eligibility with her legislative office and wanted to make the Athletic Director aware. In an email dated May 29, 2018, Parent 2 asked the Athletic Director if students declaring a gender identity are required to produce any supporting documentation, or if there is a waiting period. In an email dated June 6, 2018, Parent 2 advised the Athletic Director that she intended to request a meeting with the CIAC regarding the transgender policy; the Athletic Director acknowledged the email and stated that there had been articles and some troubling behavior around the issue, and advised that a letter to the CIAC was probably the best route for the parent to take.

In an email dated July 2, 2018, to the Athletic Director, Parent 2 stated that the CIAC had refused to entertain any policy changes in response to her correspondence with them; it was her understanding that member schools set policy; and she wanted to meet with the Athletic Director to share her research. The Athletic Director responded attempting to schedule a time to meet. Thereafter, in an email dated July 18, 2018, Parent 2 forwarded to the Athletic Director copies of responses she had received from the CIAC Executive Director. In the email, she stated that, although the CIAC stated that the state legislature needed to make a change, her state representatives informed her that athletics policies fall under the CIAC's jurisdiction.

In an email dated January 27, 2019, to School 1 administrators, Parent 3 alleged that Student A, whom Parent 3 identified as a boy who identifies as a

girl, was participating in track and creating an unfair and unsafe environment in girls track. He provided, as an example, that during the 4 x 400 relay event on January 26, 2019, in the second leg, Student A “had physicality” with a runner from Windsor, resulting in a significant lead for Bloomfield. The student-athlete running the last leg of the relay for Windsor was unable to close the gap that Student A had created. He also provided an example that at the Yale Invitational held on January 12, 2019, a student-athlete came in second to Student A, despite having run a faster time than 182 other girls in the 300-meter sprint. He asked that the unsafe and unfair situation be addressed now before it affected other sports.

In response, on January 29, 2016, the District’s school board chair emailed Parent 3 and thanked him for sharing his experiences and concerns; but noted that the CIAC handbook indicated that it would be contrary to state and federal law to preclude transgender students from participating. She stated that, accordingly, she did not believe that exclusion was an option; but advised that this was just her opinion.

In an email dated February 17, 2019, to School 1 administrators and the CIAC Executive Director, among others, Parent 3 asserted that the Revised Transgender Participation Policy directly affected the outcome of School 1’s winning the 2018-2019 Indoor State Open Championship held on February 16, 2019. Specifically, Parent 3 stated that School A2 earned the highest number of points due to the participation of Student A, who earned 20 points for the team by herself. Parent 3 alleged that, but for Student A’s participation, School 1 would have won the state title.

Specifically, Parent 3 asserted that School A2 was only able to win because Student A placed first in two separate events, earning School A2's team 20 of its total 54 points. Parent 3 also noted that Student A participated on the 4 x 400 relay, which earned the school 8 points for second place. Parent 3 acknowledged in his email that it was possible that School A2 still would have placed 2nd in the 4 x 400 relay, even if another athlete had run in Student A's place.⁴³

In an email dated February 25, 2019, to School 1 administrators and the CIAC Executive Director, among others, Parent 4 questioned the inclusion of transgender athletes' competitive times in results, which he argued affected all of the other athletes competing. Parent 4 further stated that recognizing the transgender athletes' results insulted the current cisgender athlete record holders. Parent 4 also asserted that the potential to compete for a college scholarship was at stake because the participation of transgender athletes resulted in other athletes not being able to compete at the New England Regionals, expand their résumés, and gain additional exposure to college recruiters and coaches. Parent 4 alleged that the CIAC was violating its own rules by allowing transgender athletes to compete; and asked that the results of the State Open Championship be recalculated, and points redistributed, and that the

⁴³ Parent 3 further asked that the CIAC adopt the NCAA and IOC policy, whereby a transgender athlete must undergo hormone treatment for one year before being able to compete; allow transgender athletes to run in events as exhibition participants where their results do not count; or "another fair and safe solution."

Revised Transgender Participation Policy be changed for the outdoor 2019 season. Parent 4 also suggested potential solutions to continue to allow transgender athletes to compete but change the competitive categories or “which scores count.”

In an email dated March 3, 2019, to School 1 administrators and the CIAC Executive Director, among others, Parent 3 followed up on his original request that the Revised Transgender Participation Policy be revised. Parent 3 alleged that the policy prevented deserving girls from qualifying for the New England Regionals. For example, Parent 3 stated that at the New England Regionals on March 2, 2019, a Bloomfield transgender athlete (Student A) placed first in the 55-meter and 300-meter dash events. He also stated that by participating in the 4 x 400-meter relay event, Student A provided Bloomfield with a .06 second lead over Glastonbury in the final results.

In an email dated March 5, 2019, to School 1 administrators and the CIAC Executive Director, among others, Parent 4 stated that no other states at the New England Regionals had transgender student-athletes participating, and many people were surprised and concerned that cisgender girls were forced to compete with transgender girls. In another email dated March 5, 2019, to School 1 administrators, Parent 4 requested a meeting to review the current policy regarding transgender athletes and its impact on competitive fairness; and alleged that cisgender girls were being deprived of fair and equal opportunity.

In an email dated March 7, 2019, to the District Superintendent, a parent (Parent 5) stated her

opinion that the CIAC should adopt NCAA standards regarding transgender participation. In an email dated March 10, 2019, to School 1 administrators and the CIAC Executive Director, Parent 3 advised that the National Scholastic Athletic Foundation (NSAF), which hosts the national championships, had released statements regarding its transgender policy, which required athletes to take gender affirming hormones. Parent 3 then stated that at the New England Regionals on March 2, 2019, Bloomfield beat Glastonbury in the 4 x 400 relay with Student A participating on Bloomfield's team. He then noted that at the New Balance National championships held over March 8-10, 2019, Glastonbury's 4 x 400 relay team came in 14th in the nation, while Bloomfield's came in 34th, running without Student A.

On March 15, 2019, Parent 2 and the Parent 4 met with the Athletic Director and the Principal. The Principal stated that Parent 2 wanted School 1 to put forth a request for the CIAC to change its policy, and she communicated to them that the school was comfortable with the CIAC's following the state law and was not willing to ask the CIAC to change their policy. The Athletic Director did not recall that Parent 2 and Parent 4 raised any specific concerns about the policy, other than that the policy set up an uneven playing field. The Athletic Director stated that it was difficult to keep Parent 2 focused on what was Parent 2's real issue, as Parent 2 had started talking about separate math classes. The Athletic Director stated that she did not leave the meeting with any clear understanding of what Parent 2 was saying. She noted that Parent 2 and Parent 4 also wanted to show them photos of other non-district students, which

they refused to discuss due to Family and Educational Rights and Privacy Act of 1974 (FERPA). In an email dated March 18, 2019, following their meeting, Parent 2 summarized her continued concerns that the transgender policy may violate Title IX; included information from her state legislative office that there is no law to be changed and that any changes would be the responsibility of the CIAC and member schools; and provided examples of contradictions within the CIAC policies, relative to co-ed teams.

On March 18, 2019, Parent 3 requested a meeting with administrators at School 1 to discuss the transgender policy. In an email dated March 25, 2019, to School 1 administrators, Parent 3 stated that he learned that the CIAC had sent out a survey to member schools regarding the transgender policy. He included links to resources in his email and urged School 1 not to just “rubber stamp” the policy. In response to his request, on April 2, 2019, the principal and School 1’s Athletic Director met with Parent 3. Both the principal and Athletic Director described the meeting as lasting thirty minutes, per Parent 3’s request. The Athletic Director stated that, during the meeting, Parent 3 discussed biological differences and the challenges female athletes face, and what could happen when transgender athletes participate in other sports. The principal stated that Parent 3 was focused on the safety of his child with allowing a transgender student to participate in track. The principal stated that she communicated to Parent 3 that the district was not looking at asking the CIAC to change the transgender policy. On April 2, 2019, Parent 3 emailed the principal and Athletic Director thanking them for meeting with him; he emphasized

two points relative to the fairness of the policy and the implications if an elite transgender athlete were ever to participate. He also included resources related to Oregon's policy, as well as an NSAF's press release regarding transgender participation.

In an email dated April 12, 2019 to the District Director of Health and Physical Education, K-12 (the Director), Parent 2 acknowledged their recent conversation regarding Title IX; asked the Director for clarification regarding why the principal, as a voting CIAC member, could set different athletic expectations for girls and boys teams; and questioned why that did not violate Title IX. Parent 2 also questioned why the CIAC had separate competitions for boys and girls if the CIAC's purpose was just participation, and whether the concept of gender fluidity would satisfy Title IX when there was no distinction between the sexes.

Canton:

Canton advised OCR that it was required to comply with the CIAC's Revised Transgender Participation Policy because the CIAC is the governing body for interscholastic athletics. Canton also noted that the Revised Transgender Participation Policy follows state law. Canton reported that it does not currently have any transgender students of which it is aware participating in its athletics program, nor has it challenged the CIAC's Revised Transgender Participation Policy.

Danbury:

Danbury stated that it was required to follow the Revised Transgender Participation Policy because the CIAC is the governing body of athletics for the state

and it is required to follow all of the CIAC rules, regulations, and policies. Danbury reported that it does not currently have any transgender students of which it is aware participating in its athletics program. Danbury stated that it has not expressed concerns about the policy to the CIAC.

Hartford (School A1):

Student A was a 10th grade student who participated on School A1's athletics program during school year 2017-2018.⁴⁴ During the indoor track season of school year 2017-2018, Student A was a student-athlete on School A1's boys' indoor track team. During the outdoor track season of school year 2017-2018, Student A was a student-athlete on School A1's girls' outdoor track team. School A1 staff stated that as a CIAC member, School A1 is required to follow the CIAC policy and is also required to follow state law.

Bloomfield:

Student A was enrolled in School A2 in Bloomfield as an 11th grade student during school year 2018-2019. Bloomfield stated that as a member of the CIAC, it is required to follow the CIAC rules regarding participation, eligibility, and other matters, including the Revised Transgender Participation Policy.⁴⁵

⁴⁴ During school year 2017-2018, Student A attended another school in Hartford that does not have a sports program; as a result, Student A participated in athletics through School A1's program.

⁴⁵ Bloomfield denied that it has received any requests from students to participate in its interscholastic athletics program pursuant to the Revised Transgender Participation Policy. Bloomfield stated that it currently has a transgender student participating on its girls track team (Student A), but noted that the student registered and enrolled at School A2 as a female, i.e.,

Bloomfield denied that Student A's participation has had a negative impact on other female students in the district, as Bloomfield does not cut any students from the girls' indoor or outdoor track teams; therefore, anyone who wishes to participate can. Bloomfield staff opined that while a student may have lost to a transgender student, overall, everyone's performance has benefited from the participation of Student A; and that participation in athletics is not about winning.

Cromwell:

Student B was enrolled in School B in Cromwell as a 10th grade student during school year 2017-2018, and as an 11th grade student during school year 2018-2019. During school years 2017-2018 and 2018-2019, Student B was a student-athlete on School B's varsity girls' indoor and outdoor track teams.

Cromwell stated that it has one transgender student (Student B) participating in its interscholastic athletics program, and noted that Student B's records since her enrollment at School B in school year 2016-2017 have indicated that she was female; accordingly, Student B was placed on female rosters. Cromwell staff stated that they are required to follow the Revised Transgender Participation Policy as it is set by the CIAC, which is their governing body. Cromwell staff stated that none of their district students have been affected negatively by Student B's participation.

the student's school records indicated that she was female; therefore, Bloomfield was not required to make any determinations pursuant to the policy.

Legal Standards

Subpart D of the regulation implementing Title IX prohibits discrimination on the basis of sex in education programs and activities. 34 C.F.R. § 106.31(b)(7) of Subpart D states that in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex, limit any person in the enjoyment of any right, privilege, advantage, or opportunity. 34 C.F.R. § 106.41 of Subpart D specifically applies to athletics. The regulation implementing Title IX, at 34 C.F.R. § 106.41(a), states that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against, in any interscholastic athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis. The regulation implementing Title IX, at 34 C.F.R. § 106.41(b), states that, notwithstanding the requirements of § 106.41(a), a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.⁴⁶ The regulation implementing Title IX, at 34 C.F.R. § 106.6(c), states that the obligation to comply with the regulation is not obviated or alleviated by any rule or regulation of any athletic or other league, which would render any student ineligible to

⁴⁶ Where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. 34 C.F.R. § 106.41(b).

participate or limit the eligibility or participation of any student, on the basis of sex, in any education program or activity operated by a recipient.⁴⁷

Analysis and Conclusions

The Complainant alleged that the CIAC's Revised Transgender Participation Policy discriminated against female student-athletes competing in interscholastic girls' track in the state of Connecticut on the basis of their sex. Specifically, the Complainant alleged that as a result of the CIAC's Revised Transgender Participation Policy, Students A and B were permitted to compete in girls' track athletic competitions, which resulted in female student-athletes being denied opportunities to participate in higher level and/or post-season competitions.

The CIAC:

OCR determined that the CIAC, by permitting the participation of biologically male students in girls' interscholastic track in the state of Connecticut, pursuant to the Revised Transgender Participation Policy, denied female student-athletes benefits and opportunities, including to advance to the finals in events; to advance to higher level competitions, such as the State Open Championship or the New England Regional Championship; to win individual and team state championships, along with the benefit of

⁴⁷ OCR understands that the CIAC and the individual school districts maintain that the Revised Transgender Participation Policy is consistent with, and required by, Connecticut state law. OCR takes no view on the requirements of Connecticut law except to note that the duty to comply with Title IX and its implementing regulation is independent of any such requirements.

receiving medals for these events; to place higher in any of the above events; to receive awards and other recognition; and possibly to obtain greater visibility to colleges and other benefits. For these same reasons, OCR also determined that the CIAC treated students differently based on sex, by denying opportunities and benefits to female student-athletes that were available to male student-athletes.

With respect to the three student-athletes on whose behalf the complaint was filed (Student 1, Student 2, and Student 3), Student A's and Student B's 1st and 2nd place finishes, respectively, in the preliminaries of the 2018-2019 Indoor State Open Championship for the 55-meter dash, denied Student 1, who placed 8th, the opportunity of advancing to the finals in this event, since only the top 7 finishers advanced to the finals. Student A's and Student B's participation in girls' interscholastic track in the state of Connecticut, pursuant to the Revised Transgender Participation Policy had the most significant impact on Student 2. Specifically, Student A's 1st place finish, in the finals of the 2018-2019 Outdoor Class S Statewide Championship for the 100-meter dash and the 200-meter dash, denied Student 2, who placed 2nd in both events, the benefit of a 1st place finish; and Student A's and Student B's 1st and 2nd place finishes, in the 2018-2019 Indoor State Open Championship for the 55-meter dash, denied an opportunity for Student 2, who placed 3rd, to place 1st in the event and receive the benefit of a 1st place medal. Denying a female student a chance to win a championship is inconsistent with Title IX's mandate of equal

opportunity for both sexes.⁴⁸ Accordingly, OCR determined that the CIAC denied athletic benefits and opportunities to female student-athletes competing in interscholastic girls' track in the state of Connecticut through the Revised Transgender Participation Policy, in violation of the regulation implementing Title IX, at 34 C.F.R. § 106.41(a). OCR also has concerns that additional violations may have resulted from the Policy and from Student A's and B's participation in girls' track, including but not limited to losses or lowered placement in regular season meets; losses or lowered placement in conference championships; and an inability for some female student-athletes to participate generally in a race at any level (not just championship level).

With respect to the Team Championships for the 2018-2019 Indoor State Open Championship, absent Student A's participation, School A2 earned 26 points in 4 different events. Adding the 8 points for the 4 x 200 relay, in which School A2 may have placed and earned points even without Student A, School A2 would have earned 34 points, behind School 1, which had 39 points. Subtracting the 8 relay points would have also placed School A behind School 3. Thus, Student A's participation may have denied School 1 and its female student-athletes the benefit of a team

⁴⁸ See *McCormick v. School District of Mamaroneck*, 370 F.3d 275, 294-95 (2d Cir. 2004) ("A primary purpose of competitive athletics is to strive to be the best. . . . Treating girls differently regarding a matter so fundamental to the experience of sports—the chance to be champions—is inconsistent with Title IV's mandate of equal opportunity for both sexes.").

championship, and may have denied School 3, and other schools, the benefit of a higher placement.⁴⁹

Glastonbury:

OCR determined that the participation of Glastonbury in athletic events sponsored by the CIAC, consistent with the CIAC's Revised Transgender Participation Policy, which resulted in Student 1, and other female student-athletes competing against Students A and B, denied athletic benefits and opportunities to Student 1 and other female student-athletes, in violation of the regulation implementing Title IX, at 34 C.F.R. Section 106.41(a). Glastonbury placed female student-athletes in athletic events against male student-athletes, resulting in competitive disadvantages for female student-athletes. The athletic events in which the female student-athletes competed were coeducational; female student athletes were denied the opportunity to compete in events that were exclusively female, whereas male students were able to compete in events that were exclusively male. Accordingly, the districts' participation in the athletic events sponsored by the CIAC denied female student-athletes athletic opportunities that were provided to male student-athletes. Glastonbury's obligation to comply with the regulation implementing Title IX is

⁴⁹ With respect to the 2018-2019 Outdoor State Open Championships, held on June 3, 2019. The top five finishers were as follows: School 3: 58 points; Windsor: 43 points; School A2: 38 points; Norwich Free Academy: 32 points; Immaculate; 30 points. Student A's participation earned school A2 an additional 10 to 20 points and a third-place finish when School A2 might otherwise have finished no better than 5th.

not obviated or alleviated by any rule or regulation of the CIAC. 34 C.F.R § 106.6(c).

The participation of Glastonbury in athletic events sponsored by the CIAC, consistent with the CIAC's Revised Transgender Participation Policy, which resulted in Student 1, and other female student-athletes competing against Students A and B, denied Student 1 the opportunity to place higher in events, such as the 100-meter dash at the 2017-2018 Outdoor State Championship and New England Regional Championship; the 55-meter dash at the 2018-2019 Indoor CCC Regional Championship; and the 200-meter dash at the 2018-2019 Outdoor State Championship. Student A's and Student B's 1st and 2nd place finishes, respectively, in the preliminaries of the 2018-2019 Indoor State Open Championship for the 55-meter dash, denied Student 1, who placed 8th, the opportunity of advancing to the final in this event, since only the top 7 finishers advanced to the finals.

Canton:

OCR determined that the participation of Canton in athletic events sponsored by the CIAC, consistent with the CIAC's Revised Transgender Participation Policy, which resulted in Student 2, and other female student-athletes, competing against Students A and B, denied athletic benefits and opportunities to Student 2, and other female student-athletes, in violation of the regulation implementing Title IX, at 34 C.F.R. Section 106.41(a). Canton placed female student-athletes in athletic events against male student-athletes, resulting in competitive disadvantages for female student-athletes. The athletic events in which the female student-athletes

competed were coeducational; female student athletes were denied the opportunity to compete in events that were exclusively female, whereas male students were able to compete in events that were exclusively male. Accordingly, the districts' participation in the athletic events sponsored by the CIAC denied female student-athletes athletic opportunities that were provided to male student-athletes. Canton's obligation to comply with the regulation implementing Title IX is not obviated or alleviated by any rule or regulation of the CIAC. 34 C.F.R § 106.6(c).

The participation of Canton in athletic events sponsored by the CIAC, consistent with the CIAC's Revised Transgender Participation Policy, which resulted in Student 2, and other female student-athletes competing against Students A and B, denied Student 2 the opportunity to place higher in events, such as the Class S Outdoor Championships; the Indoor and Outdoor State Open Championships; and the New England Regional Championships. Specifically, Student A's and Student B's 1st and 2nd place finishes respectively, in the 2018-2019 Indoor State Open Championship for the 55-meter dash, denied an opportunity for Student 2, who placed 3rd, to place 1st in the event and receive the benefit of a 1st place medal. Student A's 1st place finish, in the finals of the 2018-2019 Outdoor Class S Statewide Championship for the 100-meter dash and the 200-meter dash, denied Student 2, who placed 2nd in both events, the benefit of a 1st place finish. Student A's 1st place finish in the finals of the State Open Championship in the 200-meter dash denied Student 2, who finished 4th, the benefit of a top-three finish.

Danbury:

OCR determined that the participation of Danbury in athletic events sponsored by the CIAC, consistent with the CIAC's Revised Transgender Participation Policy, which resulted in Student 3, and other female student-athletes, competing against Students A and B, denied athletic benefits and opportunities to Student 3, and other female student-athletes, in violation of the regulation implementing Title IX, at 34 C.F.R. Section 106.41(a). Danbury placed female student-athletes in athletic events against male student-athletes, resulting in competitive disadvantages for female student-athletes. The athletic events in which the female student-athletes competed were coeducational; female student athletes were denied the opportunity to compete in events that were exclusively female, whereas male students were able to compete in events that were exclusively male. Accordingly, the districts' participation in the athletic events sponsored by the CIAC denied female student-athletes athletic opportunities that were provided to male student-athletes.

Danbury's obligation to comply with the regulation implementing Title IX is not obviated or alleviated by any rule or regulation of the CIAC. 34 C.F.R. § 106.6(c).

The participation of Danbury in athletic events sponsored by the CIAC, consistent with the CIAC's Revised Transgender Participation Policy, which resulted in Student 3, and other female student-athletes competing against Students A and B, denied Student 3 the opportunity to place higher in events, such as at the Outdoor State Open Championships

and the New England Regional Championships. Specifically, Student A's 1st place finish in the finals of the State Open Championship in the 200-meter dash denied Student 3, who finished 3rd, the benefit of placing 2nd in the event; and Student A's 1st place finish in the finals of the 200-meter dash at the Outdoor New England Regional Championships denied Student 3, who finished 3rd the benefit of placing 2nd in the event.

Hartford (School A1):

Student A participated in girls' outdoor track on School A1's team in Hartford during school year 2017-2018. OCR determined that the participation of School A1 in athletic events sponsored by the CIAC, consistent with the CIAC's Revised Transgender Participation Policy, which resulted in Student A's participating in events against Students 1, 2 and 3, and against other female student-athletes, denied athletic benefits and opportunities to Students 1, 2, and 3, and other female student-athletes, in violation of the regulation implementing Title IX, at 34 C.F.R. Section 106.41(a). Hartford's obligation to comply with the regulation implementing Title IX is not obviated or alleviated by any rule or regulation of the CIAC. 34 C.F.R. § 106.6(c).

Bloomfield:

Student A participated in girls' indoor and outdoor track for Bloomfield during school year 2018-2019. OCR determined that the participation of Bloomfield in athletic events sponsored by the CIAC, consistent with the CIAC's Revised Transgender Participation Policy, which resulted in Student A's participating in events against Students 1, 2, and 3, and against other

female student-athletes, denied athletic benefits and opportunities to Students 1, 2, and 3, and other female student-athletes, in violation of the regulation implementing Title IX, at 34 C.F.R. Section 106.41(a). Bloomfield's obligation to comply with the regulation implementing Title IX is not obviated or alleviated by any rule or regulation of the CIAC. 34 C.F.R. § 106.6(c).

Cromwell:

Student B participated in girls' indoor and outdoor track for Cromwell during school years 2017-2018 and 2018-2019. OCR determined that the participation of Cromwell in athletic events sponsored by the CIAC, consistent with the CIAC's Revised Transgender Participation Policy, which resulted in Student B's participating in events against Students 1, 2, and 3, and against other female student-athletes, denied athletic benefits and opportunities to Students 1, 2, and 3, and other female student-athletes, in violation of the regulation implementing Title IX, at 34 C.F.R. Section 106.41(a). Cromwell's obligation to comply with the regulation implementing Title IX is not obviated or alleviated by any rule or regulation of the CIAC. 34 C.F.R. § 106.6(c).

For the aforementioned reasons, OCR also determined that the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury treated student-athletes differently based on sex, by denying opportunities and benefits to female student-athletes that were available to male student-athletes.

II. RETALIATION

The Complainant also alleged that (1) the CIAC retaliated against Parent 1, after Parent 1

complained about the Revised Transgender Participation Policy, by informing Parent 1, in March 2019, that the CIAC's Executive Director would no longer accept communications from her; and (2) that Glastonbury's track coach retaliated against Student 1, for her and Parent 2's advocacy against the Revised Transgender Participation Policy, by (a) replacing Student 1 on the sprint medley relay team in February 2019; (b) telling Student 1 and her parents that he could not give a good report to college coaches about her in March and May 2019; (c) denying Student 1 a position as a team captain in March 2019; and (d) suggesting that Student 1 should leave the outdoor track team due to her schedule, in March and May 2019.

Findings of Fact

1. Allegation Regarding the CIAC's Retaliation

OCR determined that the CIAC Handbook in effect during school year 2018-2019 sets forth the CIAC's "Communication Protocol Rules, Regulations and Interpretations" (Communication Protocol). According to the Communication Protocol, the CIAC Board of Control is the official body charged with the responsibility of interpreting the CIAC's rules and regulations. The Communication Protocol provides, in pertinent part, that "[i]nquiries to the CIAC office from parents, student-athletes, coaches and the public requesting an interpretation of the rules and regulations will be referred back to the member school principal or his/her designee." In addition, Section 4.21 of the CIAC Handbook, "Regulation Interpretation/CIAC Protocol in Providing Decisions

to School Personnel and Public (Effective July 1, 2006),” provides, in pertinent part, “The CIAC staff will not discuss CIAC rules and regulations with anyone other than school administrators and athletic directors. Telephone inquiries from parents and coaches will not be honored. **All calls from anyone other than the athletic director or school administrator will be referred back to the school.**” (Emphasis in original.)

OCR determined that Parent 1 initially contacted the CIAC about the policy when she sent a letter dated February 21, 2018, to the CIAC’s former Executive Director, in which she requested that the CIAC establish a rule to address transgender athletes’ participating in the girls’ state championship track competitions. In an email dated March 10, 2018, the former Executive Director responded by acknowledging that issues surrounding transgender student-athlete participation are complicated; advising Parent 1 that the CIAC’s policy is directly aligned with state anti-discrimination law, including the state’s definition of gender to include gender identity; and reminding Parent 1 that most high school athletes are minors and are therefore afforded a unique level of legal protection regarding their right to privacy.

On January 24, 2019, Parent 1 sent an email to the CIAC’s current Executive Director, attaching a letter in which she again requested that the CIAC establish a rule for transgender athletes’ participating in state championship track competitions and setting forth her own proposal for the placement and scoring of transgender female athletes participating in state

championships.⁵⁰ The Executive Director responded by email the same day, advising Parent 1 that the appropriate process for addressing her proposal would be to speak with the athletic director or principal at her child's school, as policy or rule proposals "may be submitted through member leagues, sport committees, member principals, [the Connecticut Association of Athletic Directors], or the Connecticut High School Coaches Association." Parent 1 replied to the director's email that same day, January 24, 2019, stating that she would follow up with the principal and athletic director at her child's school to see if they would be willing to submit her proposal.

OCR determined that on February 1, 2019, the principal and the Executive Director spoke by telephone, regarding Parent 1's letter and proposal. The Executive Director memorialized the call in an email to the principal that same day, in which he stated that the CIAC would be convening a gender subcommittee meeting on February 7, 2019, with the task of reviewing all the CIAC bylaws, processes, procedures in which gender plays a role, including the Revised Transgender Participation Policy; and that he would share a redacted copy of Parent 1's letter with the subcommittee members, in order "to provide

⁵⁰ Specifically, Parent 1 proposed the following: "Male-to-female transgender athletes who have not yet undergone hormone therapy should compete as exhibition athletes, with results not included for scoring and placing. This would ensure that the needs of both of these protected classes are met. The transgender athletes would still be able to **participate** on the team in which they identify and the female-born athletes would be afforded the opportunity to **compete** in a race that is not clouded by questions of unfair advantage." (Emphasis in original.)

all points of view to ensure a rich discussion among committee members.”

OCR determined that in response to Parent 1’s request, made through her building principal, for an in-person meeting with a CIAC representative, the Executive Director attended a meeting at the school with Parent 1 and the principal on February 28, 2019. The Executive Director stated that, at the meeting, he explained to Parent 1 why the CIAC believed that the Revised Transgender Participation Policy was in alignment with Title IX and Connecticut state law, and advised Parent 1 that he believed that Title IX did not apply to the parent’s concerns because Title IX does not address winning. Following the meeting, that same day, Parent 1 sent an email to the Executive Director, in which she thanked him for visiting the school and wrote that “[i]t was helpful to hear from you directly regarding the transgender policy and to understand what the CIAC process will be for reviewing this issue.”

OCR determined that on March 28, 2019, Parent 1 sent an email to the Executive Director, in which she attached a letter and included links to several websites concerning issues related to the Revised Transgender Participation Policy. The Executive Director responded by email that same day, stating that he had read her email, and cordially reminded her that any further correspondence to the CIAC should come through her principal. The Complainant did not provide, nor did OCR find, evidence of any further communications between Parent 1 and the Executive Director.

The Executive Director denied that he banned Parent 1 from sending communications to him. Rather, the Executive Director stated that he treated Parent 1 in a manner consistent with how he treated other individuals in similar situations, by reminding her of the CIAC's policy that communications must go through the member school's representative. OCR determined that the Executive Director has responded in a similar manner to other parents who sought to communicate directly with him in a similar fashion. OCR determined that none of the similarly situated parents had engaged in protected activities.

2. Allegations Regarding Glastonbury Track Coach Retaliation

The Complainant also alleged that a Glastonbury track coach retaliated against Student 1, for her and Parent 2's advocacy against the Revised Transgender Participation Policy, by (a) replacing Student 1 on the sprint medley relay team in February 2019; (b) telling Student 1 and her parents that he could not give a good report to college coaches about her in March and May 2019; (c) denying Student 1 a position as a team captain in March 2019; and (d) suggesting that Student 1 should leave the outdoor track team due to her schedule, in March and May 2019.

Allegation (a):

OCR determined that a team made up of students from Glastonbury's girls' indoor track team competed at the 2019 New Balance Nationals Track and Field championships ("Nationals"). The track coach stated that the meet is not a CIAC or school-sanctioned meet; therefore, any student who participates does so on an individual basis, not on behalf of Glastonbury.

The track coach stated that, accordingly, the Glastonbury coaches do not choose who may attend the meet or choose which athletes will participate in which events. Rather, the individual students choose, on their own, whether to compete in the meet, and who will compete in the events, including relays. The track coach further stated that it was his understanding that Student 1 was not selected to run in a relay at the meet, but he denied that he played a role in this decision. He further stated that his understanding was that the other athletes decided that Student 1 would not compete in the relay, but he did not know why they had made that decision.

Student 1 confirmed that it is each individual student-athlete's decision whether to attend Nationals, if she qualifies; however, she stated that for relay events, a track coach was responsible for signing up the various teams. Parent 2 indicated that this is to prevent students from different schools entering themselves as a single "power team." Student 1 stated that although she had a qualifying time for the sprint medley relay in December 2018,⁵¹ she was not asked to join the sprint medley relay team for Nationals in March 2019. Student 1 stated that, during the regular season, coaches pick the best athletes that are capable of running times that they would like to see for an overall split in the event, but that she was not fully aware of how the coaches make those determinations. Student 1 acknowledged that she was not sure which coach picked the sprint medley relay team for Nationals, but she assumed

⁵¹ The records Glastonbury provided indicate that Student 1 participated on a sprint medley relay team during a meet held on December 22, 2018.

that a coach picked the team because that was what was done for all other meets during the season.

Allegation (b):

The Complainant stated that at the first practice of the outdoor season on March 16, 2019, the track coach told Parent 4 that he had nothing good to say about Student 1 to a college coach; and on or about May 1, 2019, the track coach told Student 1 that he could not give a good report of her to college coaches.

The track coach denied that he told either Student 1 or her parents that he could not give a good report to college coaches about Student 1. The track coach stated that it is his practice to be completely honest with college coaches, to ensure that college coaches continue to trust and rely on his recommendations of athletes. The track coach stated that because of this, on or about March 16, 2019, in the course of a discussion with Parent 4 about the Student 1's workouts and her college future, he told Parent 4 that he is "100% honest with a college coach when asked any questions about any of the athletes."⁵² The track coach stated that he had also told Student 1 that he would be 100% honest with college coaches, although he did not recall the date of this conversation or the specific context in which the subject was raised. The track coach also advised OCR that Student 1 has not requested that he give a recommendation or report to any college coach on her behalf, nor has any college coach requested information about Student 1.

⁵² The track coach stated that in reply to his remark, Parent 4 stated that he understood.

Student 1 denied that the track coach told her that he would be honest with any college coaches, and instead maintained that the track coach told her, and Parent 4, that he did not have anything good to say about her and could not give a good report about her. Student 1 stated that the track coach made this statement to her one day when she was letting him know that she was leaving practice for work. Student 1 confirmed that she has not asked the track coach to speak with any coaches on her behalf.

Allegation (c):

The Complainant stated that the track coach told Student 1 that he did not select her as team captain because she departed early from practice on Fridays for work, despite her having served as team captain during the indoor season and not receiving any complaints about her as a captain. The track coach stated that students who wish to be considered for a team captain position are required to submit a written statement concerning their interest at the beginning of each season, indoor and outdoor. All of the coaches then select the team captains as a group. If there are any disagreements among the coaches, the track coach makes the final decision regarding the selection. The track coach stated that the qualifications for team captain are hard work, dedication, leadership, sportsmanship, and appropriately representing the high school. The track coach stated that the number of captains for the team typically ranges from three to seven for each season, depending on the size of the team and the number of qualified athletes who apply.

The track coach stated that in December 2018, Student 1 was selected as a captain for the indoor season 2018-2019; but that the decision was not unanimous because at least two coaches questioned Student 1's qualifications for a captain position, stating that they believed that she had not shown enough leadership, dedication and maturity.⁵³ The track coach stated that despite the concerns raised by other coaches, he chose Student 1 to be a captain for that season because he had observed her helping new athletes on the team and he believed that she would step up to the challenge.

The track coach stated that in March 2019, Student 1 applied to be a captain for the outdoor season 2018-2019. He stated that after speaking with all of the coaches, it was unanimous that they would not select Student 1 to be a captain for a number of reasons. He stated that the main reason was that during the indoor season (December 2018 – January 2019), Student 1 had, on several occasions, displayed poor sportsmanship at meets by ripping off her headband and storming away at the conclusion of her race. In addition, the track coach stated, and another coach confirmed, that during the indoor season, Student 1 often skipped her sprint workouts in favor of spending more time doing her long jump workouts; or claimed that she had an injury and could not do her sprint workouts, despite being able to do her long jump workouts and being cleared by the trainer. An assistant coach confirmed that during the indoor season, Student 1 failed to follow his instructions

⁵³ Specifically, an assistant track coach stated that he had concerns about Student 1's being selected as captain because he did not believe that Student 1 had the maturity to be a captain.

during practice, often did not complete her workouts, and exhibited poor sportsmanship at meets. Both the assistant coach and another coach agreed that Student 1 should not be selected as a captain for the outdoor season. The track coach stated that during a prior school year, he declined to select a student as team captain because she similarly failed to demonstrate leadership qualities/maturity. Glastonbury stated that this student had not engaged in protected activities.

Allegation (d):

The Complainant alleged that on or about March 25, 2019, the track coach told Student 1 that she should consider leaving the team if she did not attend full practice every day. The Complainant alleged that the track coach had not asked other student-athletes to leave the team due to missing practices for work commitments. The Complainant also alleged that on or about May 1, 2019, the track coach complained to Student 1 about her missing Friday practices.

The track coach denied that he had an issue with Student 1's leaving practice early on Fridays and denied that he specifically told her that she should leave the team. The track coach stated that he and the other coaches emphasized the importance of practice during meetings held at the beginning of the season with the student-athletes and their parents; but he denied having told any students recently, including Student 1, that they should consider leaving the team if they did not attend full practice every day. The track coach further stated that he was aware that Student 1 left practice early on Fridays for work; and stated that he did not object to this, particularly

because the team often ends practice early on Fridays during the winter when the gym is used for high school basketball games and because Friday practices are typically lighter prior to the track team competitions on the weekends.

Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.71, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., which provides that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. The following three elements must be satisfied to establish a prima facie case of retaliation: (1) an individual engaged in a protected activity; (2) an individual experienced an adverse action caused by the recipient; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. When a prima facie case of retaliation has been established, OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

Analysis and Conclusions

1. Allegation Regarding the CIAC's Retaliation

The Complainant alleged that the CIAC retaliated against Parent 1, after Parent 1 complained about the Revised Transgender Participation Policy, by informing Parent 1, in March 2019, that the CIAC's Executive Director would no longer accept communications from her. OCR determined that Parent 1 engaged in protected activity on February 22, 2018, January 24, 2019, and March 28, 2019, when she sent emails expressing concern regarding the Revised Transgender Participation Policy to the CIAC's Executive Director;⁵⁴ and on February 28, 2019, when Parent 1 met with the Executive Director in person to discuss her concerns about the policy. OCR determined that the CIAC was aware of Parent 1's protected activity.

OCR determined, however, that the CIAC proffered a legitimate, non-retaliatory reason for the Executive Director's statement to Parent 1 that "further correspondence to CIAC has to come through your principal"; namely, that the CIAC staff typically did not communicate directly with parents and Parent 1 should have communicated her concerns with the athletic director or school administrator. OCR determined that the proffered reason was not a pretext for retaliation, as the Executive Director's instruction was consistent with the the CIAC policy

⁵⁴ As discussed previously, Parent 1 communicated with the former the Executive Director in her email on February 22, 2018; and with the current Executive Director from January 24, 2019, onward.

and the Executive Director's directives to other parents who had not engaged in protected activities. Therefore, OCR determined that there was insufficient evidence to substantiate the Complainant's allegation that the CIAC retaliated against Parent 1, after Parent 1 complained about the Revised Transgender Participation Policy, by informing Parent 1, in March 2019, that the Executive Director would no longer accept communications from her. Accordingly, OCR will take no further action with respect to this allegation.

2. Allegations Regarding Glastonbury Track Coach Retaliation

OCR determined that Parent 2 engaged in protected activity by sending emails to the Athletic Director in May, June, and July 2018, expressing her concerns that the Revised Transgender Participation Policy was unfair to cisgender female athletes; meeting with the Athletic Director, the principal, and the superintendent, on or about August 1, 2018, to discuss these concerns; meeting with the Athletic Director and Parent 4, on or about March 15, 2019, to again discuss these concerns; and telephoning and sending an email to the School's Title IX Coordinator in March and April 2019. OCR determined that Parent 2 also engaged in protected activity in May and June 2018, and in March 2019, when she sent emails to the track coach regarding her objections to the policy and a petition that she had initiated in opposition to the policy. OCR determined that the Glastonbury track coach was aware of the Parent 2's protected activity.

With respect to Allegation (a), OCR determined that neither the track coach nor any other Glastonbury

employee denied Student 1 an opportunity to participate on a sprint medley relay team at the New Balance Nationals. Rather, the students themselves chose who would participate. Accordingly, OCR could not substantiate that the track coach or other Glastonbury employee subjected Student 1 to an adverse action. Absent an adverse action, OCR does not proceed further with retaliation analysis. Accordingly, OCR will take no further action regarding Allegation (a).

With respect to Allegation (b), OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of evidence supports the allegation. Here, OCR did not find that the preponderance of the evidence supported the Complainant's assertion that the track coach told Parent 2 or Student 1 that he would not give a good report about Student 1 to college coaches. Based on the foregoing, OCR determined that there was insufficient evidence to substantiate that the track coach subjected Student 1 to the alleged adverse action. Absent an adverse action, OCR does not proceed further with a retaliation analysis. Accordingly, OCR will take no further action regarding Allegation (b).

With respect to Allegation (c), OCR determined that the Glastonbury proffered a legitimate, non-retaliatory reason for not selecting Student 1 as a captain for the spring 2019 outdoor season; namely, that track coaches had concerns about Student 1's maturity and dedication after the winter 2018 indoor season. Even assuming that the track coach also told Student 1 that the decision had to do with her leaving

practice early on Fridays, OCR determined that would still be a legitimate, non-retaliatory reason for not selecting her. OCR determined that the proffered reasons were not a pretext for retaliation, as other coaches corroborated the reasons for the decision and the track coach gave an example of another student who had not been re-selected as captain based on similar behaviors, who had not engaged in protected activities. Additionally, OCR determined that there was no causal connection between the protected activity and the alleged adverse action, as the track coach selected Student 1 as a captain for the indoor season after she and Parent 2 had engaged in protected activities in 2018 and prior to their again engaging in protected activities in 2019. Therefore, OCR determined that there was insufficient evidence to substantiate the Complainant's allegation that the Glastonbury track coach retaliated against Student 1, for her and Parent 2's advocacy against the Revised Transgender Participation Policy, by denying Student 1 a position as a team captain in March 2019. Accordingly, OCR will take no further action regarding Allegation (c).

With respect to Allegation (d), OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of evidence supports the allegation. Here, OCR did not find that the preponderance of the evidence supported the Complainant's assertion that the track coach told Student 1 in March 2019 and May 2019, that she should consider leaving the team if she had to leave practice early. Based on the foregoing, OCR determined that there was insufficient evidence to

substantiate that the track coach subjected Student 1 to the alleged adverse action. Absent an adverse action, OCR does not proceed further with a retaliation analysis. Accordingly, OCR will take no further action regarding Allegation (d).

Attempts to Resolve the Complaint

Via e-mail on February 12, 2020, OCR notified the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury that it had determined that the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury violated Title IX, and provided a proposed resolution agreement (the Agreement) to each that would resolve OCR's compliance concerns. During subsequent telephone calls with counsel for the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury, held during the period of February 13, 2020, through March 13, 2020, OCR informed counsel for the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury of the specific violation, and explained the nature of the violations and the basis of its findings. On multiple occasions during these communications, OCR informed counsel for the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury of the 90-calendar day timeframe for negotiations as set forth in Section 303(f) of the *Manual*. OCR also informed counsel for the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury that the *Manual* states that OCR may end the negotiation period at any time prior to the expiration of the 90-calendar day period when it is clear that agreement will not be reached. On March 12, 2020, counsel for Bloomfield, Hartford, and Cromwell, and on March 13, 2020, counsel for the

CIAC, Glastonbury, Canton and Danbury, informed OCR that their clients would not sign the Agreements.

On March 17, 2020, OCR issued impasse letters to the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury notifying the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury that the negotiations had reached an impasse and a final agreement had not been reached. Further, the letter informed the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury that in accordance with the *Manual*, Section 303(g), if an agreement was not reached within 10 calendar days of the date of the letter, i.e., by March 30, 2020, OCR would issue a Letter of Impending Enforcement Action indicating that the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury are in violation of Title IX. OCR also referred the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury to the *Manual*, at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>, in particular, Sections 303-305 and 601-602, for more information.

In emails dated March 27, 2020, OCR informed the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury that in view of their COVID-19-related duties and responsibilities, OCR was extending the ten-calendar day-deadline to respond to OCR's proposed resolution agreements for a period of 30 days, to April 27, 2020; and that if agreement was not reached by that date, OCR would issue a Letter of Impending Enforcement Action on April 28, 2020, pursuant to Section 305 of the *Manual*. To date, the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell,

Canton, and Danbury have not entered into resolution agreements with OCR to remedy the violations.

Based on the failure of the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury to resolve the identified areas of noncompliance, OCR will either initiate administrative proceedings to suspend, terminate, or refuse to grant or continue and defer financial assistance to the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury, or refer the cases to the U.S. Department of Justice for judicial proceedings to enforce any rights of the United States under its laws. OCR will take further enforcement action after no fewer than 20 calendar days from the date of this letter if resolution of these complaints has not yet been reached.

This Letter of Impending Enforcement Action is not intended and should not be interpreted to address the compliance of the CIAC, Glastonbury, Bloomfield, Hartford, Cromwell, Canton, and Danbury with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in these individual OCR cases; it is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the

event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801, or nadja.r.allen.gill@ed.gov.

Sincerely

Timothy C. J. Blanchard

Timothy C. J. Blanchard

cc: Glenn Lungarini, CIAC Executive Director, via email only
Alan B. Bookman, Glastonbury Superintendent, via email only
Kevin D. Case, Canton Superintendent, via email only
Dr. Enza Macri, Cromwell Superintendent, via email only
Dr. Sal V. Pascarella, Danbury Superintendent, via email only
Dr. James Thompson, Jr., Bloomfield Superintendent, via email only
Dr. Leslie Torres-Rodriguez, Hartford Superintendent, via email only
Roger G. Brooks, Alliance Defending Freedom, Complainant, via email only

APPENDIX 2

RESPONSE TO MOTION FOR PRELIMINARY
INJUNCTION – IHSAA CONSENT AND
PHYSICAL EXAMINATION FORMS



HEALTH EXAMINATION *and* CONSENT FORM

It is required all students complete a history and physical examination prior to his/her first 9th and 11th grade practice in the interscholastic (9-12) athletic program in the State of Idaho. The exam is at the expense of the student and may not be taken prior to May 1 of the 9th and 10th grade years. This examination is to be done by a licensed physician, physician's assistant or nurse practitioner under optimal conditions. Interscholastic history forms are required during the 10th and 12th grade years and must be submitted to the school administration prior to the first practice.

Name: _____ Sex: M / F Date of birth: _____ Age: _____
 Address: _____ Phone: _____
 School: _____ Sports: _____ Participation Grade: _____

MEDICAL HISTORY

Fill in details of "YES" answers in space below:

	Yes	No		Yes	No
1. Have you ever been hospitalized?	<input type="checkbox"/>	<input type="checkbox"/>	6. Have you ever had a head injury?	<input type="checkbox"/>	<input type="checkbox"/>
Have you ever had surgery?	<input type="checkbox"/>	<input type="checkbox"/>	Have you ever been knocked out or unconscious?	<input type="checkbox"/>	<input type="checkbox"/>
2. Are you presently taking any medication or pills?	<input type="checkbox"/>	<input type="checkbox"/>	Have you ever been diagnosed with a concussion?	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you have any allergies (medicine, bees, other insects)?	<input type="checkbox"/>	<input type="checkbox"/>	Have you ever had a seizure?	<input type="checkbox"/>	<input type="checkbox"/>
4. Have you ever passed out during or after exercise?	<input type="checkbox"/>	<input type="checkbox"/>	Have you ever had a stinger, burned or pinched nerve?	<input type="checkbox"/>	<input type="checkbox"/>
Have you ever been dizzy during or after exercise?	<input type="checkbox"/>	<input type="checkbox"/>	7. Have you ever had heat or muscle cramps?	<input type="checkbox"/>	<input type="checkbox"/>
Have you ever had chest pain during or after exercise?	<input type="checkbox"/>	<input type="checkbox"/>	Have you ever been dizzy or passed out in the heat?	<input type="checkbox"/>	<input type="checkbox"/>
Do you tire more quickly than your friends during exercise?	<input type="checkbox"/>	<input type="checkbox"/>	8. Do you have trouble breathing or do you cough during or after exercise?	<input type="checkbox"/>	<input type="checkbox"/>
Have you ever had high blood pressure?	<input type="checkbox"/>	<input type="checkbox"/>	9. Do you use special equipment (pads, braces, neck rolls, mouth guard or eye guards, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>
Have you been told you have a heart murmur?	<input type="checkbox"/>	<input type="checkbox"/>	10. Have you ever had problems with your eyes or vision?	<input type="checkbox"/>	<input type="checkbox"/>
Have you ever had racing of your heart or skipped heartbeats?	<input type="checkbox"/>	<input type="checkbox"/>	Do you wear glasses, contacts or protective eyewear?	<input type="checkbox"/>	<input type="checkbox"/>
Has anyone in your family died of heart problems or a sudden death before age 50?	<input type="checkbox"/>	<input type="checkbox"/>	11. Have you had any other medical problems (infectious mononucleosis, diabetes, ect.)?	<input type="checkbox"/>	<input type="checkbox"/>
5. Do you have any skin problems (itching, rash, acne)?	<input type="checkbox"/>	<input type="checkbox"/>			
12. Have you had a medical problem or injury since your last evaluation?	<input type="checkbox"/> Yes <input type="checkbox"/> No				
13. Have you ever sprained/strained, dislocated, fractured, broken or had repeated swelling or other injuries of any of bones or joints?	<input type="checkbox"/> head <input type="checkbox"/> back <input type="checkbox"/> shoulder <input type="checkbox"/> forearm <input type="checkbox"/> hand <input type="checkbox"/> hip <input type="checkbox"/> knee <input type="checkbox"/> ankle <input type="checkbox"/> neck <input type="checkbox"/> chest <input type="checkbox"/> elbow <input type="checkbox"/> wrist <input type="checkbox"/> finger <input type="checkbox"/> thigh <input type="checkbox"/> shin <input type="checkbox"/> foot				
14. Were you born without a kidney, testicle, or any other organ?	<input type="checkbox"/> Yes <input type="checkbox"/> No				
15. When was your first menstrual period?	_____				
What was your last menstrual period?	_____				
What was the longest time between your periods last year?	_____				

Explain "YES" answers: _____

CONSENT FORM

(Parent or guardian and student permission and approval)

I hereby consent to the above named student participating in the interscholastic athletic program at his/her school of attendance. This consent includes travel to and from athletic contests and practice sessions. I further consent to treatment deemed necessary by physicians designated school authorities for any illness or injury resulting from his/her athletic participation. I also consent to release of any information contained in this form to carry out treatment and healthcare operations for the above named student.

If the health care provider's exam will be performed without compensation as part of the school's health examination program for participation in high school activities, I agree to the waiver provisions as set forth in Idaho Code Section 39-7703 and agree that the health care provider shall be immune from liability as specified in said section.

PARENT OR GUARDIAN SIGNATURE _____ DATE: _____

This application to compete in interscholastic athletics for the above school is entirely voluntary on my part and is made with the understanding that I have not violated any of the eligibility rules and regulations of the State Association.

SIGNATURE OF STUDENT _____ DATE: _____

Idaho High School Activities Association
Physical Examination Form

Name: _____ Date of Birth: _____

Height _____	Weight _____	BP _____ / _____	Pulse _____
Vision R 20 / ____ L 20 / ____		Corrected: Y N	
Normal	Abnormal findings		
Medical			
Pulses			
Heart			
Lungs			
Skin			
Ears, nose, throat			
Pupils			
Abdomen			
Genitalia (males)			
Musculoskeletal			
Neck			
Shoulder			
Elbow			
Wrist			
Hand			
Back			
Knee			
Ankle			
Foot			
Other			

CLEARANCE / RECOMMENDATIONS

Clearance:

- A. Cleared for all sports and other school-sponsored activities.
- B. Cleared after completing evaluation/rehabilitation for: _____
- C. NOT cleared to participate in the following IHSAA sponsored sports /activities:
 baseball basketball cheer/dance cross country football golf
 soccer softball swimming tennis track volleyball wrestling
NOT cleared for other school-sponsored activities (example: lacrosse): _____
- D. Student is NOT permitted to participate in high school athletics.
 Reason: _____
 Recommendation: _____

Name of physician: _____

Address: _____ Phone: _____

Signature of physician/medical provider: _____ Date: _____

(This Physical Examination Form MUST be signed by a licensed physician, physician assistant or nurse practitioner)