



## DEPARTMENT OF EDUCATION

### 34 CFR Part 106

[Docket ID ED-2022-OCR-0143]

RIN 1870-AA19

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams;

Withdrawal

**AGENCY:** Office for Civil Rights, Department of Education.

**ACTION:** Notice of proposed rulemaking; withdrawal.

**SUMMARY:** The U.S. Department of Education (Department) is withdrawing the notice of proposed rulemaking entitled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams” published in the Federal Register on April 13, 2023. The proposed rule would have amended the regulations implementing Title IX of the Education Amendments of 1972 (Title IX).

**DATES:** The notice of proposed rulemaking published in the *Federal Register* on April 13, 2023, 88 FR 22860, is withdrawn as of December 20, 2024.

**FOR FURTHER INFORMATION CONTACT:** Bianca Costello, U.S. Department of Education, 400 Maryland Avenue SW, Fifth Floor, Washington, DC 20202. Telephone: (202) 219-2126. Email: [bianca.costello@ed.gov](mailto:bianca.costello@ed.gov).

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### SUPPLEMENTARY INFORMATION:

#### *Background:*

On April 13, 2023, the Department published a notice of proposed rulemaking titled

“Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams” (Athletics NPRM) in the *Federal Register* that proposed amending 34 CFR 106.41 of the Department’s regulations implementing Title IX. 88 FR 22860. The intent of the Athletics NPRM was to “propose a regulatory standard under Title IX that would govern a recipient’s adoption or application of sex-related criteria that would limit or deny a student’s eligibility to participate on a male or female athletic team consistent with their gender identity.” *Id.* The Department’s proposed rule provided that, if a recipient adopts or applies sex-related criteria that would limit or deny a student’s eligibility to participate on a male or female team consistent with their gender identity, such criteria must, for each sport, level of competition, and grade or educational level: (i) be substantially related to the achievement of an important educational objective, and (ii) minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied. 88 FR 22891.

The Department invited the public to comment on all aspects of the Athletics NPRM, as well as the Regulatory Impact Analysis. In response, the Department received more than 150,000 public comments on the Athletics NPRM during the 30-day comment period.

### **Withdrawal of the notice of proposed rulemaking and termination of the rulemaking proceeding**

The Department reviewed and considered all comments submitted during the comment period and appreciates the time and effort spent by commenters in sharing their views with the Department. Commenters offered a broad spectrum of opinions on the Athletics NPRM. Some commenters expressed general support for the proposed regulation, and some asked the Department to modify the proposed regulation to provide for more students to participate on a sex-separate athletic team consistent with their gender identity, particularly at the elementary and secondary school levels. Other commenters opposed the proposed regulation in its entirety and

asked the Department to withdraw the Athletics NPRM. Numerous commenters expressed concerns about the application of the proposed regulation in practice, arguing that the proposed regulation was unclear or too complex for recipients to implement, and many commenters offered alternative regulatory text for the Department's consideration to clarify, simplify, elaborate on, or substantively change the focus and impact of the proposed rule. Additionally, a significant number of commenters included discussions of case law, scientific studies and research papers, and existing athletic association policies and practices regarding athletic eligibility criteria that, according to the commenters, supported the adoption, modification, or withdrawal of the proposed regulation.

The Department recognizes that there are multiple pending lawsuits related to the application of Title IX in the context of gender identity, including lawsuits related to Title IX's application to athletic eligibility criteria in a variety of factual contexts. In light of the comments received and those various pending court cases, the Department has determined not to regulate on this issue at this time. Therefore, the Department hereby withdraws the Athletics NPRM and terminates this rulemaking proceeding. We do not intend for a final rule to be issued on this NPRM. If, in the future, we decide it is appropriate to issue regulations on this topic, we will do so via a new notice of proposed rulemaking, subject to the requirements of the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*

To the extent the Department receives complaints of discrimination about a recipient's obligation to provide equal opportunity to participate in athletics regardless of sex, it will continue to apply the longstanding legal standards reflected in the athletics regulations at 34 CFR 106.41 and in U.S. Dep't of Health, Educ., and Welfare, Office for Civil Rights, A Policy Interpretation: Title IX and Intercollegiate Athletics, 44 FR 71413 (Dec. 11, 1979), <https://www.govinfo.gov/content/pkg/FR-1979-12-11/pdf/FR-1979-12-11.pdf>.

The Athletics NPRM issued on April 13, 2023, is hereby withdrawn, and the rulemaking proceeding for that NPRM is terminated as of the date of publication of this notice in the *Federal Register*.

*Accessible Format:* On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3, braille, large print, audiotape, compact disc, or other accessible format.

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Miguel Cardona,  
*Secretary of Education.*

[FR Doc. 2024-30921 Filed: 12/20/2024 2:00 pm; Publication Date: 12/26/2024]