



NATIONAL ASSOCIATION OF  
School Psychologists

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Honorable Virginia Foxx, Chair  
House Committee Education and the Workforce

Honorable Bobby Scott, Ranking Member  
House Committee Education and the Workforce

**Re: Markup of Parents Bill of Rights and Protection of Women and Girls in Sports Act of 2023**

Dear Chairwoman Foxx and Ranking Member Scott,

On behalf of the National Association of School Psychologists (NASP), and our 25,000+ members, I write to express significant concerns regarding the harmful impact of the *Parents Bill of Rights Act* (H.R. 5) and the *Protection of Women and Girls in Sports Act of 2023* (H.R. 734). School psychologists work with families, educators, administrators, and community members to collectively meet the academic, social emotional, and mental and behavioral health needs of students. We are committed to ensuring that every child: has access to well-rounded, comprehensive, and inclusive curricula; receives the comprehensive learning supports they need to be successful and; attends a school with a safe, supportive learning environment free of bullying, harassment, and discrimination for *all* students. Importantly, we work to foster effective partnerships between families and educators, who share equally the responsibility for the learning and success of all students. School psychologists work with school leaders to create equitable and accessible family engagement systems in which the diverse perspectives of all families are actively sought out, acknowledged, and valued. Collectively, elements of H.R 5 and H.R. 734 undermine these commitments by: prioritizing the voices and perspectives of a small subset of families; condoning discrimination; limiting curricula; and preventing schools from ensuring physical and psychological safety. Further, elements of these bills will significantly exacerbate the current youth mental health crisis, particularly for LGBTQ+ and other marginalized youth.

**Parents Bill of Rights (H.R. 5)**

**Title I- Amendments to the Elementary and Secondary Education Act of 1965**

Sec 101 and Sec 103, State and Local Educational Agency Plan Assurances

NASP supports efforts to increase transparency and access to information about school curricula. Existing provisions in FERPA and PPRA clearly articulate the rights of parents to review school curricula and materials as well as opt their child out of specific lessons or survey administration. It is critical that parents and families know what is happening in their child's classroom so that they may engage with their children about what they are learning, and even offer differing viewpoints and helping their children think critically. Requirements to make this information publicly available to all creates an unnecessary burden on the SEA and LEA which is unattainable and will further impede already strained local and state education systems. Despite our belief that Sec 101 and Sec 103 are redundant, we offer the following edits to ensure that all information is accessible to all families: families and other persons with disabilities and those who speak a language other than English:

Sec 101 State Plan Assurances

(O)(i)(I) "posts on a publicly accessible website of the agency, in a manner that is accessible to persons with disabilities and those who speak a language other than English, such curriculum;

(O)(i)(II) if such agency does not operate a website, widely disseminates to the public in a manner that is accessible to persons with disabilities and those who speak a language other than English such curriculum;

(O)(ii)(I) "posts on a publicly accessible website of the agency, in a manner that is accessible to persons with disabilities and those who speak a language other than English;

(O)(ii)(II) “if such agency does not operate a website, widely disseminates to the public, in a manner that is accessible to persons with disabilities and those who speak a language other than English, such curriculum;”

(P) “in the case of any revisions... the State educational agency will post to the homepage of its website, and widely disseminate to the public, in a manner that is accessible to persons with disabilities and those who speak a language other than English,”

#### Sec 103 Local Plan Assurances

(9) “post on a publicly accessible website of the local educational agency or, if the local educational agency does not operate a website, widely disseminate to the public, in a manner that is accessible to persons with disabilities and those who speak a language other than English, the plan...”

We also request clarification as to the definition of ‘curriculum.’ Teachers routinely alter lesson plans or planned pace of curriculum based on students’ progress and needs. Teachers must maintain the ability to differentiate instruction and to develop lessons, aligned with state academic standards, that meet the needs of their students. Many students receive interventions, specific modifications, or specially designed instruction (as part of a child’s Individualized Education Program) to ensure access to the general curriculum and state academic standards. We strongly caution against considering these instructional materials ‘curriculum’ as it could inadvertently violate the privacy of students and their families, especially in smaller communities where identification is easier.

#### Sec 104 Parent’s Right to Know

We support that parents should have the right to see what materials are available in the school, to be well informed about potential changes to state academic standards or key programmatic offerings (not limited to the elimination of gifted and talented programs), and to voice their opinion regarding school and school district policy. This information must be accessible to all families, and we request the following revision:

(1) “Notice of Rights”- A local education agency...posts, in a manner accessible to persons with disabilities and those who speak a language other than English,”

However, the “right to review” outlined in this section must not be synonymous with the right to demand removal or alteration of specific books or other material available to all students. We remain increasingly alarmed at continued reports of the removal of material highlighting the diversity of our society and our schools. Restricting access to accurate information and removing evidence-based practices that promote inclusivity and cultural responsiveness is fundamentally handcuffing schools and school staff, and it is harming children. Public schools exist to prepare young people to live in a global society and be contributing citizens. Therefore, schools must have resources and curricula which is reflective of the world they live in. We have heard from many school psychologists that parents are frustrated by the removal of certain books and/or materials from classrooms and/or curriculum, and they are angry that their opposition to these removals has been ignored as it is placing unwanted limitation on their child’s exposure to diversity and excludes specific identities from curricula. This legislation must clearly articulate that the “right to review” does not give one the legal right to demand removal. Educators, schools, and districts must be empowered to make decisions based on empirical evidence and the needs of the school community, including the unique needs of specific groups of students without fear of reprisal.

#### **Title II- Amendments to FERPA and PPRA**

Many of the rights articulated in H.R. 5, including the right to inspect instructional material and surveys that may be administered or distributed by the school, and the right to opt their child out of participation in specific activities are statutorily afforded to parents via FERPA and PPRA. NASP does not object to more stringent requirements to ensure proper protection of student data and to prohibit the sale of student information for commercial purposes or financial gain. However, we have significant concerns that, collectively, Sec 201(n) ‘Disclosure of Information’; Sec 202(b); Sec 202 (c)(2)(D)(i), and the proposed definition of ‘Medical Examination or Screening’ will significantly impede schools’ ability to support student well-being and mental health and prevent school violence.

Sec 201(n) would require schools to share with parents, upon request, an individual students’ response to any survey. Implementation of this provision would prove impossible in many scenarios as the vast majority of surveys are

anonymous by design and identified data is less likely to be valid. Many school-administered surveys are intended to provide critical information necessary to: examine and respond to the global physical and mental health needs of young people; guide school and community violence prevention efforts; inform school safety and school climate initiatives; and guide efforts to reduce substance use and misuse. These data are critical to identifying potential risks to children and youth, and to evaluate system wide efforts to address specific concerns. Parents maintain the right to exclude their child from participating in these valuable data collection efforts, but students must be empowered to be honest without fear of consequence, punishment, or the unwanted disclosure of personal information without their permission. As such, we request the following revision:

“(n) DISCLOSURE OF INFORMATION.—An educational agency or institution or authorized representative of such agency or institution shall:

- (1) upon request from a parent of a student disclose to such parent the identity of any individual or entity with whom information is shared from the education record;
- (2) upon request from a parent of a student disclose to such parent any response of the student to a survey if
  - (A) information to accurately identify individual students was collected as part of the survey, as designed,
  - and
  - (B) the student consents to the disclosure of such information
- (3) inform students, prior to their participation in a survey in which identifying information is collected, that their individual responses may be disclosed to a parent upon request.”

Current law reflects the requirement for parental consent prior to student participation in specific school administered surveys, rendering Sec 202 (c)(2)(D)(i) redundant, and when considered in conjunction with the proposed definition of ‘Medical Examination or Screening, highly concerning. Revision of the current legal definition of ‘physical examination’ to ‘Medical Examination or Screening’, which explicitly includes a mental health or substance use disorder screening, combined with parental consent requirements will undoubtedly exacerbate the youth mental health crisis and undermine efforts to improve school safety. The term ‘mental health screening’ could be interpreted in a manner that results in significant harm to school communities. A mental health screening is not synonymous with a standardized measure or survey intended to gather personal information about an individual for diagnostic use. While those tools may be utilized as part of a holistic approach to identifying and addressing student need, mental health screening is a *process* by which educators, in collaboration with school psychologists or school mental health professionals, and families, identify students who may need support. School mental health professionals will not engage in a therapeutic intervention with a student without active parental consent. However, students must be allowed to seek out a trusted adult or mental health professional, including school psychologists, at school and these professionals must be able to assess student well-being and (as part of their responsibility as a mandatory reporter) immediately assess if there is concern regarding risk of harm to self or others. As currently written, H.R 5 would require parental consent prior to any contact with a school mental health professional and could result in unnecessary and preventable harm to self or others. Parents are already notified of reported risk after an assessment is completed and inability to reach a parent for consent to do an assessment can have lethal consequences.

We offer the following suggested revision and would welcome the opportunity to collaborate on statutory language that ensures availability of comprehensive school mental and behavioral health services and balances schools’ obligation to support student learning and well-being and maintain a safe school environment with efforts to improve family engagement in all aspects of the education system.

MEDICAL EXAMINATION OR SCREENING.—The term ‘medical examination or screening’ means any medical examination or screening that involves the exposure of private body parts, or any act during such examination or screening that includes incision, insertion, or injection into the body, or a mental health or substance use disorder screening, except that such term does not include:

- (i) a hearing, vision, or scoliosis screening;
- (ii) an observational screening carried out to comply with child find obligations under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).”

- (iii) Informal observation, screening, or short term consultation, of non-therapeutic nature, with a school based mental health services provider;
- (iv) a process to assess and mitigate the risk of inflicted harm to self or others, provided that parental notification of such screening occurs as soon as is feasibly possible unless there is reasonable evidence that parent notification will result in harm to the child.

### **Protection of Women and Girls in Sports Act of 2023 (H.R. 734)**

NASP believes, and courts have established, that the civil rights of transgender students are protected as part of U.S. public schools' obligations under Title IX of the Education Amendments of 1972. These rights include honoring a person's right to express gender identity, and the right to modify gender expression when necessary for individual well-being, and to have their gender identify affirmed and acknowledged, the right to explore and question their gender identity, and the right to participate in activities, including sports, that correspond with one's gender identity.

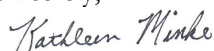
We vehemently oppose any effort, including the Protection of Women and Girls in Sports Act, to define sex based solely on a person's reproductive biology and genetics at birth. While this legislation, on its face, is narrowly focused on the issue of athletics, it is legally tenuous to assume that Title IX allows for multiple, context specific, definitions of sex. This definition would most certainly be applied across all educational activities and programs and amounts to an assault on the existence and civil rights of transgender, gender nonconforming and intersex children, adolescents, and adults in our communities. Further, H.R. 734 places unfair burden on school administrators, who are not medical providers, to examine and police a student's body. Administrators and the National Association of Secondary School Principals have expressed concern and frustration over individual state's laws which violate Title. IX.

This legislation is a "solution" in search of a problem. The policies of the International Olympic Committee (IOC) and the National Collegiate Athletic Association (NCAA), among others have longstanding guidelines regarding participation on competitive sports teams. The IOC first allowed transgender participation in the Olympic Games beginning in 2004 and the NCAA has done so since 2011. Both the IOC and the NCAA have refined their policy to better align with scientific fact and empirical research; and both organizations, as well as numerous high school athletic associations and professional and amateur sports leagues, currently to allow transgender athletes to compete on teams and in events aligned with their gender identity. Inclusive sports participation benefits all students and ensures equitable opportunities for collegiate sports attainment, collegiate scholarships, and opportunities to compete in professional sports. There is absolutely no evidence that cisgender athletes, or women's athletics in general, are harmed by these policies.

For almost two decades, transgender athletes in the United States have been allowed to participate in some of the most elite national and international competitions as their authentic selves. Yet, it was not until 2020, out of concern for the future of women's athletics, that policy makers sought to prohibit transgender people, particularly transgender women, from participating in sports teams that aligned with their gender identity. This legislation is not about protecting women. This legislation is a thinly veiled attempt at codifying a harmful and discriminatory definition of 'sex' under the guise of "protecting women" from discrimination in sports. This legislation is not about sports, it is about further erasing transgender people from public life. We adamantly oppose this legislation and urge you to do the same.

We welcome the opportunity to collaborate on legislation that promotes effective family engagement, ensures access to a well-rounded and inclusive curriculum, supports student well-being, and affirms the rights and identities of all students. Please contact NASP Director of Policy and Advocacy, Dr. Kelly Vaillancourt ([kvaillancourt@naspweb.org](mailto:kvaillancourt@naspweb.org)) with questions, concerns, or opportunities to promote a public education system that works for all students.

Sincerely,



Kathleen Minke, PhD, NCSP  
Executive Director