



LOWER HUDSON EDUCATION COALITION

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Lower Hudson Education Coalition (LHEC) Comments on NYSED Proposed Amendment of Sections 135.1, 135.4, and 135.5 of the Regulations of the Commissioner of Education Relating to Mixed Competition and Extra Class Athletic Activities

To Whom It May Concern,

The Lower Hudson Education Coalition (LHEC) appreciates the opportunity to provide feedback on the proposed amendments to Sections 135.1, 135.4, and 135.5 of the Regulations of the Commissioner of Education. While we support the goal of promoting inclusivity and equal opportunities for all students, we remain very concerned that the proposed changes will have a chilling effect on the access, ability and engagement of female athletes. Specifically, we have significant concerns regarding the proposed changes, particularly the removal of the "significant adverse effect" language.

Therefore, we strongly urge the Board of Regents to rescind and reconsider the proposed amendments for the following reasons:

Unclear Standards for Participation and Increased Risk of Injury

The elimination of the "significant adverse effect" wording creates an ambiguous standard for student participation in mixed competition. This lack of clarity could lead to scenarios where students are allowed to compete outside their physical development levels, thus increasing the risk of injuries. Adolescents develop at varying rates, and physical development can significantly impact a student's ability to safely engage in certain sports. Without clear standards, there is a heightened risk of physical mismatches, which could result in severe injuries that might have been avoidable with appropriate guidelines. Further, removing the "significant adverse effect" language may result in boys competing in girls' sports, which can dominate and overshadow female athletes. This situation can discourage female participation and create an environment of unfair competition. Boys generally have physical advantages in terms of strength and speed due to differences in muscle mass and hormonal influences. Allowing boys to compete in girls' sports without clear standards could undermine the competitive integrity of these sports, making it difficult for female athletes to compete fairly and potentially discouraging them from participating altogether.

Potential Title IX Violations

If boys are allowed to compete in girls' sports without the "significant adverse effect" standard, there is a risk of creating unbalanced teams, leading to reduced playing time and scholarship opportunities for girls. This imbalance could diminish overall interest in athletics among female students and potentially violate Title IX, which mandates equal opportunities for both genders in educational programs and activities, including athletics. Title IX compliance is crucial for ensuring that female athletes receive the same opportunities, resources, and recognition as their male counterparts. The absence of clear guidelines might lead to discriminatory practices, intentionally or unintentionally, which could have legal ramifications for educational institutions.



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Lack of Clear Guidelines for Decision-Making

Without the "significant adverse effect" standard, coaches and administrators are left without clear guidelines to make fair and consistent decisions regarding mixed competition. This ambiguity could result in inconsistent application of rules and standards across different schools and regions, potentially leading to legal challenges and disputes. Clear, objective criteria are essential for maintaining fairness and transparency in decision-making processes. When guidelines are vague, it opens the door to subjective interpretations that can vary widely from one institution to another, undermining the principles of equity and fairness that the proposed amendments seek to promote.

Neglect of Key Supervisory Duties

The Duty to Supervise, the Duty to Match Up Athletes, the Duty to Provide Medical Care, the Duty to Warn, and the Duty to Maintain Safe Playing Conditions are critical responsibilities that were blatantly disregarded by the Regents in their decision. This decision not only undermines the safety of our student-athletes but also opens the door to potential litigation. For instance, the duty to match up athletes, ensure fair competition, and prevent injuries was not considered when creating the proposal. These duties are essential for the protection and well-being of all student-athletes and neglecting them can have serious legal and ethical consequences.

Support for the Athletic Placement Process (APP)

We strongly believe that the Athletic Placement Process (APP) provides a robust protocol to address many of the issues that this proposed rulemaking aims to resolve. The APP ensures that students are placed in appropriate competitive environments based on their physical and emotional readiness, sport-specific skill development, and overall athletic ability. By adhering to the APP, schools can maintain high standards of safety and fairness, ensuring that all student-athletes can participate in sports in a manner that is appropriate for their development and abilities.

Therefore, while we support the intent to foster inclusivity and equal opportunities in school athletics, we strongly urge the Board of Regents to rescind the proposed rulemaking, but at a very minimum to reconsider the removal of the "significant adverse effect" language. Maintaining this standard is crucial for ensuring the safety, fairness, and equitable treatment of all student-athletes. We recommend that clear and objective guidelines be established to assist coaches and administrators in making informed decisions that uphold the principles of safety and fairness in mixed competition.