



August 31, 2023

Office for Civil Rights
U.S. Department of Education
Renaissance Tower
1201 Elm Street, Suite 1000
Dallas, Texas 75270

Sent Via E-mail

Re: Administrative Civil Rights Complaint Against Fort Worth Academy of Fine Arts

To Whom It May Concern:

We are writing you to inform you of a school in the state of Texas that is being pressured through the administrative complaint process to violate Title IX. The Fort Worth Academy of Fine Arts (FWAFA) in Fort Worth, Texas has been the focus of activist efforts over the past year to violate the “sex-separated” protections provided in Title IX in regards to choruses by being forced to allow a female student to audition, sing, and compete in a historically all boys choir.

In June of this year, FWAFA decided to adopt a policy clarifying that students must audition and compete in the choir that aligns with their sex assigned at birth. Soon after, the school received notice of an American Civil Liberties Union (ACLU)-initiated administrative civil rights complaint filed against it with your office on behalf of parents of children who want to compete in choirs that are the opposite of their child’s sex.

The complaint alleges that the school board’s recently passed policy is discriminatory toward transgender and nonbinary students, and that the policy violates the student’s right to be free from discrimination under Title IX of the Education Amendments of 1972 by denying students the opportunity to join the choir.

However, neither federal nor state law prohibits choirs separated by sex. The ACLU pins their main claims to the Supreme Court’s decision in *Bostock v. Clayton County*, 140 S.Ct. 1731 (2020), which itself proclaimed that its decision regarding sex did not “sweep beyond Title VII to other federal or state laws that prohibit sex discrimination.” *Bostock*, 140 S. Ct. at 1753.

In 2022, a federal district judge in Amarillo, Texas opined in *Neese v. Becerra*, (2:21-CV-163-Z) that “no precedential authority exports *Bostock* to the Title IX context.” A number of circuits

across the country have confirmed this interpretation, including the Sixth Circuit Court of Appeals as recently as July of this year. *L.W., et al. v. Skrametti, et al.*, (23-5600) (*Bostock's* definition of sex “applies only to Title VII”); *see also Meriwether v. Hartop*, 992 F.3d 492, 510 n.4 (6th Cir. 2021) (reasoning that Title VII analysis does not apply to Title IX).

As stated above, even if *Bostock's* decision regarding Title VII somehow applied more expansively (it does not), Title IX's implementing regulations in 34. C.F.R § 106.34(a)(4) allow that choruses “may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.” Complainants freely admit this in their filing.¹

Complainant's desired outcomes would actually hurt students. Male students are denied opportunities each time a female is allowed a slot on an all-boys choir that travels the world, wins monetary prizes, and on occasion meets world leaders such as the Pope at the Vatican. The girls' choir, while exceptional, has neither the established longevity nor world-traveling prestige of the boys' choir. Allowing a student to change their “sex” to participate on any choir desired sets a dangerous precedent of allowing kids to gain an advantage in extracurricular activities based on how they “identify.”

Instituting a choir eligibility policy based on sex at birth is a completely nondiscriminatory and commonsense approach, in particular for a school renowned for its prestigious and rigorous choir experience. It also avoids inevitable privacy issues and safety concerns where minors might find themselves sleeping or showering in common hotel rooms.

FWAFA school board members, as unpaid volunteers, work continuously to benefit students at their school. Pressure politics have no place in a productive learning environment. We urge the Department to see through this complaint filed by agitators for the purpose of scoring political points and support the board in its mission to inspire students with a lifelong passion for learning and artistic excellence.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Saenz', is written over a light blue circular stamp.

Jonathan Saenz, Attorney and President
Texas Values
1005 Congress Ave., Ste. 830
Austin, TX 78701
jsaenz@txvalues.org

¹ Pg. 10 - August 10, 2023: ACLU Civil Rights Complaint to U.S. Dept. of Education on behalf of Moe Against FWAFA