

Senate Committee on Human Services, Children and Families  
May 26, 2021

**Department of Public Instruction Testimony  
in Opposition to Senate Bill 322**

The Department of Public Instruction (DPI) would like to thank Chairman Jacque and members of the committee for the opportunity to provide written testimony in opposition to Senate Bill 322 (SB 322).

Creating safe and supportive school environments for all youth, including those who identify as Lesbian, Gay, Bisexual, and Transgender (LGBT), is essential to educational success as well as social, emotional, and physical well-being. SB 322 goes in the opposite direction and specifically writes into statute an allowance to discriminate against a protected class of students. This prevents school districts from providing an inclusive and supportive environment to all students and harms students who are discriminated against as allowed under the bill.

**Background**

*State Statutory Provisions*

Under Wisconsin Statutes 118.13, pupil discrimination is prohibited. Specifically, the statute reads:

...no person may be denied admission to any public school or be denied participation in, be denied the benefits of or be discriminated against in any curricular, extracurricular, pupil services, recreational or other program or activity because of the person's sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

SB 322 amends Wisconsin Statutes to state that except as laid out in the proposed language of the bill surrounding sports, the prohibition on pupil discrimination applies.

*Data and Research*

According to the 2019 Youth Risk Behavior Survey, students who report having strong adult support, as well as high levels of school and extracurricular participation and belonging, are less likely to engage in risk behaviors and more likely to report positive mental health and higher grades. Students in extracurricular activities were 1.6 times more likely to feel like they belong at school (68.8 percent versus 44.2 percent) and less likely to report depression (24.8 percent versus 35.8 percent).

Child development research<sup>1</sup> demonstrates that in order to thrive, children must have their physical, social, emotional, and educational needs recognized and addressed. When children are told they are explicitly protected by schools' anti-bullying and anti-harassment policies and are able to engage and participate in school activities<sup>2</sup>, particularly those that actively affirm their identities<sup>3</sup>, their academic achievement improves and their risk for negative outcomes, such as suicide<sup>4</sup> or school drop-out, significantly decreases.

### *Federal Law*

The Equal Protection Clause of the 14th Amendment states, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Similarly, Title IX of the Education Amendments of 1972 states, "No 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." Title IX applies to schools, local and state educational agencies, and other institutions that receive federal financial assistance from the U.S Department of Education (USDE).

### **Conclusion**

SB 322 creates an allowance in state law to discriminate and is in conflict with the research demonstrating the beneficial effects of a supportive, affirmative, and safe environment as well as the benefits of sports and physical activity for high-risk youth. While not covered as part of this testimony, SB 322 would also be in direct conflict with current guidance from the Wisconsin Interscholastic Athletic Association.<sup>5</sup>

If you have questions about this testimony, please contact Grant Huber, Legislative Liaison at [grant.huber@dpi.wi.gov](mailto:grant.huber@dpi.wi.gov).

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<sup>1</sup> National Academies of Sciences, Engineering, and Medicine. 2019. *Fostering Healthy Mental, Emotional, and Behavioral Development in Children and Youth: A National Agenda*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/25201>.

<sup>2</sup> Shulruf, B. Do extra-curricular activities in schools improve educational outcomes? A critical review and meta-analysis of the literature. *Int Rev Educ* 56, 591–612 (2010). <https://doi.org/10.1007/s11159-010-9180-x>.

<sup>3</sup> Joseph G. Kosciw, Neal A. Palmer, Ryan M. Kull & Emily A. Greytak (2013) The Effect of Negative School Climate on Academic Outcomes for LGBT Youth and the Role of In-School Supports, *Journal of School Violence*, 12:1, 45-63, DOI: [10.1080/15388220.2012.732546](https://doi.org/10.1080/15388220.2012.732546).

<sup>4</sup> Mark L. Hatzenbuehler, K. M. (2013). Inclusive Anti-bullying Policies and Reduced Risk of Suicide Attempts in Lesbian and Gay Youth. *Journal of Adolescent Health*, 53(1), S21-S26. Retrieved from <https://www.sciencedirect.com/science/article/pii/S1054139X12003540>.

<sup>5</sup> Wisconsin Interscholastic Association. Transgender Participation Policy. Retrieved 5/24/21 from <https://www.wiaawi.org/Portals/0/PDF/Eligibility/WIAAtransgenderpolicy.pdf>.