

TRAFTON, MATZEN,
BELLEAU & FRENETTE, LLP



James E. Belleau
jbelleau@tmbf-law.com
Bar No. 8314

March 18, 2025

Via Priority Mail:

Anthony F. Archeval, Acting Director, HHS Office for Civil Rights
U.S. Department of Health and Human Services
Office for Civil Rights
Headquarters – Humphrey Building
200 Independence Avenue, SW
Washington, D.C. 20201

Via Email and Priority Mail: Daniel.Shieh@hhs.gov

W. Daniel Shieh, Associate Deputy Director
United States Department of Health and Human Services
Office for Civil Rights
Policy Division
200 Independence Avenue, SW
Washington, D.C. 20201

RE: OCR Transaction Number: DO-25-610531-RV-CRR State of Maine

Dear Director Archeval and Associate Deputy Director Shieh:

As you know, the Office for Civil Rights (“OCR”) of the United States Department of Health and Human Services (“HHS”) recently sent communications to the Office of the Maine Attorney General (“Maine OAG”) regarding the Maine Department of Education (“MDOE”) and the Maine Principals’ Association (“MPA”). I represent the MPA and specifically, its interscholastic division which governs high school sports in Maine, which is specifically referenced in the March 5, 2025 letter entitled “Amended Notice of Compliance Review.” The letter indicates that the OCR of HHS initiated a compliance review of the MDOE and the MPA and specifically, its interscholastic division, alleging that they will continue to allow male athletes to compete in female sports (i.e., sports where male and female athletes compete separately) allegedly in violation of President Trump’s Executive Order (EO) 14201, “Keeping Men Out of Women’s Sports,” signed February 5, 2025 under Title IX of the Education of Amendments of 1972.¹ Specifically, the March 5, 2025 letter added the MPA Interscholastic Division to the investigation. On March 17, 2025, OCR sent an Amended Notice of Determination. This letter responds to the March 5 and March 17, 2025, letters.

In order to conduct this investigation, OCR must have jurisdiction over the entity alleged to having engaged in discrimination. Specifically, the entity being investigated must be a

¹ 20 U.S.C. § 1681, *et seq.*, as implemented by HHS at 45 C.F.R. Part 86.



recipient of federal financial assistance and with regard to this investigation specifically, HHS. Here, the MPA is not a recipient for federal financial assistance from any federal agency, directly or indirectly, therefore, OCR must dismiss the compliance review for lack of jurisdiction.

Title IX at Section 106.2(i) defines “recipient” as any state or political subdivision thereof, or any instrumentality of a state or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any other person, to whom federal financial assistance is extended directly or through another recipient and which operates an education program activity which receives such assistance, including any sub-unit, successor, assignee or transferee thereof.

On January 20, 2025, the United States Department of Justice (DOJ) published a “Title IX Legal Manual” (“Manual”). The Manual includes a detailed description of the scope of coverage, including action that constitutes federal financial assistance and the definition of “recipients” of federal funding from DOE. *See* Manual at Section III. According to the Manual, the MPA is neither a direct nor indirect recipient of federal funding. *See* Manual at Section III(A)(2)-(3).

To qualify as a “recipient,” the federal financial aid must flow directly or indirectly to a recipient. In reliance on legally binding Supreme Court case law, the Manual states Congress did not intend for Title IX coverage to extend to entities that may in some attenuated way, “merely benefit from the aid.” *See* Manual at Section III(B)(3).

In *Grove City College v. Bell*, 465 U.S. 555 (1984), the Supreme Court found that the intended recipient of federal “Basic Educational Opportunity Grant” (BEOG) funds was the college, albeit indirectly through the award of the funds to students, who then used the BEOG funding to help pay their college tuition. The college was free to decline assurances of compliance with Title IX, and if so, DOE’s enforcement authority was limited to withholding federal funding for the BEOG program, not the institution as a whole. *Grove City* at 573-574.

In *Department of Transportation v. Paralyzed Veterans*, 477 U.S. 597 (1986) the Supreme Court addressed the issue of whether an entity was a “recipient” of federal funding assistance. The Court held that Congress limited the scope of Section 504 to those who actually receive federal funding as a form of “contractual cost to the recipient’s agreement to accept federal funds.” *Paralyzed Veterans* at 605.

By limited coverage to recipients, Congress imposes obligations . . . upon those who are in a position to accept or reject those obligations as part of the decision whether or not to “receive” federal funds.

Id. at 606.

Here, the MPA receives no direct or indirect federal funding as referenced in the March 5 and March 17, 2025, letters from OCR. Therefore, the MPA has no ability to accept or reject



federal obligations, as a condition of financial assistance it does not receive. Moreover, HHS/OCR is unable to withhold federal funds as a condition of compliance with Title IX because the MPA is not a recipient of federal financial assistance.

In *Paralyzed Veterans*, the Court expressly rejected the “economic ripple effect” argument, finding that indirect economic benefits are insufficient to trigger statutory coverage. *Paralyzed Veterans* at 464-465. Similarly, in *NCAA v. Smith*, 525 U.S. 459 (1999), the Court stated that while the NCAA may indirectly benefit from dues paid to it by colleges and universities who were recipients of federal financial assistance, this indirect benefit, “without more, is insufficient to trigger Title IX coverage.” *Id.* at 468; *see also* Manual at Section III(B)(3).

Here, while many MPA schools may receive federal funding, as in *Smith*, this showing “without more, is insufficient to trigger Title IX coverage.” *Smith* at 468.

In light of the foregoing, because the MPA is not a “recipient” as defined by Title IX, the Manual and applicable binding Supreme Court case law, as a matter of law OCR must dismiss the compliance review for lack of jurisdiction.

Undersigned counsel will be able to speak with you or your team regarding this correspondence and your prior correspondence. Going forward, please contact undersigned counsel with respect to this matter.

Sincerely,

for: James E. Belleau

JEB/mam
Encl.

CC: Maine Principals' Association (via email only)