

March 1, 2023

***Sent via E-Mail***

Dr. Jennifer Blaine  
Superintendent  
Spring Branch Ind. Sch. District

Josef D. Klam  
Member – Board of Trustees  
Spring Branch Ind. Sch. District

Chris Earnest  
President – Board of Trustees  
Spring Branch Ind. Sch. District

Chris Gonzalez  
Member – Board of Trustees  
Spring Branch Ind. Sch. District

Lisa Andrews Alpe  
Vice President – Board of Trustees  
Spring Branch Ind. Sch. District

Minda Caesar  
Member – Board of Trustees  
Spring Branch Ind. Sch. District

John Perez  
Secretary – Board of Trustees  
Spring Branch Ind. Sch. District

Caroline H. Bennett  
Member – Board of Trustees  
Spring Branch Ind. Sch. District

Dear Superintendent Blaine, President Earnest, Vice President Alpe, Secretary Perez, and Board of Trustees Members:

The ACLU Women’s Rights Project and the ACLU of Texas write on behalf of G.H., a Spring Woods High School student and member of the girls’ cross-country and track teams, to express serious concerns about the Spring Branch Independent School District’s dress code enforcement and gender inequities within its athletics program. Based on our investigation, it appears that District officials and employees have maintained and enforced the District’s dress code in a manner that reflects and reinforces invidious sex stereotypes and have treated the Spring Woods High School girls’ and boys’ cross-country teams differently in the quality of coaching and training in violation of the Fourteenth Amendment to the U.S. Constitution and Title IX of the Education Amendments of 1972.

The District’s policies and actions harm all students, regardless of gender, but have particularly egregious consequences for Black girls and other girls of color. We therefore urge the District to revise its dress code to eliminate provisions that reflect and reinforce gender stereotypes, adopt measures to remedy and guard against discriminatory enforcement of its dress code, and take immediate steps to revise its athletics policies and practices to ensure all athletes receive an equal opportunity to succeed irrespective of gender.

**I. Factual Background**

G.H. is a junior at Spring Woods High School and the only Black student-athlete on the girls’ cross-country and track teams. G.H. is a talented runner who joined the varsity cross-country team as a freshman with the goal of eventually qualifying for collegiate athletics

scholarships. However, the District’s discriminatory policies and practices have caused ongoing harm to G.H. and her ability to participate in athletics, as discussed further below.

a. Spring Branch Independent School District’s Discriminatory Dress Code and Enforcement

The District has maintained a gender-specific dress code (“Student Dress Code”) that applies to all students in middle school and high school. The Student Dress Code sets forth several requirements that apply broadly to all students, but also imposes additional gender-specific regulations for girls and boys.<sup>1</sup>

Under the “Girls” section, the Student Dress Code prohibits girls—and only girls—from wearing “[h]alter tops, tank tops, tube tops, and tops that are immodest and/or expose undergarments.”<sup>2</sup> The Student Dress Code’s “Girls” section further requires that, for girls and only girls, “[u]ndergarments (top and bottom) must be worn at all times.”<sup>3</sup> In contrast, the Student Dress Code’s “Boys” section simply provides that (1) “[n]o facial hair is allowed for middle school boys,” and (2) “[t]ank tops and sleeveless shirts may not be worn.”<sup>4</sup> Unlike the “Girls” section, the “Boys” section of the Student Dress Code does not impose any restrictions based on “immodesty” or any requirements concerning the wearing of undergarments.

In August 2021, G.H.’s cross-country coach instructed the girls’ team that they had to put on shirts and could no longer run in sports bras. It was a longstanding and common practice for all athletes to run shirtless during summer outdoor practices, when temperatures average over 90 degrees and often exceed 100 degrees. When G.H. asked what prompted this policy change, her coach said that the principal was responsible. G.H. later asked the principal, who denied this and told G.H. that, as always, the girls could run in their sports bras. G.H. told her coach what the principal said.

In the early summer of 2022, prior to G.H. rejoining practices for the upcoming season, the coaches permitted both girls and boys to run shirtless. However, as soon as G.H. returned to practice in July, the coaches told the girl athletes to wear shirts. G.H.’s parents reached out via email to ask about this apparent change in policy. A few days later, a District employee unexpectedly called an athletic trainers meeting, where he announced that all indoor and outdoor athletes (except those doing water sports) are required to wear shirts because “it’s inappropriate to be showing skin as a high school student.”<sup>5</sup> At a later cross-country parent information

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<sup>1</sup> Spring Branch Ind. Sch. Dist., Student/Parent Handbook 2022-2023, at H-24–H-25, [https://resources.finalseite.net/images/v1659967186/springbranchisdcom/md8otco5x0ja2x8oyifs/SBISD\\_Student\\_Parent\\_Handbook\\_2022-2023\\_8322.pdf](https://resources.finalseite.net/images/v1659967186/springbranchisdcom/md8otco5x0ja2x8oyifs/SBISD_Student_Parent_Handbook_2022-2023_8322.pdf). Notably, the District’s dress code inappropriately grants principals and coaches broad authority to regulate dress in extracurricular activities, permitting bias and stereotypes to guide decision making at the level of individual schools. *See id.* at H-15.

<sup>2</sup> *Id.* at H-25.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> This recently announced ban on practicing in sports bras was never reduced to writing. The Spring Woods High School athletics policy only states that students must wear athletic uniforms during practice and competitions.

meeting, a District employee justified this new policy by stating that he did not want “any boobs, butts, or bellies out.”

A couple days later, during practice, G.H. saw a boy athlete take his shirt off during a hill workout. After observing that the boy was not reprimanded, G.H. took off her shirt to finish the workout in her sports bra due to the extreme summer heat. Immediately, the coaches yelled at her to put a shirt on. When G.H. pointed out that the same coaches were allowing a boy to practice shirtless without issue, they then asked that student to don a shirt.

b. Disparities in the Spring Branch Independent School District’s Athletics Program

Soon after the 2021 season began, G.H. and her parents observed many concerning disparities in the treatment of and benefits provided to the girls’ cross-country team as compared to the boys’ cross-country team.

First, the cross-country coaches, who are supposed to coach both the boys’ and girls’ teams, provide boy athletes with a greater level of instruction and more practice opportunities than girl athletes. For example, the coaches often assign the boys’ cross-country team higher-mileage workouts than the girls’ team, even though the teams are training for races of the same distance. During the few workouts where both teams are given the same mileage, the coaches routinely end practice for both teams when the boys finish running, regardless of whether the girls have completed their workout.

In addition, the coaches do not provide the same level of feedback and coaching to the girls’ team as compared to the boys’ team. For example, the coaches routinely yell out split times to the boys, and not to the girls, so that boy athletes know their paces, but girl athletes do not. The coaches also routinely acknowledge and even praise the boys for their performances during practices and running meets, but provide no feedback to the girls about their performances. As a result, the girl athletes are not given the same opportunities to receive coaching or improve their athletic performance as boy athletes.

Furthermore, the cross-country coaches fail to extend the same level of supervision to the girls’ cross-country runners as they do for the boys. When the athletes run during practices, the boys’ team has at least one coach running with them, watching over them, and encouraging them as they run. In contrast, the girls’ team runs alone, without any adult supervision. The coaches rarely check on the girls before or following practices and meets, which they do consistently for the boys. Thus, if a girl is injured or in bad shape after a practice or meet, no adult is in close proximity to provide her with medical assistance or support if she needs it. As a result, the District fails to provide the Spring Woods High girls’ cross-country team with equal practice opportunities and instruction as compared to the boys’ cross-country team.

c. Spring Branch Independent School District’s Failure to Respond to Complaints of Discrimination and Further Mistreatment of G.H.

After G.H. complained about the discriminatory dress code enforcement and the gender disparities in coaching, G.H. and her parents noticed that the head cross-country coach’s behavior toward her changed. Immediately following G.H.’s complaints about both issues in

August 2021, the head coach started to dismiss her when she asked questions and, at times, even walked away in the middle of G.H. speaking to him. If G.H. asked him to repeat an instruction, he would give her contradictory information.

This mistreatment escalated again at the 2021 Winter Sports Banquet, when the cross-country coaches denied G.H. an award for being the top runner on the girls' cross-country team, an important credential for college applications and recruiting. This was particularly shocking, as G.H. had the best performance record on the team and was the only student-athlete to have never missed a cross-country practice. In addition, G.H. always encouraged her teammates during practice and at cross-country meets, and was a top volunteer at school and outside of school. Being overlooked for this award despite excelling as an athlete and teammate was devastating for G.H. and further confirmed that her coaches were mistreating her after she spoke out about the dress code and gender disparities in the athletics program.

In August 2022, after G.H. was reprimanded for running in a sports bra, the coaches pulled G.H. and one of her teammates aside during practice. The girls shared that they were struggling to remain motivated because the coaches were not treating the girls' team fairly. One coach responded that he was only hired to coach the boys' team, leading G.H.'s teammate to ask: "Who's coaching us?" This question enraged the coaches, who kicked G.H. and her teammate out of that day's practice.

Despite this pattern of targeted mistreatment, G.H.'s love for running inspired her to participate in the 2023 Winter track season. Although G.H. has always been a distance runner, she was inexplicably transitioned into the sprinting section of the track team. When she recently had the opportunity to practice with the distance coaches, who are also the cross-country team coaches, they deliberately ignored G.H. when addressing all of the distance runners.<sup>6</sup>

The District's failure to respond adequately to G.H.'s mistreatment is further illuminated by its recent response to her family's Title IX complaint. Although the District purported to investigate the family's allegations, the District merely accepted the statements of its own employees at face value and failed to address many of the family's complaints while finding no violation of Title IX. Indeed, the District's cursory determination failed even to correctly identify G.H.'s graduation year. Moreover, in an investigation about discrimination against G.H. and the girls' cross-country team, the District conducted student interviews in the Spring Woods principal's office while the principal remained nearby, leading some students to fear reprimand or discipline if they were forthcoming about their experiences. To the knowledge of G.H.'s family, no action has been taken to address the issues raised in their Title IX complaint.

The discriminatory treatment of G.H. and her teammates not only diminishes the status of the girls' cross-country team at Spring Woods High School, but also harms G.H. as a young Black person and an aspiring college athlete. G.H. is an enthusiastic runner who set a personal record of a 5:50 mile in her first year of high school, making her incredibly competitive at the

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<sup>6</sup> Not only does the coaches' conduct demonstrate an unwillingness to address complaints about discriminatory treatment, it also raises serious concerns about retaliation. Title IX prohibits retaliation against individuals who complain about gender discrimination. *See, e.g., Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167 (2005).

collegiate level. G.H. loves running so much that she would jump out of bed early in the morning, motivated to practice and do her best work every day. She overcame serious personal odds because of her love of running.

Things are different for G.H. now. Since being dismissed, mistreated, and improperly coached by District employees, G.H. has never been able to reach her personal record again. Her coaches' mistreatment and discriminatory conduct has severely diminished her love for the sport, and their failure to coach G.H. and her teammates has negatively impacted her chances of gaining an athletic scholarship for college.

## II. Legal Concerns

The District's biased dress code policy and enforcement, as well as its unequal treatment of the Spring Woods High School girls' cross-country team as compared to the boys' team, may run afoul of the Fourteenth Amendment to the U.S. Constitution and Title IX of the Education Amendments of 1972 ("Title IX").

### a. Gender-Specific Dress Code Policy and Discriminatory Enforcement

It is well established that the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution prohibits school officials from treating students differently based on, or forcing students to conform to, gender stereotypes or "overbroad generalizations about the different talents, capacities, or preferences of males and females." *See United States v. Virginia*, 518 U.S. 515, 533 (1996); *Glenn v. Brumby*, 663 F.3d 1312, 1313-20 (11th Cir. 2011); *Peltier v. Charter Day School, Inc.*, 37 F.4th 104, 124 (4th Cir. 2022) (en banc); *Sturgis v. Copiah Cnty. Sch. Dist.*, No. 3:10-CV-455-DPJ-FKB, 2011 WL 4351355, at 4-5 (S.D. Miss. Sept. 15, 2011); *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135, 150-52 (N.D.N.Y. 2011).

Schools may not impose different terms or requirements based on gender without an exceedingly persuasive justification, nor may schools rely on gender stereotypes when creating and enforcing dress code policies. *See, e.g., Hayden ex rel. A.H. v. Greensburg Cmty. Sch. Corp.*, 743 F.3d 569, 583 (7th Cir. 2014) (requiring male athletes to have short hair discriminated on the basis of sex in violation of the Equal Protection Clause and Title IX); *Peltier*, 37 F.4th at 125 (school's requirement that girls wear skirts violated the Equal Protection Clause); *Arnold v. Barbers Hill Indep. Sch. Dist.*, 479 F. Supp. 3d 511, 521-24 (S.D. Tex. 2020) (school's gender-based hair-length rule likely violated the Equal Protection Clause); *A.C. v. Magnolia Indep. Sch. Dist.*, No. 4:21-cv-03466, Dkt. 20 (S.D. Tex. Oct. 26, 2021) (same).

In addition, as a recipient of federal funds, the District must comply with Title IX and the U.S. Department of Education's implementing regulations, which prohibit differential treatment of students based on gender.<sup>7</sup> *See, e.g., Peltier*, 37 F.4th at 128. Title IX regulations prohibit the District from "[s]ubject[ing] any person to separate or different rules of behavior, sanctions, or

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<sup>7</sup> 20 U.S.C. § 1681(a); *see also* 34 C.F.R. §§ 106.31(a) and (b)(4).

other treatment.”<sup>8</sup> The U.S. Department of Education and the U.S. Department of Justice have recently reiterated that Title IX prohibits discrimination in school dress and grooming policies.<sup>9</sup>

Here, the District’s dress code enforcement subjected G.H. to “different rules of behavior, sanctions, or other treatment” based on her sex, in violation of Title IX and the U.S. Constitution. Until the events in question, both girls and boys were routinely permitted to practice shirtless. When G.H. pointed out this inconsistency, she was isolated and ignored. Later, when both the girls’ and boys’ cross-country teams were practicing on a hot August day, a boy was permitted to practice shirtless without issue. When G.H. attempted to practice in her sports bra to prevent heat exhaustion and maintain comfort during an intense workout, she was immediately reprimanded and told to put her shirt back on. District employees attempted to impose a similar rule on the boy only after G.H. pointed out the double standard. This is clear disparate treatment based on sex.

Moreover, the justification offered for prohibiting sports bras during athletic practices — specifically, that it was “inappropriate to show skin” and District employees did not want any “boobs, butts, or bellies out”— does not come close to meeting the demanding requirements necessary to satisfy heightened scrutiny. On the contrary, this justification rests on the same harmful and archaic gender stereotypes that the Supreme Court has rejected time and again as *per se* unlawful.<sup>10</sup> Specifically, it reflects the view that girls’ bodies are inherently shameful or vulgar and that girls’ dress and appearance require more regulation than that of boys. For example, based on reports from students and parents, District employees instructed girl athletes, but not boy athletes, to put on shirts during runs through an “unsafe” neighborhood because a District employee suggested that the girls could be sexually assaulted if they ran shirtless. The District’s dress code also imposes additional restrictions on girls, but not boys, to dress “modestly” and to avoid items such as halter tops and tube tops.

These statements, as well as the District’s biased dress code policy and enforcement, reflect and reinforce broad and archaic generalizations about boys’ and men’s inability to control their sexual impulses and girls’ inability to make their own decisions about the clothing that makes them feel safe and physically comfortable. The District’s policies and practices diminish girls’ autonomy, physical comfort, and wellbeing by forcing girl athletes to wear more layers of clothing despite the hot weather to avoid scrutiny and disciplinary action. Importantly, these stereotypes reflect and reinforce a longstanding culture of victim-blaming, rooted in misogyny, that conveys the message to girls that their clothing choices may justify anything that happens to them. Such attitudes reflect the “romantic paternalism” that the U.S. Supreme Court has recognized puts women “in practical effect...not on a pedestal, but in a cage.”<sup>11</sup> The District clings to these archaic sentiments despite the widespread, accepted use of sports bras as outerwear in competition for professional, amateur, and casual athletes. In fact, sports bras are

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<sup>8</sup> 34 C.F.R. §§ 106.31(a) and (b)(4).

<sup>9</sup> United States’ Statement of Interest, *Arnold v. Barbers Hill Sch. Dist.* (S.D. Tex. filed on July 23, 2021), <https://www.justice.gov/crt/case-document/file/1419201/download>.

<sup>10</sup> See, e.g., *Sessions v. Morales Santana*, 137 S. Ct. 1678 (2017); *United States v. Virginia*, 518 U.S. 515 (1996).

<sup>11</sup> *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973).

the official uniform tops of this country’s most competitive women’s team, the U.S. Women’s Olympic Track and Field Team.<sup>12</sup>

Significantly, the District’s enforcement of the dress code only when G.H.—the only Black runner on the girls’ cross-country and track teams—participated indicates it is engaging in racially discriminatory practices that are all too common in the United States. Black girls and other girls of color are disproportionately targeted for dress and grooming code enforcement because of internalized, intersecting race and gender stereotypes about proper feminine behavior and appearance.<sup>13</sup> Black girls are often denied the benefit of the doubt that is accorded to white girls. They are perceived as less innocent, more adult, aggressive, and threatening, and needing less support and protection—otherwise known as the “adultification bias.”<sup>14</sup> Black and Latina girls are also frequently viewed as being more sexually active than others their age, making them more vulnerable to harassment and misconduct by adults and peers alike.<sup>15</sup>

#### b. Unequal Treatment of the Girls’ Cross-Country Team

The District’s unequal treatment of the boys’ and girls’ teams likely violates Title IX’s prohibition on gender-based discrimination in school athletics programs. The Department of Education requires schools that sponsor athletics programs to provide “equal athletic opportunity for members of both sexes.”<sup>16</sup> The governing principle underlying this mandate is that “male and female athletes should receive equivalent treatment, benefits and opportunities.”<sup>17</sup> Compliance is measured in part by considering the “opportunity to receive coaching and academic tutoring” and the “assignment and compensation of coaches and tutors.”<sup>18</sup>

A Title IX violation for unequal treatment occurs when a funding recipient intentionally discriminates against girls by utilizing unequal athletic opportunities to treat girls differently based on their sex. *See McCully v. Stephenville Indep. Sch. Dist.*, No. 4:13-CV-702-A, 2014 WL

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<sup>12</sup> Karen Rosen, *Meet the Members of the U.S. Olympic Women’s Track & Field Team*, TEAM USA (July 7, 2021, 11:57 am) <https://www.teamusa.org/news/2021/july/07/meet-the-members-of-the-us-olympic-womens-track-and-field-team>.

<sup>13</sup> Nat’l Women’s Law Ctr., *Dress Coded: Black girls, bodies, and bias in DC schools*, [https://nwlc.org/wp-content/uploads/2018/04/5.1web\\_Final\\_nwlc\\_DressCodeReport.pdf](https://nwlc.org/wp-content/uploads/2018/04/5.1web_Final_nwlc_DressCodeReport.pdf); see also Rachel Anspach, *School dress codes unfairly target Black girls. But students are fighting back*, MIC, Oct. 30, 2019, <https://www.mic.com/p/school-dress-codes-unfairly-target-black-girls-but-students-are-fighting-back-19276290>.

<sup>14</sup> Rebecca Epstein et al., *Girlhood Interrupted: The Erasure of Black Girls’ Childhood*, Georgetown Law Ctr. on Poverty & Inequality, <https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2017/08/girlhood-interrupted.pdf>; see also Alex Laughlin, *The startling thing that happens to black girls in preschool*, WASH. POST, Apr. 25, 2016, <https://www.washingtonpost.com/news/wonk/wp/2016/04/25/monique-morris-pushout/> (noting that Black girls are stereotyped as being “social deviants” and having “certain attitude”).

<sup>15</sup> Rebecca Epstein et al., *Girlhood Interrupted: The Erasure of Black Girls’ Childhood*, Georgetown Law Ctr. on Poverty & Inequality, <https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2017/08/girlhood-interrupted.pdf>; see also Nat’l Women’s Law Ctr., *Let Her Learn: A Toolkit to Stop School Push Out for Girls of Color* (2016), at 1, [https://nwlc.org/wp-content/uploads/2016/11/final\\_nwlc\\_NOVO2016Toolkit.pdf](https://nwlc.org/wp-content/uploads/2016/11/final_nwlc_NOVO2016Toolkit.pdf).

<sup>16</sup> 34 C.F.R. §§ 106.41(c)(2), (5)-(6).

<sup>17</sup> Dep’t of Health, Ed., & Welfare, Title IX Policy Interpretation, 44 Fed. Reg. 71,413, 71,414 (effective Dec. 11, 1979).

<sup>18</sup> *Id.*

292147, at \*4 (N.D. Tex. Jan. 24, 2014). A single, substantial disparity between boys’ and girls’ athletic teams can give rise to Title IX liability. *McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 293 (2d Cir. 2004) (finding that girls’ soccer team being unable to participate in regional soccer competition, when boys could, was a disparity substantial enough to deny equal athletic opportunity for girls). Failing to provide equal treatment and benefits in various areas of an athletic program has been held as evidence of “systemic administrative failures” and “general noncompliance with Title IX.” *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 853 (9th Cir. 2014) (internal citations omitted).

Members of the Spring Woods High School girls’ cross-country team have received unequal treatment and benefits as compared to the boys’ cross-country team. Despite the fact that the teams train for races of the same distance, the coaches assign workouts for the girls that are shorter in time and distance than the workouts they assign for the boys. Consequently, the girls are not adequately prepared to be competitive in cross-country meets. The girls’ workouts are also routinely cut short because the coaches end practices once the boys, but not the girls, finish their workouts, signaling that the girls’ athletic development and potential are not taken seriously.

In addition, the girls receive less coaching, support, and acknowledgement than the boys, and they do not have their split times called out during runs so that they know and can improve their pacing. The coaches also fail to provide the girls with any supervision in the locker room or on team runs. These differences in treatment make the girls’ cross-country team less competitive and send a message to the girls that “they are not expected to succeed and that the school does not value their athletic abilities as much as it values the abilities of the boys.” *McCormick*, 370 F.3d at 295.

### III. Conclusion

For these reasons, we share our concerns that the Spring Branch Independent School District, by enforcing a discriminatory dress code and treating the girls’ cross-country team unfairly as compared to the boys’ team, is violating the Fourteenth Amendment and Title IX.

We respectfully request a meeting with the District to discuss these concerns. The District should direct its response to Linda Morris and Liza Davis via email at [LindaM1@aclu.org](mailto:LindaM1@aclu.org) and [ldavis@aclu.org](mailto:ldavis@aclu.org) by March 8, 2023.

Sincerely,

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