

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

South Side Area School District,
Knoch School District, Beth Ann
Rosica, individually and as parent
and natural guardian of L.U. and
M.U., minors, Aaron Bernstine,
individually and as parent and
natural guardian of D.B., G.B.,
Z.B., minors, Jason Saylor,
individually, and as a parent and
natural guardian of E.S., a minor,
Barbara Gleim, individually,

Petitioners

v.

Pennsylvania Human Relations
Commission,

Respondent

No. 78 M.D. 2025

Argued: December 10, 2025

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE WOLF

FILED: October 9, 2026

South Side Area School District, Knoch School District (Districts),
Beth Ann Rosica, individually and as parent and natural guardian of L.U. and M.U.,
minors, Aaron Bernstine, individually and as parent and natural guardian of D.B.,

G.B., Z.B., minors, Jason Saylor, individually, and as a parent and natural guardian of E.S., a minor (Parents),¹ and Barbara Gleim, a Pennsylvania State Representative (Representative Gleim) (collectively Petitioners) have filed an amended petition for review (Amended Petition) in this Court’s original jurisdiction challenging the validity of regulations promulgated by the Pennsylvania Human Relations Commission (Commission). *See* 16 Pa. Code §§ 41.201-41.207 (Regulations). The Regulations at issue define, *inter alia*, the meaning of “sex” as used in two anti-discrimination statutes: the Pennsylvania Human Relations Act² (PHRA) and the Pennsylvania Fair Educational Opportunities Act³ (PFEOA). 16 Pa. Code § 41.206.

Presently before the Court are the Commission’s preliminary objections to Petitioners’ Amended Petition. Also before the Court are Petitioners’ and the Commission’s cross-applications for summary relief. For the reasons that follow, we conclude that Petitioners lack standing to bring the instant action. Accordingly, we sustain the Commission’s preliminary objection on that basis, dismiss the Amended Petition, and dismiss the cross-applications for summary relief as moot.

I. BACKGROUND

The instant case challenges the validity of the Regulations promulgated by the Commission under the PHRA and PFEOA. For context, we begin with a brief overview of each statutory scheme.

A. PHRA and PFEOA

The PHRA was enacted by the General Assembly in 1955. Therein, the General Assembly declared that the practice or policy of discrimination against

¹ Jason Saylor is also an elected School Board member in the Perkiomen School District in Montgomery County.

² Act of October 27, 1955, P.L. 744, *as amended*, 43 P.S. §§ 951-963.

³ Act of July 17, 1961, P.L. 776, *as amended*, 24 P.S. §§ 5001-5010.

individuals or groups on the basis of sex (amongst other things) “is a matter of concern of the Commonwealth.”⁴ 43 P.S. § 952. Specifically, the General Assembly found that discrimination on this basis “foments domestic strife and unrest, threatens the rights and privileges of the inhabitants of the Commonwealth, and undermines the foundations of a free democratic state.” *Id.* To effectuate this declaration of public policy, the legislature created an enforceable civil right to employment, housing, and public accommodation without discrimination on the basis of one’s sex. 43 P.S. § 953. The PHRA sets forth a procedure where any person claiming to be subject to an alleged unlawful discriminatory practice may file a complaint with the Commission, which shall promptly investigate. 43 P.S. § 959. Our Supreme Court has explained that the Commission’s “primary function is to assure compliance with the act through ‘conference, conciliation and persuasion.’ Only after this approach has failed, is it empowered to hold hearings, make findings of fact, and issue a final order.” *Pa. Hum. Rels. Comm’n v. Chester Sch. Dist.*, 233 A.2d 290, 299 (Pa. 1967) (quoting 43 P.S. § 959). If the Commission concludes that evidence supports a finding of unlawful discrimination, it has the authority to fashion a remedy to end the unlawful discriminatory practice. 43 P.S. § 959(f).

The PFEOA similarly adopted as the policy of this Commonwealth that “all persons shall have equal opportunities for education regardless of their . . . sex.”⁵

⁴ The PHRA recognizes “discrimination against individuals or groups by reason of their race, familiar status, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals” as harmful and declares a civil right to employment, housing, and public accommodation without discrimination on those bases. 43 P.S. §§ 952-53. As this case focuses on discrimination based on sex, we discuss the PHRA as limited to that specific class.

⁵ The PFEOA recognizes “equal opportunities for education regardless of [one’s] race, religion, color, ancestry, national origin, sex, handicap or disability.” 24 P.S. § 5002. Again, **(Footnote continued on next page...)**

24 P.S. § 5002. Expounding on this right, Section 5004 of the PFEOA sets forth numerous unfair educational practices. 24 P.S. § 5004. The procedure for an action under the PFEOA mirrors that found in the PHRA. 24 P.S. § 5007. With this statutory background in mind, we turn to the instant case.

B. Commission’s Regulations

In June 2023, the Commission published the Regulations, entitled “Protected Classes,” effective August 16, 2023. The purpose of the Regulations was, in part, to ensure that “all unlawful discriminatory practices proscribed by the PHRA and all unfair educational practices proscribed by the PFEOA are interpreted and applied consistently.” 16 Pa. Code § 41.201. Relevant to Petitioners’ challenge, Section 206 of the Regulations clarifies what constitutes discrimination on the basis of “sex” under both statutes. 16 Pa. Code § 41.206 (Regulations). The language provides:

The term “sex” as used in the PHRA and the PFEOA includes all of the following:

- (1) Pregnancy.
- (2) Sex assigned at birth.
- (3) Gender, including a person’s gender identity or gender expression.
- (4) Affectional or sexual orientation, including heterosexuality, homosexuality, bisexuality and asexuality.
- (5) Differences of sex development, variations of sex characteristics or other intersex characteristics.

because this case focuses on discrimination based on sex, we discuss the PFEOA as limited to that specific class.

16 Pa. Code. § 41.206. Section 204 of the Regulations defines many of the terms used in Section 206. 16 Pa. Code § 41.204. The Regulations also define the terms “religious creed” and “race” as used in the PHRA and PFE OA. 16 Pa. Code §§ 41.205, 41.207.

C. Amended Petition

On May 7, 2025, Petitioners filed the Amended Petition, challenging the validity of the Regulations. Petitioners allege that through the Regulations, and in violation of the Pennsylvania Constitution, the Commission has created an “unimagined” meaning of the term “sex” within the Commonwealth. Amended Petition at 2. The Amended Petition avers that the Regulations “impose substantial, direct and immediate obligations upon [the] Districts that affect their governmental functions.” *Id.* ¶ 27. Additionally, Petitioners aver that students enrolled at the Districts are

required to participate in the educational curriculum and programs mandated by the school district; to comply with the policies and rules mandated by the school district; to utilize the facilities provided by the school district; and to participate in the extracurricular and cocurricular activities offered by the school district all of which must now comply with [the Commission’s] Regulations.

Id. ¶ 28. The Amended Petition further alleges that all other Petitioners who “want to participate in the activities of the school districts, as parents or otherwise, are required to comply with the policies and rules mandated by the school districts; to utilize the facilities provided by the school districts; and to act in a manner consistent with and in compliance with [the Commission’s] Regulations. *Id.* ¶ 29. In sum, Petitioners aver they are “adversely impacted by the direct and immediate

obligations placed upon Petitioner Districts’ governmental functions which directly impact Petitioners’ participation in and utilization of the school districts’ public facilities, programs, and activities.” *Id.* ¶ 30. Additionally, Petitioners assert that the Commission’s definition of sex, which they characterize as contrary to the law, has a “direct and immediate adverse impact upon the fundamental liberty interests of [] Parents’ interest in the care, custody, and control of their children. . . .” *Id.* ¶ 33.

The Amended Petition goes on to plead that compliance with the Commission’s Regulations is contrary to various provisions of the Public School Code of 1949 (Code),⁶ rendering compliance with both impossible. *See* Amended Petition ¶¶ 61-82. Specifically, Petitioners note that Section 1601-C of the Code requires “reporting by school entities of athletic opportunities afforded to male and female secondary school students.” 24 P.S. § 16-1601-C.⁷ Additionally, Section 740 requires a certain number of bathrooms in each school building, to be used separately by the sexes. 24 P.S. § 7-740.

The Amended Petition pleads that South Side School District has adopted Policy No. 1003, titled “Discrimination/Title IX Sexual Harassment Affecting Students” and Policy No. 1023.1, titled “Sex-Based Distinction in Athletics.” Similarly, Knoch School District has adopted Policy No. 103, titled “Discrimination/Title IX Sexual Harassment Affecting Students” and Policy No. 123, titled “Interscholastic Athletics” (collectively, District Policies or Policies). Amended Petition ¶¶ 71-81, Exs. B-E. The District Policies, in sum, expressly designate sports teams to be made up of one sex (defined as the biological distinction between male and female based on reproductive biology and genetic make-up) and

⁶ Act of March 10, 1949, P.L. 30, *as amended*, 24 P.S. §§ 1-101 - 27-2702.

⁷ Added by the Act of June 30, 2012, P.L. 684.

prohibit participation by members of the opposite sex. *See id.* Petitioners allege that the District's Policies are directly contrary to the language in the Regulations and note that other school districts in the Commonwealth have promulgated policies that match the language of the Regulations. *Id.* ¶ 82 & n.1.

Petitioners also point to an Executive Order signed by President Donald J. Trump on January 20, 2025, which recognized two sexes: male and female. Amended Petition ¶ 83, Exs. E, F. Section 3 of the Executive Order states that federal funds "shall not be used to promote gender ideology. Each agency shall assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology." *Id.* at Ex. E, p.3 § 3(g). The Districts allege they are direct and indirect recipients of federal funds and are thus obligated to comply with President Trump's Executive Order, as detailed in the directive they received from the United States Department of Education (USDE) on April 3, 2025. *Id.* at Ex. G.

Petitioners submit that the Commission intends to enforce its regulations against (1) school districts which continue to designate and restrict access to restrooms, locker rooms, and other similar facilities to solely males and females; (2) school districts which continue to designate and restrict participation in extracurricular and cocurricular activities, including athletic teams, based upon the individual's biological sex of either male or female; (3) individuals who refuse to share restrooms, locker rooms, and other similar facilities with adults or minors of the other biological sex; and (4) individuals who refuse to participate in educational programs, extracurricular and cocurricular activities designated and restricted by the participant's sex with students of the other biological sex. Amended Petition ¶¶ 95-99. They aver this will result in students being forced to share restrooms, locker

rooms, and similar public facilities with individuals, including adult individuals, of a different sex.

Based on these allegations, Petitioners bring two counts. First, they seek a declaration that the Commission’s Regulations violate the non-delegation clause, as the Regulations have redefined “sex” without the consent of the General Assembly. *See* PA. CONST. art. II, § 1.⁸ Second, Petitioners seek a declaration that the Regulations violate the Equal Rights Amendment (ERA) of the Pennsylvania Constitution. *Id.*, art. I § 28.⁹ Petitioners ask this Court to declare the Regulations void *ab initio*.

II. MOTIONS BEFORE THE COURT

On June 6, 2025, the Commission filed Preliminary Objections to Petitioners’ Amended Petition objecting to Petitioners’ standing and the sufficiency of their claims. Petitioners and the Commission also filed Applications for Summary Relief. The parties submitted combined briefs on the filings, all of which are now ripe for review.

III. PRELIMINARY OBJECTIONS

We begin with the Commission’s Preliminary Objections to the Amended Petition.¹⁰ The Commission first objects on the basis that Petitioners lack standing to bring the instant action.

⁸ “The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.”

⁹ PA. CONST. art. I, § 28 (“Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.”).

¹⁰ Pennsylvania Rule of Appellate Procedure 1516(b) permits the filing of preliminary objections to a petition for review filed in this Court’s original jurisdiction. *See* Pa.R.A.P. 1516(b).

In ruling on preliminary objections, we must accept as true all well-pleaded material allegations in the petition for review [], as well as
(Footnote continued on next page...)

A. Standing

“Standing is a justiciability concern, implicating a court’s ability to adjudicate a matter.” *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 481 (Pa. 2021) (citing *Robinson Twp. v. Com.*, 83 A.3d 901, 916 (Pa. 2013), *Town of McCandless v. McCandless Police Officers Ass’n*, 901 A.2d 991, 1002 (Pa. 2006)). In *McCandless*, our Supreme Court explained that three justiciability considerations—standing, ripeness, and mootness— are each “concerned with the proper timing of litigation.” *McCandless*, 901 A.2d at 1002. To protect against the issuance of advisory opinions, courts are required to “resolve justiciability concerns as a threshold matter before addressing the merits of the case.” *Firearm Owners*, 261 A.3d at 481. As to standing, our Supreme Court has explained:

The doctrine of standing stems from the principle that judicial intervention is appropriate only where the underlying controversy is real and concrete, rather than abstract. The touchstone of standing is protecting against improper plaintiffs. To do so, courts require a plaintiff to demonstrate he or she has been aggrieved by the conduct he or she challenges. To determine whether the plaintiff has been aggrieved, Pennsylvania courts traditionally examine whether the plaintiff’s interest in the outcome of the lawsuit is substantial, direct, and immediate. A party’s interest is substantial when it surpasses the interest of all

all inferences reasonably deduced therefrom. The Court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and any doubt should be resolved by a refusal to sustain them.

Torres v. Beard, 997 A.2d 1242, 1245 (Pa. Cmwlth. 2010) (citations omitted). This Court has further noted that “[l]egal conclusions and general allegations of wrongdoing, without the requisite specific factual averments or support, fail to meet the pleading standard.” *Chester Upland Sch. Dist. v. Rossi*, 275 A.3d 1117, 1128 (Pa. Cmwlth. 2022).

citizens in procuring obedience to the law; it is direct when the asserted violation shares a causal connection with the alleged harm; finally, a party's interest is immediate when the causal connection with the alleged harm is neither remote nor speculative.

Id. (internal citations and quotations omitted). To establish aggrievement, a party must show “some discernable adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law.” *William Penn Parking Garage v. City of Pittsburgh*, 346 A.2d 269, 282 (Pa. 1975) (plurality).

The Commission contends that the harms alleged in the Amended Petition are remote and speculative and therefore insufficient to confer standing to Petitioners in the present action. The Commission emphasizes that “[c]larifying what constitutes discrimination because of sex under the PHRA [and PFOA] does not cause a school to adopt any specific policy, program, or activity, much less one that has a ‘discernable adverse effect.’” Commission’s Brief at 17 (quoting *William Penn Parking Garage*, 346 A.2d at 282).

Petitioners respond that the harms pleaded are real, concrete, and sufficient to confer standing. Each Petitioner or class of Petitioners argues that they are subject to the Regulations in some immediate and substantial way that affects their interests. Because the analysis differs as to each group of Petitioners, we address standing as it relates to the Districts, Parents (individually and on behalf of their minor children), and Representative Gleim in turn.¹¹

i. Districts

The Commission asserts that the Districts fail to provide evidence of any discernable adverse effect caused by the Regulations, and instead merely recite

¹¹ For ease of disposition, we have reordered the discussion of standing as it relates to each group of Petitioners.

conclusory, inaccurate, or legally insufficient statements in an attempt to establish standing. While the Amended Petition is replete with statements that the Districts’ “programs, students, staff, and taxpayers are directly and adversely affected by” the Regulations, the Commission argues Petitioners provide no facts to show how defining what constitutes discrimination because of sex has caused any adverse effect on the Districts whatsoever. *See* Commission’s Br. at 21 (citing Amended Petition ¶¶ 5, 27).

First, the Commission rejects as inaccurate Petitioners’ claim that the directors of a school board would be engaged in prohibited discrimination if they comply with the Code’s requirements to report athletic opportunities offered to male and female secondary students, *see* 24 P.S. § 16-1601-C, or have separate male and female bathrooms, *see* 24 P.S. § 7-740. The Commission explains that the Regulations simply do not prohibit the Districts from either of those actions; instead, they merely clarify that discriminating against a person because of their gender identity or sexual orientation falls within the umbrella of discrimination based on sex under the PHRA and PFEOA. Commission’s Br. at 21. The Commission unequivocally states “[t]he existence of male and female bathrooms and sports teams does not discriminate against any person or create an unfair educational practice.” *Id.*

Next, the Commission submits that Presidential Executive Orders are binding only on federal executive branch agencies and therefore do not bind the Districts. To the extent Petitioners point to the USDE’s April 3, 2025 Letter, the Commission argues that such letter concerned Title VI of the Civil Rights Act of 1964¹² and affirmative action programs as addressed by *Students for Fair Admissions*

¹² 42 U.S.C. § 2000d. *See also* United States Department of Education’s Regulations at 34 C.F.R. § 100.3.

v. President & Fellows of Harvard Coll., 600 U.S. 181 (2023),¹³ which are wholly irrelevant to this matter. The Commission again stresses that the Regulations do not require the Districts to implement any policies whatsoever, no less one inconsistent with the Executive Order or one that would foreseeably result in the loss of federal funding.

Finally, to the extent the Districts argue that the District Policies are in conflict with the Regulations, the Commission characterizes that argument as “self-defeating.” Commission’s Br. at 23. It notes that the Districts’ Policies, enacted in February 2024 and August 2024 and still in effect today, demonstrate that the Regulations do not have any discernable adverse effect on the Districts. The Districts’ arguments of direct, immediate, and substantial harm are merely speculative and remote.

The Districts respond by underscoring the District Policies, which they allege are directly contrary to the Regulations, and again note that other school districts in the Commonwealth have chosen to implement policies consistent with the Regulations. The Districts submit that the existence of their Policies is enough to confer standing now; they are not required to wait to be sued. They argue that Pennsylvania courts have consistently recognized pre-enforcement review when a regulation compels a party to choose between altering conduct or risking enforcement. Petitioners’ Br. at 11-12 (citing *Firearm Owners Against Crime v. City of Harrisburg*, 218 A.3d 497 (Pa. Cmwlth. 2019) (*en banc*), *Arsenal Coal Co.*

¹³ In *Students for Fair Admissions v. Harvard*, the United States Supreme Court held that race-based affirmative action programs at Harvard University and the University of North Carolina violated the Equal Protection Clause of the Fourteenth Amendment and Title VI. 600 U.S. at 230. The USDE’s Letter of April 3, 2025, explains that “any violation of Title VI—including the use of Diversity, Equity & Inclusion (“DEI”) programs to advantage one’s race over another—is impermissible” and sets forth various consequences if such practices continue. Amended Petition, Ex. G at 3.

v. Com., 477 A.2d 1333 (Pa. 1984), and *Pittsburgh Palisades Park, LLC v. Com.*, 888 A.2d 655 (Pa. 2005)). The Districts argue that the Regulations “inject[] immediate tension: enforcing Code-anchored, sex-based structures invites PHRC proceedings; abandoning them risks violating the Code and federal guidance.” Petitioners’ Br. at 16. The District maintains that this “forced choice” is a discernable adverse effect sufficient to confer standing and mirrors the “Hobson’s choice” recognized by the Supreme Court in *Arsenal Coal*. *Id.*

The Districts correctly note that Courts of this Commonwealth, under certain circumstances, have recognized the justiciability of challenges to regulations prior to any enforcement actions. In support of their position, the Districts cite *Arsenal Coal*, *Firearm Owners*, and *Pittsburgh Palisades*, which we discuss in turn.

In *Arsenal Coal*, anthracite coal mine operators (operators) challenged regulations promulgated by the Environmental Quality Board (EQB) on the basis that the EQB exceeded its authority under the Surface Mining Conservation and Reclamation Act.¹⁴ Acting in our original jurisdiction, this Court dismissed operators’ petition on the basis that they failed to exhaust administrative remedies, reasoning that any enforcement action by the Department of Environmental Resources was appealable through the EQB, and the regulations could appropriately be challenged at that juncture. On direct appeal, the Supreme Court reversed and remanded to this Court with direction to exercise pre-enforcement equity jurisdiction.

In finding pre-enforcement review of the EQB regulations appropriate, the Supreme Court explained that “[w]here the effect of the challenged regulations upon the industry regulated is direct and immediate, the hardship thus presented

¹⁴ Act of May 31, 1945, P.L. 1198, *as amended*, 52 P.S. §§ 1396.1-1406.

suffices to establish the justiciability of the challenge in advance of enforcement.” *Arsenal Coal*, 477 A.2d at 1339. Furthering this rationale, the Supreme Court stated that piecemeal review of the regulations as applied to individual operators would entail a lengthy review process and cause the entire anthracite coal industry to face uncertainty in day-to-day business operations. *Id.* at 1340. Further, the Supreme Court found the reality of testing the regulations through compliance or non-compliance presented equally unappealing options. Operators’ compliance with the regulations would be burdensome and cause the expenditure of substantial sums, impairing the cash flow of operators. Non-compliance, on the other hand, would be “beset with penalties and impediments to the operation of the anthracite industry.” *Id.* Accordingly, the Supreme Court found the asserted impact of the regulations “sufficiently direct and immediate to render the issue appropriate for judicial review.” *Id.*

Districts next cite this Court’s *en banc* decision in *Firearm Owners Against Crime v. City of Harrisburg*, 218 A.3d 497 (Pa. Cmwlth. 2019), *aff’d sub nom. Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467 (Pa. 2021).¹⁵ In that case, following dismissal by common pleas, *Firearm Owners Against Crime* and individual gun owners (appellants) sought declaratory and injunctive relief to invalidate several ordinances enacted by the City of Harrisburg. The ordinances in question included restrictions on firearm discharge, possession within city parks, reporting lost or stolen firearms, and regulations during states of emergency. Appellants argued that the ordinances infringed upon their constitutional rights and were preempted by state law.

¹⁵ Despite that the Supreme Court affirmed this Court’s decision, and ultimately spoke on the issue of pre-enforcement standing, Petitioners curiously cite to this lower Court’s decision. Petitioners’ Br. at 11-12.

This Court considered whether the appellants had standing to challenge these ordinances before any enforcement action was taken against them, finding that the individual appellants had standing to challenge ordinances regarding discharge, possession within city parks, and lost or stolen firearms because these ordinances directly affected their lawful use and possession of firearms within the city. *Firearm Owners Against Crime*, 218 A.3d at 508-09. In so ruling, this Court noted that the ordinances were actively enforced, creating a chilling effect on appellants' rights, and that appellants need not actually violate the ordinances to confer standing. *Id.* at 506, 508-09. However, this Court concluded that appellants lacked standing to challenge the state of emergency ordinance because it only imposed restrictions during a declared state of emergency, which had not occurred, finding that the potential for future enforcement was too speculative to confer standing. *Id.* at 509-10.

Petitioners last cite *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655 (Pa. 2005). In *Pittsburgh Palisades*, our Supreme Court addressed the issue of pre-enforcement standing in the context of a constitutional challenge to a provision of the Pennsylvania Race Horse Development and Gaming Act¹⁶ (the Gaming Act). The petitioners in that case sought to challenge the constitutionality of Section 1209 of the Gaming Act, which required the Commonwealth to return license fees if changes were made to the Gaming Control Board within five years. The Court concluded that any harm to the petitioners related to Section 1209 was “wholly contingent on future events,” as they had not even obtained gaming licenses yet. *Pittsburgh Palisades*, 888 A.2d 660. Accordingly, it concluded they lacked standing to challenge the constitutionality of the section.

¹⁶ 4 Pa.C.S. § 1101-1904.

The Districts argue that like the operators in *Arsenal Coal*, they are currently forced to choose between two unappealing options: compliance with the Regulations—resulting in non-compliance with the Code and the loss of federal funding—or non-compliance with the Regulations—resulting in the potential for complaints under the PHRA or PFEOA. We disagree.

First, we reject the Districts’ contention that compliance with the Regulations results in de facto violations of the Code. This contention, repeated throughout Petitioners’ filings, is based on an incorrect interpretation of the Regulations. As explained by the Commission and supported by the plain language of the Regulations, the mere existence of separate bathrooms and the reporting of interscholastic athletic data does not in and of itself violate the Regulations. Contrary to the Districts’ assertions, compliance with both the Code and the Regulations is not impossible.

Unlike *Arsenal Coal*, the Regulations here require no action on the part of the Districts and, to date, cannot be said to have had any effect on the Districts’ day-to-day operations. Nowhere in the Regulations is a requirement that any school district in the Commonwealth implement any specific policy. Regardless, the Regulations do not predetermine that the Districts’ Policies constitute unlawful discrimination. Indeed, the District Policies have been in place since before the promulgation of the Regulations and remain in place today. That other school districts in the Commonwealth have promulgated different policies than the Districts is telling of this exact point: the Regulations simply do not force school districts to adopt any specific policy.

Unlike the chilling effect the ordinances had on individuals’ right to bear arms in *Firearm Owners*, the existence of the Regulations has no such similar

effect on Districts or their Policies. As explained above, the Districts' Policies have been in place since 2024 and are currently in effect, and, according to the allegations in the pleadings, which are taken to be true, have yet to be challenged under either the PHRA or PFE OA. These circumstances are a far cry from those present in *Arsenal Coal* or *Firearm Owners*, where active enforcement and knowing noncompliance were both present, requiring the parties to alter conduct or risk enforcement. We have neither active enforcement, as the Regulations do not require the implementation of any specific policies or practice, nor knowing noncompliance, as the Regulations do not predetermine whether the District Policies constitute unlawful discrimination. Accordingly, the Districts' allegations of direct and immediate harm are too speculative and too remote.

Relatedly, we note that while the Districts propose various hypothetical situations that could result in their engagement in an unlawful discriminatory practice under the Regulations, it cannot be said with any certainty what such scenario would entail, or what remedy would be assigned in the event a complaint under the PHRA or PFE OA was filed against them. These hypotheticals only call for speculation. As explained in Section I(A), *supra*, the Commission's "primary function" under the PHRA and PFE OA is to assure compliance through "conference, conciliation and persuasion." *Pa. Hum. Rels. Comm'n.*, 233 A.2d at 299; 43 P.S. § 959(f). Any imagined future proceeding under either the PHRA and PFE OA that challenges one of the District Policies has too many unknown variables to create the type of direct, immediate, and substantial harms required to confer standing to achieve pre-enforcement review of the Commission's Regulations.

In sum, the circumstances presented in this case are in stark contrast to those apparent in *Arsenal Coal*, and *Firearm Owners*, where pre-enforcement review

was deemed appropriate. Accordingly, we find this matter distinguishable from those cases, and instead more analogous to *Pittsburgh Palisades*. Like the *Pittsburgh Palisades* petitioners, the Districts here have not shown any direct, substantial, or immediate interest sufficient to confer standing, and instead plead harms that are either belied by an accurate interpretation of the Regulations or “wholly contingent on future events” not guaranteed to occur. 888 A.2d at 660. Accordingly, we sustain the Commission’s objection to the Districts’ standing.

ii. Parents¹⁷

We next address the Commission’s objection to Parents’ standing. The Commission argues that the alleged harm identified by Parents rests on a misinterpretation of the Regulations. As argued above, the Commission contends that the Regulations do not require any school districts to adopt any specific policy, program, or activity. Moreover, the Regulations do not subject Parents or their children to enforcement actions by the Commission. While the PHRA and PFEOA require equal treatment in employment, housing, education, and public accommodation, it does not regulate students or individuals in their capacity as parents. The Regulations merely provide clarity about what type of discrimination and unfair education practices are actionable under the two anti-discrimination statutes. In this way, the Commission argues, Parents and their children, who are free to utilize the procedures in the PHRA and PFEOA, are actually benefitted—not harmed—by the Regulations.

The Commission next argues that the Regulations do not impact Parents’ fundamental liberty interest in the care, custody, and control of their

¹⁷ While the parties classify the children of Parents (i.e., students) and Parents as separate, but related, classes of Petitioners, we address the claims relevant to both together, as the students are represented by and through the Parents in this action.

children. It argues this right is implicated when a law directly interferes with core parental decisions about their children, citing examples like granting nonparental visitation rights over parents' objection, *Troxel v. Granville*, 530 U.S. 57 (2000) (plurality), or by criminalizing parents' decision to not send their children to secondary school for religious reasons, *Wisconsin v. Yoder*, 406 U.S. 205 (1972). The Commission argues that "regulations that clarify what constitutes discrimination because of sex in employment, housing, education, and public accommodation have no more effect on a parent's 'care, custody, and control' of their children than do any other civil rights law prohibiting differential treatment based on a protected classification." Commission's Br. at 19.

Parents respond that those "who want to participate in the activities of the school districts, as parents or otherwise, are required to comply with the policies and rules mandated by the school districts; to utilize the facilities provided by the school districts; and to act in a manner consistent with and in compliance with [the Commission's] Regulations." Petitioners' Brief at 18. They further contend that both Parents and their children will experience "daily the application of sex-structured programs in athletics and multi-user privacy facilities. The credible threat that those programs will be targeted as 'sex discrimination' under the PHRC's new definition directly affects participation, opportunities, and bodily privacy." *Id.* at 19. Parents further allege that the Commission "intends to enforce [the] Regulations against Petitioners who refuse to share restrooms, locker rooms, and other similar facilities with adults or minors of the other biological sex" and that students will "be required to participate with and compete against students of the other biological sex." *Id.* at 19-20. Parents submit the Regulations violate their parental rights to protect the health, safety, and welfare of their children in school facilities.

We agree with the Commission that Parents' arguments are premised on a misinterpretation of what the Regulations actually seek to accomplish. While Parents imagine a variety of speculative hypothetical situations that they contend may be actionable under the PHRA or PFEOA, they have failed to plead the reality of any such situations. What is concrete at this juncture is that the Regulations do not require any action by school districts in the Commonwealth, and that neither Parents nor students are alleged to be directly subject to the Regulations. Accordingly, any allegation that hypothetical policies resulting from the Regulations would be harmful to Parents or their minor children is entirely remote and speculative, and therefore insufficient to confer standing.

Further, contrary to their contention, Parents' fundamental liberty interests in the care, custody, and control of their children are not implicated by the Regulations. Petitioners cite *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972); however, that matter is wholly distinguishable. In *Yoder*, the United States Supreme Court found that compulsory schooling for the children of Amish parents after the completion of 8th grade violated the fundamental liberty interests of the parents. 406 U.S. at 234-35. Here, the Regulations simply clarify who may fall within a protected class under the PHRA and PFEOA. As aptly noted by the Commission, the effect of the Regulations on parental rights is no greater than that of any other civil rights law prohibiting differential treatment based on a protected classification. Here, we agree with the Commission that Parents have failed to allege any harm to them caused merely by others being afforded equal opportunity. Commission's Brief at 20.

It is apparent that the real crux of Parents' issue is their disagreement or discomfort with the Regulations (and the future policies they speculate could be

made in response to it). Apropos to apparent parental discomfort, in his concurrence to *Firearm Owners*, Justice Wecht addressed such general discomfort succinctly and persuasively, stating, “[m]erely to lack the desire to conform, or simply to find the requirements of the law distasteful, is not to gain standing to challenge the law. Discomfort with legal requirements, without more, does not confer standing.” *Firearm Owners*, 261 A.3d at 495 (Wecht, J., concurring). Parents have pleaded nothing more than discomfort here, and therefore we sustain the Commission’s preliminary objection to Parents’ standing.

iii. Representative Gleim¹⁸

We next address the Commission’s objection to Representative Gleim’s standing. The Commission argues that Representative Gleim has failed to establish either individual or taxpayer standing. As an individual, the Commission maintains that Representative Gleim is neither adversely impacted by, nor subject to, the Regulations. It submits that she has failed to show that the Regulations have “any impact on Ms. Gleim’s life in any way.” Commission’s Br. at 15. As to taxpayer standing, the Commission submits that Representative Gleim has failed to plead that she meets any of the necessary elements to confer such type of standing in this matter.

Representative Gleim responds that she has established individual harm because when she “visits school districts or other public facilities within the Commonwealth of Pennsylvania, she will be subject to the [R]egulations promulgated by [the Commission.]” Amended Petition ¶ 14.¹⁹ She further contends

¹⁸ For clarification, we note that Aaron Bernstine, here considered among Parents, is also a state representative. Like Representative Gleim, he does not assert legislative standing, and it is clear from Petitioners’ pleadings and subsequent brief that he asserts standing only as an individual and parent to his minor children.

¹⁹ Representative Gleim has not asserted legislative standing. *See* Petitioner’s Brief at 5.

that she is “adversely impacted by the direct and immediate obligations placed upon [School] Districts’ governmental functions[,] which directly impact individuals who visit, attend, or utilize public facilities, including, but not limited to, public school district facilities and activities.” *Id.* ¶ 13. As to taxpayer standing, Representative Gleim asserts that the Commission’s action violates her constitutionally protected rights under the ERA. She maintains that absent her and her co-Petitioners bringing this lawsuit, it is likely that no other or similar challenge will be brought “to end the impermissible actions described.” Petitioners’ Br. at 4.

We agree with the Commission that Representative Gleim has failed to establish standing in her capacity as an individual or as a taxpayer. Beginning with individual standing, Petitioner Gleim offers no argument or evidence as to how she, as an individual, is subject to the Regulations in any way, or by whom. Thus, she fails to establish how she is impacted by the Regulations in any concrete, discernible manner and instead demonstrates merely an “abstract interest of all citizens,” which has regularly been found insufficient to confer standing. *William Penn Parking Garage*, 346 A.2d at 282.

Taxpayer standing is reserved for instances where “(1) the governmental action in question would otherwise go unchallenged; (2) those who are directly and immediately affected by the action complained of benefit from the action and thus are not inclined to challenge it; (3) judicial relief is appropriate; (4) redress through other channels is unavailable; and (5) no other person is better suited to bring the challenge.” *Firearm Owners*, 218 A.3d, at 514. Further, “taxpayer standing is only appropriate in cases where the challenged action affects in some way the plaintiff’s status as a taxpayer.” *Id.*

Representative Gleim fails to so much as articulate the standard to achieve taxpayer standing, no less plead facts sufficient to support it. While she conclusorily argues that she has standing as a taxpayer in both the Amended Petition and Petitioners’ Brief, she offers no argument as to how the relevant criteria, cited above, are met. Accordingly, we sustain the Commission’s preliminary objection to Representative Gleim’s standing as both an individual and a taxpayer.

IV. CONCLUSION

For the foregoing reasons, we sustain the Commission’s first preliminary objection and dismiss the Amended Petition, finding that Petitioners lack standing.²⁰ While Petitioners have made their disagreement with the Regulations’ definition of “sex” clear, such disagreement does not translate into a legally cognizable harm absent an actual adverse impact on Petitioners’ interest, which is not apparent here.

The Regulations’ definition of “sex” may raise interesting questions if and when an actual controversy exists. However, those questions are not justiciable at this time, and this Court lacks the power to adjudicate the matter. Based on this

²⁰ On July 6, 2026, Petitioner filed a “Letter Submitting Supplemental Authority Pursuant to Rule 2501(b) of the Pennsylvania Rules for Appellate Procedure” directing this Court’s attention to *West Virginia v. B. P. J. by Jackson*, 146 S. Ct. 2356 (2026). While we appreciate counsel’s diligence on updating the Court as to new caselaw, we find *West Virginia v. B. P. J.* presents a fact pattern largely distinguishable from the case before us. That case dealt with West Virginia and Idaho laws prohibiting biological males from playing on sports teams for females. Here, we note again that the Regulations do not direct any specific policy, unlike that contemplated in *W. Virginia v. B. P. J.* Accordingly, and as this case is disposed of on standing, we do not find that case to be relevant to the issue on which we now decide.

disposition, the Commission's second preliminary objection, and the Commission's and Petitioners' cross-applications for summary relief, are dismissed as moot.

MATTHEW S. WOLF, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

South Side Area School District,	:	
Knoch School District, Beth Ann	:	
Rosica, individually and as parent	:	
and natural guardian of L.U. and	:	
M.U., minors, Aaron Bernstine,	:	
individually and as parent and	:	
natural guardian of D.B., G.B.,	:	
Z.B., minors, Jason Saylor,	:	
individually, and as a parent and	:	
natural guardian of E.S., a minor,	:	
Barbara Gleim, individually,	:	
Petitioners	:	
	:	
v.	:	No. 78 M.D. 2025
	:	
Pennsylvania Human Relations	:	
Commission,	:	
Respondent	:	

ORDER

AND NOW, this 9th day of October 2026, the Pennsylvania Human Relations Commission's (Commission) first preliminary objection on the basis of standing is SUSTAINED, and the Amended Petition for Review is DISMISSED. The Commission's second preliminary objection, and the Commission's and Petitioners' cross-applications for summary relief are DISMISSED as MOOT.

MATTHEW S. WOLF, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

South Side Area School District,	:	
Knoch School District, Beth Ann	:	
Rosica, individually and as parent	:	
and natural guardian of L.U. and	:	
M.U., minors, Aaron Bernstine,	:	
individually and as parent and	:	
natural guardian of D.B., G.B.,	:	
Z.B., minors, Jason Saylor,	:	
individually, and as a parent and	:	
natural guardian of E.S., a minor,	:	
Barbara Gleim, individually,	:	
Petitioners	:	
	:	
v.	:	No. 78 M.D. 2025
	:	
Pennsylvania Human Relations	:	Argued: December 10, 2025
Commission,	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

CONCURRING AND DISSENTING OPINION
BY JUDGE McCULLOUGH

FILED: October 9, 2026

I concur in part and dissent in part. Although I agree with the Majority that the individual Petitioners do not, at present, have standing to challenge the regulations in question (Regulations), I cannot agree that South Side Area School District and Knoch School District (Districts) lack standing. In my view, the

Districts have pled substantial, direct, and immediate interests that confer standing to bring this suit.

The Majority concludes that the Districts have not shown any direct, substantial, or immediate interests in this litigation because the Regulations do not alter the Districts’ day-to-day operations, do not require the implementation of any specific policies, do not force the Districts to violate any laws, and do not, on their face, invalidate the Districts’ current policies. The Majority therefore characterizes the Districts’ interests and asserted harms as speculative and “wholly contingent on future events” that may never occur. *South Side Area School District, et al. v. Pennsylvania Human Relations Commission* (Pa. Cmwlth., No. 78 M.D. 2025, filed October 9, 2026) (Majority Opinion), slip op. at 16-18. I disagree.

Although I grant that the Regulations may not, on their face, force the Districts to violate the Public School Code of 1949¹ or federal law, they directly contradict both Districts’ policies governing interscholastic athletic teams (Policies). The Policies mandate, with certain exceptions not pertinent here, single-sex athletic teams and either expressly (South Side Area School District) or implicitly (Knoch School District) define sex and gender exclusively in terms of reproductive biology and genetic makeup. (Amended Petition for Review, ¶¶ 71-82.) The Policies thereby directly contradict the Regulations’ definition of “sex,” which includes non-biological, subjective categories such as “gender identity” and “gender expression.” 16 Pa. Code § 41.206. Given the Policies’ sex-based restrictions on athletic team choice, it is not at all far-fetched or hypothetical to anticipate sex-based

¹ Act of March 10, 1949, P.L. 30, *as amended*, 24 P.S. §§ 1-101 – 27-2702.

discrimination claims under the Pennsylvania Human Relations Act (PHRA),² the Pennsylvania Fair Educational Opportunities Act (PFEOA),³ or both.

In denying the Districts standing, the Majority emphasizes that the Policies remain intact and have not been the target of specific and imminent PHRA and/or PFEOA claims. But this is precisely the point: pre-enforcement review is designed to obviate the need for disruptions to day-to-day operations and the filing of individualized, filled-out lawsuits. Moreover, because the Districts lodge facial constitutional challenges to the Regulations, their claims present pure questions of law well-suited for pre-enforcement review. *Robinson Township, Washington County v. Commonwealth*, 83 A.3d 901, 917 (Pa. 2013). The Districts simply should not have to wait for individual and fact-specific discrimination claims to settle the question of whether the Regulations, for *all* intents and purposes, are unconstitutional. *Id.* at 924; *see also Firearm Owners Against Crime v. City of Harrisburg*, 218 A.3d 497, 512-14 (Pa. Cmwlth. 2019) (*en banc*).

I would overrule the Pennsylvania Human Relations Commission’s (Commission) preliminary objection to the Districts’ standing, rule on the Commission’s remaining preliminary objection, and, if appropriate, rule on the pending cross-applications for summary relief.

PATRICIA A. McCULLOUGH, Judge

² Act of October 27, 1955, P.L. 744, *as amended*, 43 P.S. §§ 951 – 953. Section 5(i)(1) of the PHRA prohibits sex-based discrimination in the provision of “public accommodations.” 43 P.S. § 955(i)(1), *as amended*; *see also* Section 4(l) of the PHRA, 43 P.S. § 954(l) (defining “public accommodation” to include, *inter alia*, “primary and secondary schools” and “high schools”).

³ Act of July 17, 1961, P.L. 766, *as amended*, 24 P.S. §§ 5001 – 5010. Section 4(a)(3) of the PFEOA prohibits sex-based discrimination against students by educational institutions. 24 P.S. § 5004(a)(3), *as amended*.