

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**B.P.J., by her next friend and mother,
HEATHER JACKSON,**

Plaintiff,

v.

**Civil Action No. 2:21-cv-00316
Honorable Joseph R. Goodwin, Judge**

**WEST VIRGINIA STATE BOARD OF EDUCATION,
HARRISON COUNTY BOARD OF EDUCATION,
WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION, W. CLAYTON BURCH
in his official capacity as State Superintendent, and
DORA STUTLER in her official capacity as
Harrison County Superintendent,
Defendants,**

And

**LAINIEY ARMISTEAD,
Defendant-Intervenor.**

**WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION'S
MOTION IN LIMINE TO EXCLUDE TEXT AND EMAIL COMMUNICATIONS**

Now comes West Virginia Secondary School Activities Commission (WVSSAC), by counsel, Roberta F. Green, Kimberly M. Bandy, Shannon M. Rogers and Shuman McCuskey Slicer PLLC, and moves the Court for an order in *limine* to preclude use of text communications and email communications of Bernie Dolan. In discovery, the parties have exchanged copies of certain email communications and text messages between WVSSAC Executive Director Bernie Dolan and other individuals, as well as email communications received by Bernie Dolan without response. The communications contain hearsay, and no exception to the hearsay rules applies to these communications. Thus, they should be excluded pursuant to Rule 801 of the Federal Rules of Evidence.

Further, the communications are not relevant to the material issues, making exclusion proper pursuant to Rules 401 and 402 of the Federal Rules of Evidence. Additionally, the prejudicial value of such communications outweighs any probative value that the materials may have. The communications create the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, and wasting time, such that they should not be admitted as evidence at trial or used for any other purpose. WVSSAC contemporaneously submits its Memorandum of Law in support of the relief requested.

WVSSAC moves this Honorable Court for an order in *limine* prohibiting the use of text communications and email communications of Bernie Dolan.

**WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION,
By Counsel.**

/s/Kimberly M. Bandy
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Kimberly M. Bandy (WVSB #10081)
Shannon M. Rogers (WVSB # 13920)
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in his official capacity as State Superintendent, and
DORA STUTLER in her official capacity as
Harrison County Superintendent,
Defendants,**

And

**LAINIEY ARMISTEAD,
Defendant-Intervenor.**

CERTIFICATE OF SERVICE

I hereby certify that I, Kimberly M. Bandy, have this, the 22nd day of June, 2022, served a true and exact copy of the foregoing “**West Virginia Secondary School Activities Commission’s Motion in Limine to Exclude Text and Email Communications of Bernie Dolan**” with the Clerk of Court using the CM/ECF System, which will send notification of such filing to the following counsel of record:

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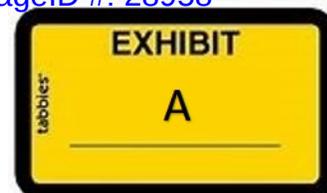
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/s/Kimberly M. Bandy

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(304) 345-1400; FAX: (304) 343-1826
Counsel for Defendant WVSSAC
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To: Stephen Baldwin

Wed, Mar 24, 5:39 PM

Could you talk to our caucus about the transgender student athlete Bill? Our concern is that legislature shouldn't get involved. We should leave it to you.

It's five days. So unless they pass a Bill in last five days, they will be able to override.

Thanks

Tue, Mar 30, 7:22 AM

I have my board of control today



iMessage





To: Stephen Baldwin

I have my board of control today.

I have a few slots open to call or "zoom" into your caucus or I can be there tomorrow.

Today

Probably 9:00-930

12-1

After 4

Sorry I forget the biggest day here

We vote on all new



To: Stephen Baldwin

Ok, I understand. 12-1 is probably the time we are meeting anyway. Could you join us for 10 minutes or so via phone? Or if you prefer in person tomorrow is fine too. This isn't up for a vote yet.

Tomorrow is better in person

Ok let's plan on it. Thx.



To: Stephen Baldwin

Yes

Ok let's plan on 930 in 330 west wing. Thx sir.

Fairness wv will be there too. We are most interested in your perspective though.

Ok

Tue, Mar 30, 7:41 PM

Do I. We'd anything special to get in

Tell security you are meeting with me

They'll let you in





To: Stephen Baldwin

They'll let you in

You're a big deal

I'll see you tomorrow

Haha. Not at all. Ask a Republican. They'll tell you I'm not.

Lol

Thx sir!

Wed, Mar 31, 9:21 AM

Room change. We are now in 208W, the judiciary room.

Ok





To: Stephen Baldwin

Ok

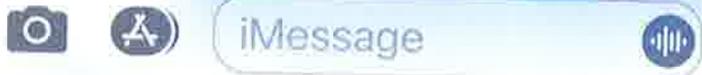
Thu, Apr 8, 12:50 PM

Are you listening to senate debate of trans Bill?

No I'm out town.

Ok thx. Rucker is on floor saying y'all don't have a trans policy. She dismisses what you have as an internal document of the board.

That may be the case
It has not gone through





To: Stephen Baldwin

That may be the case
It has not gone through
our formal rules process

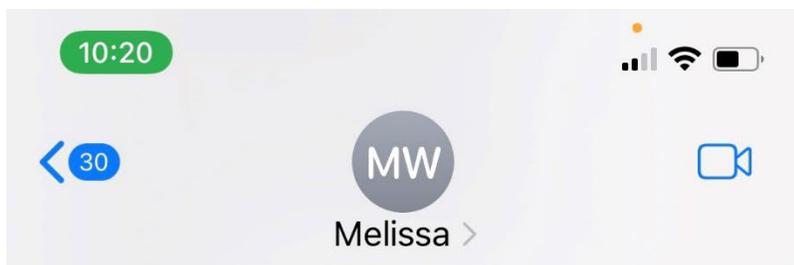
Ok thx

Mon, Aug 23, 2:32 PM

Afternoon bernie! Do y'all
keep records of all-state
student athletes? A
constituent who ran track
in the late 70s is trying to
track down her records.
Thx.

We do not unless it was a
state record.
What is her name, year
and events if you know.





Thanks

You're welcome

Thu, Apr 8, 12:52 PM

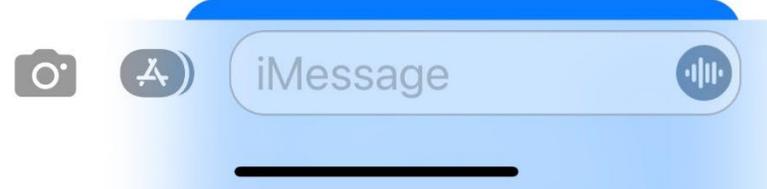
Hi Bernie. Can I get a copy of the SSAC's policy about transgender participation in sports?

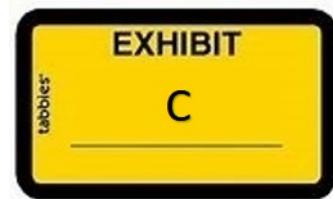
I'll try
I'm out of town
Meeting with our builder,
our house burned down
in Jan

I'm so sorry to hear that

Check your email

I did. Thank you





Bernie Dolan <bernie.dolan@wvssac.org>

Transgender

Daniel Swartos <daniel.swartos@sdhsaa.com>

Mon, May 6, 2019 at 5:10 PM

cc: HI - Christopher Chun <chun@hhsaa.org>, MS - Don Hinton <dhinton@misshsaa.com>, TN - Bernard Childress <bchildress@tssaa.org>, WV - Bernie Dolan <bernie.dolan@wvssac.org>, MT - Mark Beckman <mbeckman@mhsa.org>, Jerome Singleton <jsingle@schsl.org>

Chris, Mark, Bernie, Don, Bernard, and Jerome,

Good afternoon! Say, I've got a state legislator who has been fighting us for years to get rid of our transgender policy.

Today he sent me this link: <https://www.transathlete.com/k-12> which lists states according to their policy.

He noted that Hawaii, West Virginia, Tennessee, Mississippi, South Carolina, and Montana all have no transgender policy and he wants us to follow your lead.

A few questions:

- Is this map accurate? Do you all not have transgender policies?
- If not, have you ever been challenged on not having a policy?
- Have you received any litigation for not having a policy?
- Did you remove an existing policy or have you never had a policy?

Any information would be helpful. Transgender athletes make up around 0.008% of our athletes in the state, but we spend an inordinate amount of time fighting about it.

Have a great day!

-Dan

Dr. Daniel Swartos, Executive Director
South Dakota High School Activities Association
804 N. Euclid Avenue, Suite 102
Pierre, SD 57501
Office: (605)-224-9261
Cell: (605)-924-0361

WVSSAC000223



Bernie Dolan <bernie.dolan@wvssac.org>

ransgender

ernie.dolan@wvssac.org <bernie.dolan@wvssac.org>
o: Daniel Swartos <daniel.swartos@sdhsaa.com>

Mon, May 6, 2019 at 6:29 P

Daniel,

WV has a board policy that is not in our by laws.
Basically,
We support whatever the local school's determination.

However there can be an appeal on safety and competitive balance.
It has not been challenged yet

Bernie

Sent from my iPhone
[Quoted text hidden]

WVSSAC000224



Bernie Dolan <bernie.dolan@wvssac.org>

Subject: Policies Regarding Transgender Athletes

From: WVSSAC Office <wvssac@wvssac.org>
To: Bernie Dolan <bernie.dolan@wvssac.org>

Mon, Jul 27, 2020 at 11:33 AM

----- Forwarded message -----
From: **Aubrey Greathouse** <greathousea@healthworksrf.com>
Date: Fri, Jul 24, 2020 at 11:15 AM
Subject: Policies Regarding Transgender Athletes
To: wvssac@wvssac.org <wvssac@wvssac.org>

To whom it may concern:

I am the Athletic Trainer at a West Virginia high school. I am seeking any written policies or procedures regarding transgender athletes and sports participation at the high school level. I have done some research on my own, but have been unable to find any documentation. According to www.transathlete.com/k-12 <<http://www.transathlete.com/k-12>> , there is no WVSSAC policy on this matter. Is this still current information? Is there anyone specific that I may reach out to with questions and concerns?

Thank you for your time.

Aubrey Greathouse, LAT, ATC

Athletic Trainer
East Fairmont High School
HealthWorks Rehab and Fitness
(304)771-5510
greathousea@healthworksrf.com

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WVSSAC000225



Bernie Dolan <bernie.dolan@wvssac.org>

Track Data

messages

runwv@runwv.com <runwv@runwv.com>
o: bernie.dolan@wvssac.org

Mon, Mar 8, 2021 at 1:38 P

Mr. Dolan,

You had contacted me a couple (maybe a few) weeks ago regarding data in relationship to a bill that might be proposed by a legislator. At the time, my data was in limbo, sitting on a crashed hard drive. Our IT guy at work was finally able to find the time to check it out, and he was able to retrieve my files.

If you still have need of something in relation to this, let me know, and I'll do my best to help you out.

Josh Weekley
RunWV.com

ernie Dolan <bernie.dolan@wvssac.org>
o: runwv@runwv.com

Mon, Mar 8, 2021 at 3:27 P

Josh,

We were looking at girl's times in some events compared to boys. A transgender issue.

Bernie

[Quoted text hidden]

—
Bernie Dolan
Executive Director
WVSSAC
2875 Staunton Turnpike
Parkersburg, WV 26104
304-485-5494

runwv@runwv.com <runwv@runwv.com>
o: Bernie Dolan <bernie.dolan@wvssac.org>

Mon, Mar 8, 2021 at 9:41 P
WVSSAC000226

Josh Weekley

RunWV.com

[Quoted text hidden]

WVSSAC000227



Bernie Dolan <bernie.dolan@wvssac.org>

Transgender participation in secondary schools bill

message

Melissa White <Melissa.White@wvhouse.gov>

to: Bernie Dolan <bernie.dolan@wvssac.org>, Bernie Dolan <bdolan@k12.wv.us>

Thu, Mar 11, 2021 at 9:53 AM

Bernie,

Attached is a draft of an originating bill regarding transgender participation in sports. I kept it short. There are obviously certain things that would need to be handled in a rule, unless you have language that you would like to see in the bill. Please let me know your thoughts and if there are any unintended consequences. The Chairman does not want to keep girls from participating in boys sports when there are not girls teams.

Thanks,

Melissa

Melissa J. White

Chief Counsel

Committee on Education

West Virginia House of Delegates

Room 432M

1900 Kanawha Boulevard, East

Charleston, WV 25305

 Transgender originating bill.docx
36K

WVSSAC000228

HB ORG

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Originating

House Bill Number

BY ENTER SPONSORS HERE

[Originating in the Committee on Education; Reported

on **January 14, 2016**]

HB ORG

1 A BILL

Be it enacted by the Legislature of West Virginia:

§18-2-25. Authority of county boards to regulate athletic and other extracurricular activities of secondary schools; delegation of authority to West Virginia Secondary School Activities Commission; authority of commission; approval of rules by state board; incorporation; funds; participation by private and parochial schools and by home-schooled students.

1 (a) The county boards of education shall exercise the control, supervision, and regulation
2 of all interscholastic athletic events, and other extracurricular activities of the students in public
3 secondary schools, and of those schools of their respective counties. The county board of
4 education may delegate control, supervision, and regulation of interscholastic athletic events and
5 band activities to the West Virginia Secondary School Activities Commission.

6 (b) The West Virginia Secondary School Activities Commission is composed of the
7 principals, or their representatives, of those secondary schools whose county boards of education
8 have certified in writing to the State Superintendent of Schools that they have elected to delegate
9 the control, supervision, and regulation of their interscholastic athletic events and band activities
10 of the students in the public secondary schools in their respective counties to the commission.
11 The West Virginia Secondary School Activities Commission may exercise the control, supervision,
12 and regulation of interscholastic athletic events and band activities of secondary schools,
13 delegated to it pursuant to this section. The rules of the West Virginia Secondary School Activities
14 Commission shall contain a provision for a proper review procedure and review board and be
15 promulgated in accordance with the provisions of chapter 29A of this code, but shall, in all
16 instances, be subject to the prior approval of the state board. The West Virginia Secondary School
17 Activities Commission, may, with the consent of the State Board of Education, incorporate under
18 the name of West Virginia Secondary School Activities Commission, Inc., as a nonprofit, nonstock
19 corporation under the provisions of chapter 31 of this code. County boards of education may

HB ORG

20 expend moneys for and pay dues to the West Virginia Secondary School Activities Commission,
21 and all moneys paid to the commission, as well as moneys derived from any contest or other
22 event sponsored by the commission, are quasi-public funds as defined in §18-5-1 *et seq.* of this
23 code, and the funds of the commission are subject to an annual audit by the State Tax
24 Commissioner.

25 (c) The West Virginia Secondary School Activities Commission shall promulgate
26 reasonable rules providing for the control, supervision, and regulation of the interscholastic
27 athletic events and other extracurricular activities of private and parochial secondary schools as
28 elect to delegate to the commission control, supervision, and regulation, upon the same terms
29 and conditions, subject to the same rules and requirements and upon the payment of the same
30 fees and charges as those provided for public secondary schools. Any such private or parochial
31 secondary school shall receive any monetary or other benefits in the same manner and in the
32 same proportion as any public secondary school.

33 (d) Notwithstanding any other provision of this section, or the commission's rules, the
34 commission shall consider eligible for participation in interscholastic athletic events and other
35 extracurricular activities of secondary schools a student who is receiving home instruction
36 pursuant to §18-8-1(c) of this code and who:

37 (1) Has demonstrated satisfactory evidence of academic progress for one year in
38 compliance with the provisions of that subsection: *Provided*, That the student's average test
39 results are within or above the fourth stanine in all subject areas;

40 (2) Is enrolled in at least one virtual instructional course per semester, consistent with the
41 applicable virtual instruction policy of the county board in which the home-schooled student lives
42 and the State Board;

43 (3) Has not reached the age of 19 by August 1 of the current school year;

44 (4) Is an amateur who receives no compensation but participates solely for the
45 educational, physical, mental and social benefits of the activity;

HB ORG

46 (5) Agrees to comply with all disciplinary rules of the West Virginia Secondary School
47 Activities Commission and the county board in which the home-schooled student lives; and

48 (6) Agrees to obey all rules of the West Virginia Secondary School Activities Commission
49 governing awards, all-star games, parental consents, physical examinations, and vaccinations
50 applicable to all high school athletes.

51 Eligibility is limited to participation in interscholastic athletic events and other
52 extracurricular activities at the public secondary school serving the attendance zone in which the
53 student lives: *Provided*, That home-schooled students who leave a member school during the
54 school year are subject to the same transfer protocols that apply to member-to-member transfers.
55 Reasonable fees may be charged to the student to cover the costs of participation in
56 interscholastic athletic events and other extracurricular activities.

57 (e) The West Virginia Secondary School Activities Commission shall recognize
58 preparatory athletic programs, whose participants attend a secondary school in West Virginia for
59 academic instruction, as nonparticipating members of the commission solely for the purpose of
60 competing on the national level: *Provided*, That the preparatory athletic program shall pay the
61 same fees as member schools. Such recognition does not entitle the preparatory athletic program
62 to compete against a member school during the regular season or in any commission state
63 championship events. The commission may promulgate an emergency rule pursuant to
64 subsection (b) of this section, if necessary, to carry out the intent of this subsection.

65 (f) A student's gender for purposes of participation in single-sex secondary school
66 interscholastic athletic events must be determined by the student's sex at the time of the student's
67 birth, as indicated on the student's original birth certificate. If a birth certificate provided by a
68 student pursuant to this subsection does not appear to be the student's original birth certificate or
69 does not indicate the student's sex upon birth, then the student must provide other evidence
70 indicating the student's sex at the time of birth: *Provided*, That the student or the student's parent
71 or guardian must pay any costs associated with providing the evidence required under this

HB ORG

72 subsection. The commission may promulgate an emergency rule pursuant to subsection (b) of
73 this section, if necessary, to carry out the intent of this subsection.

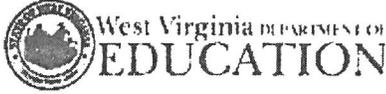
74 This subsection does not prohibit students from participating in a co-educational
75 secondary school interscholastic athletic events. Students may participate in a co-educational
76 secondary school interscholastic athletic events without having to comply with the requirements
77 of this section.

NOTE: The purpose of this bill is to require that a secondary student athlete's participation in single-sex athletics be based upon the athlete's biological sex, as indicated on the athlete's original birth certificate issued at the time of birth.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.



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Superintendent's Office



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[f 11 - YI](#)

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From: Melissa White <Melissa.White@wvhouse.gov>
Sent: Monday, March 15, 2021 9:44 AM
To: Sarah Stewart <sarah.a.stewart@k12.wv.us>
Subject: FW: Transgender participation in secondary schools bill

[EXTERNAL SENDER]: Do not click links, open attachments or reply to this email unless you recognize the sender and know the content is safe.

Sarah,

Per our discussion.

Thank you,
Melissa

Melissa J. White
Chief Counsel
Committee on Education
West Virginia House of Delegates
Room 432M
1900 Kanawha Boulevard, East
Charleston, WV 25305

From: Melissa White
Sent: Thursday, March 11, 2021 9:53 AM
To: Bernie Dolan <bernie.dolan@wvssac.org>; Bernie Dolan <bdolan@k12.wv.us>
Subject: Transgender participation in secondary schools bill

Bernie,

Attached is a draft of an originating bill regarding transgender participation in sports. I kept it short: There are obviously certain things that would need to be handled in a rule, unless you have language that you would like to see in the bill. Please let me know your thoughts and if there are any unintended consequences. The Chairman does not want to keep girls from participating in boys sports when there are not girls teams.

Thanks,
Melissa

Melissa J. White
Chief Counsel
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West Virginia House of Delegates
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wvde.us

f | t | YT

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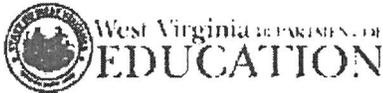
From: Sarah Stewart
Sent: Monday, March 15, 2021 9:49 AM
To: Heather Hutchens <hhutchens@k12.wv.us>; Stephanie Abraham <stephanie.abraham@k12.wv.us>; Mary Catherine Tuckwiller <mctuckwiller@k12.wv.us>
Subject: FW: Transgender participation in secondary schools bill

Happy Monday!

Would you all care to take a look at this one and provide feedback (preferably in writing)? Not necessarily on the substance, but modifications we would suggest. I have to leave for a funeral soon and not sure when will be back this afternoon.

Thanks,
Sarah

Sarah Stewart
Government Affairs Counsel
Superintendent's Office



1900 Kanawha Boulevard, East
Charleston, WV 25305-0520
304.558.3667 F
304.558.0048 F
304.807.6040 C
wvde.us

f | t | YT

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From: Melissa White <Melissa.White@wvhouse.gov>
Sent: Monday, March 15, 2021 9:44 AM
To: Sarah Stewart <sarah.a.stewart@k12.wv.us>
Subject: FW: Transgender participation in secondary schools bill

[EXTERNAL SENDER]: Do not click links, open attachments or reply to this email unless you recognize the sender and know the content is safe.

Sarah,

Per our discussion.

Thank you,
Melissa

Melissa J. White
Chief Counsel
Committee on Education
West Virginia House of Delegates
Room 432M
1900 Kanawha Boulevard, East
Charleston, WV 25305

From: Melissa White
Sent: Thursday, March 11, 2021 9:53 AM
To: Bernie Dolan <bernie.dolan@wvssac.org>; Bernie Dolan <bdolan@k12.wv.us>
Subject: Transgender participation in secondary schools bill

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Room 432M

1900 Kanawha Boulevard, East
Charleston, WV 25305

HB ORG

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Originating

House Bill Number

BY ENTER SPONSORS HERE

[Originating in the Committee on Education; Reported

on January 14, 2016]

HB ORG

1 A BILL

Be it enacted by the Legislature of West Virginia:

§18-2-25. Authority of county boards to regulate athletic and other extracurricular activities of secondary schools; delegation of authority to West Virginia Secondary School Activities Commission; authority of commission; approval of rules by state board; incorporation; funds; participation by private and parochial schools and by home-schooled students.

1 (a) The county boards of education shall exercise the control, supervision, and regulation
2 of all interscholastic athletic events, and other extracurricular activities of the students in public
3 secondary schools, and of those schools of their respective counties. The county board of
4 education may delegate control, supervision, and regulation of interscholastic athletic events and
5 band activities to the West Virginia Secondary School Activities Commission.

6 (b) The West Virginia Secondary School Activities Commission is composed of the
7 principals, or their representatives, of those secondary schools whose county boards of education
8 have certified in writing to the State Superintendent of Schools that they have elected to delegate
9 the control, supervision, and regulation of their interscholastic athletic events and band activities
10 of the students in the public secondary schools in their respective counties to the commission.
11 The West Virginia Secondary School Activities Commission may exercise the control, supervision,
12 and regulation of interscholastic athletic events and band activities of secondary schools,
13 delegated to it pursuant to this section. The rules of the West Virginia Secondary School Activities
14 Commission shall contain a provision for a proper review procedure and review board and be
15 promulgated in accordance with the provisions of chapter 29A of this code, but shall, in all
16 instances, be subject to the prior approval of the state board. The West Virginia Secondary School
17 Activities Commission, may, with the consent of the State Board of Education, incorporate under
18 the name of West Virginia Secondary School Activities Commission, Inc., as a nonprofit, nonstock
19 corporation under the provisions of chapter 31 of this code. County boards of education may

HB ORG

20 expend moneys for and pay dues to the West Virginia Secondary School Activities Commission,
21 and all moneys paid to the commission, as well as moneys derived from any contest or other
22 event sponsored by the commission, are quasi-public funds as defined in §18-5-1 *et seq.* of this
23 code, and the funds of the commission are subject to an annual audit by the State Tax
24 Commissioner.

25 (c) The West Virginia Secondary School Activities Commission shall promulgate
26 reasonable rules providing for the control, supervision, and regulation of the interscholastic
27 athletic events and other extracurricular activities of private and parochial secondary schools as
28 elect to delegate to the commission control, supervision, and regulation, upon the same terms
29 and conditions, subject to the same rules and requirements and upon the payment of the same
30 fees and charges as those provided for public secondary schools. Any such private or parochial
31 secondary school shall receive any monetary or other benefits in the same manner and in the
32 same proportion as any public secondary school.

33 (d) Notwithstanding any other provision of this section, or the commission's rules, the
34 commission shall consider eligible for participation in interscholastic athletic events and other
35 extracurricular activities of secondary schools a student who is receiving home instruction
36 pursuant to §18-8-1(c) of this code and who:

37 (1) Has demonstrated satisfactory evidence of academic progress for one year in
38 compliance with the provisions of that subsection: *Provided*, That the student's average test
39 results are within or above the fourth stanine in all subject areas;

40 (2) Is enrolled in at least one virtual instructional course per semester, consistent with the
41 applicable virtual instruction policy of the county board in which the home-schooled student lives
42 and the State Board;

43 (3) Has not reached the age of 19 by August 1 of the current school year;

44 (4) Is an amateur who receives no compensation but participates solely for the
45 educational, physical, mental and social benefits of the activity;

HB ORG

46 (5) Agrees to comply with all disciplinary rules of the West Virginia Secondary School
47 Activities Commission and the county board in which the home-schooled student lives; and

48 (6) Agrees to obey all rules of the West Virginia Secondary School Activities Commission
49 governing awards, all-star games, parental consents, physical examinations, and vaccinations
50 applicable to all high school athletes.

51 Eligibility is limited to participation in interscholastic athletic events and other
52 extracurricular activities at the public secondary school serving the attendance zone in which the
53 student lives: *Provided*, That home-schooled students who leave a member school during the
54 school year are subject to the same transfer protocols that apply to member-to-member transfers.
55 Reasonable fees may be charged to the student to cover the costs of participation in
56 interscholastic athletic events and other extracurricular activities.

57 (e) The West Virginia Secondary School Activities Commission shall recognize
58 preparatory athletic programs, whose participants attend a secondary school in West Virginia for
59 academic instruction, as nonparticipating members of the commission solely for the purpose of
60 competing on the national level: *Provided*, That the preparatory athletic program shall pay the
61 same fees as member schools. Such recognition does not entitle the preparatory athletic program
62 to compete against a member school during the regular season or in any commission state
63 championship events. The commission may promulgate an emergency rule pursuant to
64 subsection (b) of this section, if necessary, to carry out the intent of this subsection.

65 (f) A student's gender for purposes of participation in single-sex secondary school
66 interscholastic athletic events must be determined by the student's sex at the time of the student's
67 birth, as indicated on the student's original birth certificate. If a birth certificate provided by a
68 student pursuant to this subsection does not appear to be the student's original birth certificate or
69 does not indicate the student's sex upon birth, then the student must provide other evidence
70 indicating the student's sex at the time of birth: *Provided*, That the student or the student's parent
71 or guardian must pay any costs associated with providing the evidence required under this

HB ORG

72 subsection. The commission may promulgate an emergency rule pursuant to subsection (b) of
73 this section, if necessary, to carry out the intent of this subsection.

74 This subsection does not prohibit students from participating in a co-educational
75 secondary school interscholastic athletic events. Students may participate in a co-educational
76 secondary school interscholastic athletic events without having to comply with the requirements
77 of this section.

NOTE: The purpose of this bill is to require that a secondary student athlete's participation in single-sex athletics be based upon the athlete's biological sex, as indicated on the athlete's original birth certificate issued at the time of birth.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.

From: Melissa White
Sent: 3/15/2021 9:44:29 AM
To: Sarah Stewart
Subject: FW: Transgender participation in secondary schools bill

Attachments: [Transgender originating bill.docx](#)

Sarah,

Per our discussion.

Thank you,
Melissa

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Charleston, WV 25305

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West Virginia House of Delegates
Room 432M
1900 Kanawha Boulevard, East
Charleston, WV 25305

BPJ_00403



From: Melissa White
Sent: 3/11/2021 10:00:56 AM
To: Bernie Dolan
Subject: RE: Transgender participation in secondary schools bill

Thank you!

From: Bernie Dolan <bdolan@k12.wv.us>
Sent: Thursday, March 11, 2021 10:00 AM
To: Melissa White <Melissa.White@wvhouse.gov>
Subject: Re: Transgender participation in secondary schools bill

I'm in a meeting this morning.
I'll reply this afternoon.

Bernie

Sent from my iPhone

On Mar 11, 2021, at 9:53 AM, Melissa White <Melissa.White@wvhouse.gov> wrote:

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1900 Kanawha Boulevard, East
Charleston, WV 25305

<Transgender originating bill.docx>

BPJ_01425



ICAA Handbook

message

Mon, Mar 22, 2021 at 1:55 PM

Senator John Unger <senatorjohnunger@gmail.com>
to: Bernie Dolan <Bernie.dolan@wvssac.org>

- >
- > https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf
- >
- >

 Transgender_Handbook_2011_Final.pdf
1288K



NCAA Inclusion of Transgender Student-Athletes



Office of Inclusion

AUGUST 2011



As a core value, the NCAA believes in and is committed to diversity, inclusion and gender equity among its student-athletes, coaches and administrators. We seek to establish and maintain an inclusive culture that fosters equitable participation for student-athletes and career opportunities for coaches and administrators from diverse backgrounds. Diversity and inclusion improve the learning environment for all student-athletes and enhance excellence within the Association.

The Office of Inclusion will provide or enable programming and education, which sustains foundations of a diverse and inclusive culture across dimensions of diversity including, but not limited to age, race, sex, national origin, class, creed, educational background, disability, gender expression, geographical location, income, marital status, parental status, sexual orientation and work experiences.

Adopted by the NCAA Executive Committee, April 2010

PRIMARY CONTACTS

Bernard Franklin – bfranklin@ncaa.org (Executive Vice President,
Chief Inclusion Officer)

Kimberly Ford - kford@ncaa.org (Minority Inclusion)

Karen Morrison - kmorrison@ncaa.org (Gender Inclusion and LGBT)

NCAA Inclusion of Transgender Student-Athletes

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The purpose of this resource is to provide guidance to NCAA athletic programs about how to ensure transgender student-athletes fair, respectful, and legal access to collegiate sports teams based on current medical and legal knowledge. It provides best practice and policy recommendations for intercollegiate athletic programs to provide transgender student-athletes with fair and equal opportunities to participate. In addition to specific policy recommendations for college athletics, the resource provides guidance for implementing these policies to ensure the safety, privacy, and dignity of transgender student-athletes as well as their teammates. Specific best practice recommendations are provided for athletic administrators, coaches, student-athletes and the media.

Authors:

Dr. Pat Griffin, Director of Changing the Game: The Gay, Lesbian, Straight Education Network (GLSEN) Sports Project www.sports.glesn.org, Professor Emerita in the Social Justice Education program at the University of Mass. Amherst, former athlete and collegiate coach.

Helen Carroll, Director of the National Center for Lesbian Rights (NCLR) Sports Project www.nclrights.org, former NCAA/NAIA basketball coach and collegiate athletic director at University of North Carolina Asheville and Mills College of Oakland, Ca.

Providing medical advice and understanding of the complexities of the transitioning student-athlete are: **Eric Vilain, M.D., Ph.D.**, Professor of Human Genetics, Pediatrics and Urology, Director of the Center for Gender-Based Biology and Chief of Medical Genetics in the UCLA Department of Pediatrics, member of the International Olympic Committee medical advisory board; **R. Nick Gorton, M.D.**, Emergency Medicine Physician, Sutter Davis Hospital, Primary Care Provider, Lyon- Martin Women's Health Services—San Francisco, Medical-Legal Consultant for transgender health care for Lambda Legal, the Transgender Law Center, the Northwest Justice Project, the New York Legal Aid Society, National Center for Lesbian Rights Sports Project and the Sylvia Rivera Law Project; **Lori Kohler, M.D.**, Medical Director of the Family Health Center at San Francisco General Hospital.

Providing review related to the legal rights of transgender student-athletes in the context of the broader legal status of transgender rights in the United States: Lambda Legal; American Civil Liberties Union; Transgender Law Center; National Center for Transgender Equality; Gay and Lesbian Advocates and Defenders; National Center for Lesbian Rights.

Providing expertise regarding National Collegiate Athletic Association rules, regulations and procedures related to drug testing, eligibility requirements, and gender equity: Karen Morrison, Director for Gender Inclusion Initiatives; Mary Wilfert, Associate Director, Health and Safety.

Providing a voice and sharing the experience of being a transgender student-athlete: Keelin Godsey, Track and Field, Rugby, Bates College, 2006, Northeastern College, 2010; Morgan Dickens, Basketball and Rugby, Cornell University, 2008, Ithaca College, 2009; Kye Allums, Women's Basketball, George Washington University, Class of 2012.



INTRODUCTION

What Does Transgender Mean?

“Transgender” describes an individual whose gender identity (one’s internal psychological identification as a boy/man or girl/woman) does not match the person’s sex at birth. For example, a male-to-female (MTF) transgender person is someone who was born with a male body, but who identifies as a girl or a woman. A female-to-male (FTM) transgender person is someone who was born with a female body, but who identifies as a boy or a man.¹

It is important that all people recognize and respect the transgender person’s identification as a man or a woman. In order to feel comfortable and to express their gender identity, transgender people may take a variety of steps: changing their names and self-referencing pronouns to better match their gender identity; choosing clothes, hairstyles, or other aspects of self-presentation that reflect their gender identity; and generally living, and presenting themselves to others, consistently with their gender identity. Some, but not all, transgender people take hormones or undergo surgical procedures to change their bodies to better reflect their gender identity.

Some people are confused by the difference between transgender people and people who have intersex conditions. The key feature of being transgender is having a psychological identification as a man or a woman that differs from the person’s sex at birth. Apart from having a gender identity that is different than their bodies, transgender people are not born with physical characteristics that distinguish them from others. In contrast, people with intersex conditions (which may also be called a “Disorders of Sex Development”), are born with physically mixed or atypical bodies with respect to sexual characteristics such as chromosomes, internal reproductive organs and genitalia, and external genitalia.²

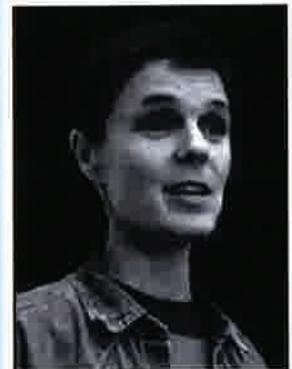
An increasing number of high school- and college-aged young people are identifying as transgender (or trans), meaning that their internal sense of their gender identity is different from the gender they were assigned at birth. These students challenge educators to rethink an understanding of gender as universally fixed at birth. Educators must be open to this challenge to create educational institutions that value and meet the needs of all students. Once we recognize that transgender young people are part of school communities across the United States, educational leaders have a responsibility to ensure that these students have access to equal opportunities in all academic and extracurricular activities in a safe and respectful school environment.

For a more complete list of definitions and terms related to transgender people, refer to Appendix A.

STEPHANIE BRILL

Executive Director, Gender Spectrum

“There are more and more transgender children today who, even at young ages, are allowed to live their lives in alignment with who they are. As it becomes common medical procedure to allow these children to transition in childhood, athletic policies need to reflect this change in the landscape of student-athletes.”



Athletics programs are widely accepted as integral parts of the college experience. The benefits of athletics participation include many positive effects on physical, social, and emotional well-being. Playing sports can provide student-athletes with important lessons about self-discipline, teamwork, success, and failure—as well as the joy and shared excitement that being a member of a sports team can bring.

For some students, playing on collegiate sports teams leads to future careers in athletics as competitors, coaches, administrators, and athletic trainers. All students, including those who are transgender, deserve access to these benefits.

Though the needs of transgender college students have received some attention in recent years, this issue has not been adequately addressed in the context of athletics. Few collegiate athletics programs, administrators, or coaches have been prepared to fairly, systematically, and effectively address a transgender student's interest in participating in athletics. The majority of intercollegiate athletics programs have no policy governing the inclusion of transgender student-athletes, and most coaches have not received any direction for accommodating a transgender student who wants to play on a sports team. In fact, most intercollegiate athletics programs have not received the information to address even basic accommodations such as knowing what pronouns or names to use when referring to a transgender student, where a transgender student should change clothes for practice or competition, or what bathroom or shower that student should use.

The best practices and recommended policies within this resource will provide athletics administrators and others involved in intercollegiate athletics with the information and tools to support participation of transgender student-athletes and create environments that respect students from all backgrounds.

PART ONE

Overview

This section provides an overview of issues related to providing participation opportunities for transgender student-athletes by addressing the following questions:

- Why must we address transgender issues in athletics?
- Why focus on college athletics?
- Should the participation of transgender student-athletes raise concerns about competitive equity?
- What are the benefits of adopting fair and inclusive policies?

Why Must We Address Transgender Issues in Collegiate Athletics Programs?

Educators must address transgender issues in athletics for several reasons. First and foremost, core values of equal opportunity and inclusion demand that educational leaders adopt thoughtful and effective policies that enable all students to participate fully in intercollegiate athletics programs. Over the course of many years, schools have learned and continue to appreciate the value and necessity of accommodating the sport participation interests of students of color, women, students with disabilities, and lesbian, gay, and bisexual students. These are all issues of basic fairness and equity that demand the expansion of our thinking about equal opportunity in sports. The right of transgender students to participate in sports calls for similar considerations of fairness and equal access.

Additionally, as more states, localities, and schools add gender identity and expression to their non-discrimination policies, and as more courts hold that sex discrimination laws protect transgender people, transgender students and their parents are increasingly empowered to insist that athletics programs accommodate transgender students (see Part Four: Appendix C for a compilation of state and federal laws, regulations, and legal decisions prohibiting discrimination based on gender identity/expression). To avoid decision-making that perpetuates discrimination, school leaders must be proactive in adopting policies that are consistent with school non-discrimination policies and state and federal laws prohibiting discrimination based on gender identity or expression (see Appendix A for definitions of gender identity and gender expression).

Though the number of transgender students is small, research indicates that their number is growing.³ As the number of people who come out as transgender as teenagers and children increases, so too do the numbers of parents who support their transgender children and advocate for their rights to safety and fair treatment. In response to these demands, college leaders must be prepared to accommodate the educational needs and protect the rights of transgender students.

To respond to these realities, athletics conferences and individual universities/colleges are well advised to proactively adopt policies and best practices that provide equal opportunities for transgender students to participate on sports teams. Moreover, in the spirit of encouraging sports participation for all, it is the right thing to do.

In order to design effective policies, educators must understand that gender is a core part of everyone's identity and that gender is more complex than our society generally acknowledges. Learning about the experience of transgender people can help us to see more clearly how gender affects all of our lives, and to put that knowledge into practice in order to better serve all students.

Addressing the needs of transgender students is an important emerging equal opportunity issue that must be taken seriously by school leaders. Because a more complex understanding of gender may be new and

challenging for some people, there is a danger that misinformation and stereotypes rather than accurate and up-to-date information will guide policy decisions. Campus and athletics administrators who are charged with policy development need guidance to avoid including misconceptions and misinformation in policies that, ultimately, create more problems than they solve.

Lea Robinson

**Associate Director, Office of Multicultural Affairs, Columbia University
American Association of University Women (AAUW)
(former coach and athlete)**

“During my coaching career, there was little discussion of the existence of transgender student-athletes and few resources for those student-athletes that did identify as transgender.

In my own experience, the few students that I did suspect may have identified as transgender weren’t really able to come out in those settings because of a lack of support within their athletic communities as well as a real lack of resources, education, and safe spaces.

I believe that the implementation of supportive policies would signify a commitment to the support and acceptance of transgender-identified student-athletes and coaches, and aid in creating more spaces for dialogue and education within the culture of athletics regarding issues and challenges facing transgender student-athletes.

Those policies will also give transgender student-athletes and coaches the guidance, support, encouragement, and sense of safety they need to pursue what can sometimes be a very difficult journey.”



Why Focus on College Athletics?

Providing equal opportunities in all aspects of school programming is a core value in education. As an integral part of higher educational institutions, college athletics programs are responsible and accountable for reflecting the goals and values of the educational institutions of which they are a part. It follows that athletics programs must reflect the value of equal opportunity in all policies and practices.

A core purpose of college is to teach students how to participate and be good citizens in an increasingly diverse society and how to interact respectfully with others. In addition, college athletics programs impose limits on how many years a student-athlete can compete that do not exist in adult sporting competitions, where athletes can compete as long as their performances are viable or, in the case of most amateur sports, as long as they wish to. Intercollegiate athletics provides a unique opportunity to provide participation opportunities for all students regardless of race, religion, sexual orientation or gender expression.

As a core value, the NCAA believes in and is committed to diversity, inclusion and gender equity among its student-athletes, coaches and administrators. The NCAA seeks to establish and maintain an inclusive culture that fosters equitable participation for student-athletes and career opportunities for coaches and administrators from diverse backgrounds. Diversity and inclusion improve the learning environment for all student-athletes and enhance excellence within the Association.

The NCAA Office of Inclusion provides or enables programming and education, which sustains foundations of a diverse and inclusive culture across dimensions of diversity including, but not limited to age, race, sex, class, national origin, creed, educational background, disability, gender expression, geographical location,

income, marital status, parental status, sexual orientation and work experiences. In keeping with those values of inclusion, the NCAA encourages thoughtful development of policies and practices that provide fair participation opportunities for all student-athletes, including transgender individuals.

Should the Participation of Transgender Student-Athletes Raise Concerns About Competitive Equity ?

Concern about creating an “unfair competitive advantage” on sex-separated teams is one of the most often cited reasons for resistance to the participation of transgender student-athletes. This concern is cited most often in discussions about transgender women competing on a women’s team. Some advocates for gender equality in college sports are concerned that allowing transgender women—that is, male-to-female transgender athletes who were born male, but who identify as female—to compete on women’s teams will take away opportunities for women, or that transgender women will have a competitive advantage over other women competitors.

These concerns are based on three assumptions: one, that transgender women are not “real” women and therefore not deserving of an equal competitive opportunity; two, that being born with a male body automatically gives a transgender woman an unfair advantage when competing against non-transgender women; and three, that men might be tempted to pretend to be transgender in order to compete in competition with women.

These assumptions are not well founded. First, the decision to transition from one gender to the other—to align one’s external gender presentation with one’s internal sense of gender identity—is a deeply significant and difficult choice that is made only after careful consideration and for the most compelling of reasons. Gender identity is a core aspect of a person’s identity, and it is just as deep seated, authentic, and real for a transgender person as for others. Male-to-female transgender women fully identify and live their lives as women, and female-to-male transgender men fully identify and live their lives as men.

Second, some people fear that transgender women will have an unfair advantage over non-transgender women. It is important to place that fear in context.

Transgender girls who medically transition at an early age do not go through a male puberty, and therefore their participation in athletics as girls does not raise the same equity concerns that arise when transgender women transition after puberty.

Transgender women display a great deal of physical variation, just as there is a great deal of natural variation in physical size and ability among non-transgender women and men. Many people may have a stereotype that all transgender women are unusually tall and have large bones and muscles. But that is not true. A male-to-female transgender woman may be small and slight, even if she is not on hormone blockers or taking estrogen. It is important not to overgeneralize. The assumption that all male-bodied people are taller, stronger, and more highly skilled in a sport than all female-bodied people is not accurate.⁴

DR. NICK GORTON

***American Board of Emergency Medicine, Medical Legal Consultant,
Trans Health Care***

“Transgender student-athletes fall within the spectrum of physical traits found in athletes of their transitioned gender, allowing them to compete fairly and equitably.”



It is also important to know that any strength and endurance advantages a transgender woman arguably may have as a result of her prior testosterone levels dissipate after about one year of estrogen or testosterone-suppression therapy. According to medical experts on this issue, the assumption that a transgender woman competing on a women's team would have a competitive advantage outside the range of performance and competitive advantage or disadvantage that already exists among female athletes is not supported by evidence.

Finally, fears that men will pretend to be female to compete on a women's team are unwarranted given that in the entire 40 year history of "sex verification" procedures in international sport competitions, no instances of such "fraud" have been revealed.⁵ Instead, rather than identifying men who are trying to fraudulently compete as women, "sex verification" tests have been misused to humiliate and unfairly exclude women with intersex conditions.⁶ The apparent failure of such tests to serve their stated purpose of deterring fraud—and the terrible damage they have caused to individual women athletes—should be taken into account when developing policies for the inclusion of transgender athletes.

Educators in collegiate athletics programs must develop thoughtful and informed practices that provide opportunities for all students, including transgender students, to participate in sports. These practices must be based on sound medical science, which shows that male-to-female transgender athletes do not have any automatic advantage over other women. These practices must also be based on the educational values of sport and the reasons why sport is included as a vital component of the educational environment: promoting the physical and psychological well-being of all students, and teaching students the values of equal opportunity, participation, inclusion, teamwork, discipline, and respect for diversity.

What Are the Benefits of Adopting Inclusive Practices Regarding Transgender Student-Athletes?

All stakeholders in NCAA athletics programs will benefit from adopting fair and inclusive practices enabling transgender student-athletes to participate on school sports teams. School-based sports, even at the most competitive levels, remain an integral part of the process of education and development of young people, especially emerging leaders in our society. Adopting fair and inclusive participation practices will allow school and athletics leaders to fulfill their commitment to create an environment in which all students can thrive, develop their full potential, and learn how to interact with persons from diverse groups.

JILL PILGRIM

***Precise Advisory Group, Principal Counsel
Former General Counsel & Drug Testing Program Administrator
Ladies Professional Golf Association***

"Colleges need to adopt transgender student-athlete accommodation policies to remedy the silent suffering of young people who have the right to participate and enjoy the same activities that all other students have access to, without being discriminated against."



Many schools and athletics departments identify diversity as a strength and have included sexual orientation and gender identity/expression in their non-discrimination policies. Athletics departments and personnel are responsible for creating and maintaining an inclusive and non-discriminatory climate in the areas they oversee. Adopting inclusive participation practices provides school athletics administrators with a concrete opportunity to fulfill that mandate and demonstrate their commitment to fair play and inclusion.

Moreover, when all participants in athletics are committed to fair play, inclusion, and respect, student-athletes are free to focus on performing their best in athletic competition and in the classroom. This climate promotes the well-being and achievement potential of all student-athletes. Every student-athlete and coach will benefit from meeting the challenge of overcoming fear and prejudice about social groups of which they are not members. This respect for difference will be invaluable to all student-athletes as they graduate and enter an increasingly diverse workforce in which knowing how to work effectively across differences is a professional and personal asset.

The benefits of school sports participation include many positive effects on physical, social, and emotional well-being. All students, including those who are transgender, deserve access to these benefits.⁷ *When athletics departments adopt inclusive policies, they are living up to the educational values of equality that join them with the broad institutional and societal ideal of inclusion and respect for differences.*

PART TWO

Recommendations for Including Transgender Student-Athletes

This section of the resource includes:

- Guiding Principles
- Recommended Policy for College Athletics
- Additional Guidelines for Transgender Student-Athlete Inclusion

Guiding Principles

Policies governing the participation of transgender student-athletes should be informed by the following principles, and be included in the institution's transgender student-athlete policy statement:

1. Participation in intercollegiate athletics is a valuable part of the education experience for all students.
2. Transgender student-athletes should have equal opportunity to participate in sports.
3. The integrity of women's sports should be preserved.
4. Policies governing sports should be based on sound medical knowledge and scientific validity.
5. Policies governing sports should be objective, workable, and practicable; they should also be written, available and equitably enforced.
6. Policies governing the participation of transgender students in sports should be fair in light of the tremendous variation among individuals in strength, size, musculature, and ability.
7. The legitimate privacy interests of all student-athletes should be protected.
8. The medical privacy of transgender students should be preserved.
9. Athletics administrators, staff, parents of athletes, and student-athletes should have access to sound and effective educational resources and training related to the participation of transgender and gender-variant students in athletics.
10. Policies governing the participation of transgender students in athletics should comply with state and federal laws protecting students from discrimination based on sex, disability, and gender identity and expression.

Policy Recommendations for Collegiate Athletics

Policy development governing the inclusion of transgender student-athletes is an emerging endeavor. As new research on the participation of transgender athletes and the physiological effects of gender transition on athletic performance becomes available, policies may need to be re-evaluated to ensure that they reflect the most current research-based information.

KEELIN GODSEY

Former Student-Athlete, Bates College 2006, Northeastern College, 2010



I was 18 when I started to figure out I was transgender, but the thought of telling anyone was absolutely frightening. I didn't have the support system I needed and I didn't know how it would impact my track and field career.

I started researching rules and regulations for transgender athletes, and while I was able to find a policy from the International Olympic Committee, I couldn't find anything that would apply to me at the collegiate level. I later found out it was because they didn't have any policies.

I also tried to find information about transgender athletes, which, at the time, was like trying to find a needle in a haystack. I became very fearful that you couldn't be transgender and a champion collegiate athlete at the same time. This fear, the lack of policies and information about successful transgender athletes, and the fact that I was the track team's biggest scorer and a national contender each year, caused me to hold off on coming out as transgender for almost three years. I was so afraid of losing everything I had worked so hard to accomplish in track and field and that I would no longer be able to compete in something that defined me as much as being transgender does.

But by the end of my junior year I couldn't hide who I was anymore. I felt I had no choice but to face the consequences head on and come out as FTM. I was afraid if I didn't, I wouldn't make it through my senior year. I started by coming out to a professor/mentor. This wasn't too hard, but I knew that I had to come out to the athletic director, and that getting his/ her support was imperative in order for my "transition" of names and pronouns to work and my continued participation on the women's track and field team to go smoothly.

At the time, my track team had a new head coach, and I was really nervous about how she was going to respond. But after having a long talk with her it was clear that she understood and that she was there to help. Together, we were able to think through how my coming out might affect the team, and come up with the best plan for telling my teammates. When I came out to the team, I wasn't met with the fear and hate that I was expecting. In fact, it was the complete opposite. My team was awesome. The only thing that was said was, "Please forgive us if we slip on the pronouns while we adjust." And, to tell the truth, I don't think I ever once heard them slip up on pronouns.

Everyone's biggest concern was how my transition was going to be received outside of Bates, as, at that time, the NCAA didn't have any rules or guidelines about transgender athletes. Since I was already a national champion in the Women's Hammer Throw, as well as holding the DIII national record as an 11-time all-American, we knew my coming out was very much going to be a public event. Unfortunately, things went less smoothly off-campus than on. I was extremely lucky though to have the support of my teammates and my coach, who helped me succeed despite all of the outside stresses I experienced as an FTM competing at the national level on a women's team. My teammates were the first to defend me when people were being hateful, when the media was stalking me or when I was repetitively accused of cheating despite all of my clean drug (testosterone) tests. I had chosen to forego any medical transitioning to remain on my women's team. My team was also there to share in the positive things that happened as a result of my coming out.

NCAA Bylaws related to hormonal treatment and mixed teams.

Two areas of NCAA regulations can be impacted by transgender student-athlete participation: use of banned substances and mixed team status.

A mixed team is a varsity intercollegiate sports team on which at least one individual of each gender competes. (*Revised: 5/8/06*). NCAA Bylaw 18.02.2 for purposes of meeting the required minimums set forth in Bylaws 18.2.3 and 18.2.4, a mixed team shall be counted as one team. A mixed team shall count toward the minimum sponsorship percentage for men's championships.

- NCAA rules state that a male participating in competition on a female team makes the team a "mixed team." The mixed team can be used for sports sponsorship numbers (provided other conditions, such as being an acceptable NCAA sport, outlined in Bylaw 20.9 (Division I), 20.10 (Division II) and 20.11 (Division III) are met) and counts toward the mixed/men's team minimums within the membership sports-sponsorship requirements. Such a team is ineligible for a women's NCAA championship but is eligible for a men's NCAA championship.
- A female on a men's team does not impact sports sponsorship in the application of the rule—the team still counts toward the mixed/men's numbers. Such a team is eligible for a men's NCAA championship.
- Once a team is classified as a mixed team, it retains that status through the remainder of the academic year without exception.

NCAA Bylaw 31.2.3 identifies testosterone as a banned substance, and provides for a medical exception review for demonstrated need for use of a banned medication. It is the responsibility of the NCAA institution to submit the request for a medical exception (see www.ncaa.org/drugtesting) for testosterone treatment prior to the student-athlete competing while undergoing treatment. In the case of testosterone suppression, the institution must submit written documentation to the NCAA of the year of treatment and ongoing monitoring of testosterone suppression.

NCAA Policy on Transgender Student-Athlete Participation

The following policies clarify participation of transgender student-athletes undergoing hormonal treatment for gender transition:

1. A trans male (FTM) student-athlete who has received a medical exception for treatment with testosterone for diagnosed Gender Identity Disorder or gender dysphoria and/or Transsexualism, for purposes of NCAA competition may compete on a men's team, but is no longer eligible to compete on a women's team without changing that team status to a mixed team.
2. A trans female (MTF) student-athlete being treated with testosterone suppression medication for Gender Identity Disorder or gender dysphoria and/or Transsexualism, for the purposes of NCAA competition may continue to compete on a men's team but may not compete on a women's team without changing it to a mixed team status until completing one calendar year of testosterone suppression treatment.⁸

ERIC VILAIN

M.D., Ph.D., Professor, Director of the Center for Gender-Based Biology and Chief Medical Genetics Department of Pediatrics, UCLA

“Research suggests that androgen deprivation and cross sex hormone treatment in male-to-female transsexuals reduces muscle mass; accordingly, one year of hormone therapy is an appropriate transitional time before a male-to-female student-athlete competes on a women's team.”



Any transgender student-athlete who is not taking hormone treatment related to gender transition may participate in sex-separated sports activities in accordance with his or her assigned birth gender.

- A trans male (FTM) student-athlete who is not taking testosterone related to gender transition may participate on a men's or women's team.
- A trans female (MTF) transgender student-athlete who is not taking hormone treatments related to gender transition may not compete on a women's team.

Additional considerations

The student's responsibilities

1. In order to avoid challenges to a transgender student's participation during a sport season, a student-athlete who has completed, plans to initiate, or is in the process of taking hormones as part of a gender transition should submit the request to participate on a sports team in writing to the director of athletics upon matriculation or when the decision to undergo hormonal treatment is made.
2. The request should include a letter from the student's physician documenting the student-athlete's intention to transition or the student's transition status if the process has already been initiated. This letter should identify the prescribed hormonal treatment for the student's gender transition and documentation of the student's testosterone levels, if relevant.

The school's responsibilities

1. The director of athletics should meet with the student to review eligibility requirements and procedure for approval of transgender participation.
2. If hormone treatment is involved in the student-athlete's transition, the director of athletics should notify the NCAA of the student's request to participate with a medical exception request.
3. To assist in educating and in development of institutional policy and practice, a Transgender Participation Committee should be established. Members of the committee should represent a cross section of the institutional staff with student well-being interests, and include representation from the following departments: office of general counsel, health and counseling, faculty/academic affairs, and athletics.
4. All discussions among involved parties and required written supporting documentation should be kept confidential, unless the student-athlete makes a specific request otherwise. All information about an individual student's transgender identity and medical information, including physician's information provided pursuant to this policy, shall be maintained confidentially.

PAR T THREE

Best Practices and Guidelines for Inclusion of Transgender Student-Athletes

Part Three describes best practices — the actions that coaches, administrators and student-athletes can take to assure the inclusion of transgender student-athletes. Although these practices specifically address transgender student-athletes, they can be used to address discrimination based on other factors as well, such as race, religion, class, and sexual orientation.

The first part of this section describes general best practices for everyone. The next sections identify best practices recommended specifically to athletics administrators, coaches, student-athletes, and athletics staff who interact with the media.

MORGAN DICKENS

*Former Basketball, Rugby Student-Athlete,
Cornell University 2008, Ithaca College 2009*

“There are differences between being male and female, but being gender fluid doesn’t mean I reject these differences, it just means I’m rejecting the idea that I have to be defined one way or another. The clear delineation between male and female in the sporting world doesn’t leave room for someone like me. When I started presenting in a more masculine way, I was ostracized in girls’ locker rooms, told I was in the wrong bathroom, and even once had my gender questioned during a co-ed intramural football game. Because athletics are such an important part of my life, I deal with these and other inequalities and misunderstandings. While I’m prepared to handle it, my concern is there aren’t many other people out there who are prepared and willing to engage in a dialogue about the presence of gender fluid athletes in sport.”



Overall Best Practices

1. **Provide Equal Opportunity** — Colleges and universities often have legal obligations to provide equal opportunity to student-athletes and to personnel, including coaches. All those involved in athletics should be aware of these obligations, and treat them as core values, guiding policies and practices. Transgender discrimination may be a part of a systemic problem where the broader environment is unfriendly or discriminatory toward lesbian, gay, bisexual, and transgender people. This can negatively affect all men and women who participate in athletic competition. If discrimination is accepted as part of the common practices of an athletics department, this will undermine the core principle of equal opportunity.
2. **Value Diversity** — In creating guidelines or best practices for including transgender student-athletes, it is important to place this conversation in the context of the athletics department’s broad commitments to safety, fairness, and respect for all participants. It helps when athletics department leadership, including coaches, value all aspects of diversity. Collegiate athletics provides an opportunity for students to compete with and against others who come from different races, cultures, religions, sexual

orientations, gender identities and expressions, and social classes, but all of whom share the common goal of achieving athletic excellence. Valuing this common ground enhances the social and competitive experience for all. Athletics administrators should make their commitment to valuing diversity explicit in media interviews and other public speaking opportunities as well as in meetings with athletics department staff. That diversity-valuing approach then shapes and informs activities throughout the athletics department and is conveyed to coaches and student-athletes. Everyone should also understand how these core values are important to team success and to individual team member development. Teams that value each member's contribution to the unit, while respecting individual differences, provide a foundation for the whole team and each member of the team to focus on achieving their athletic and academic goals.

3. **Establish policy** — When diversity values are explicit, athletics departments, institutions, state, and national governing organizations are in a position to develop specific policy statements that reflect a commitment to these values. These policy statements, if followed, protect schools, administrators, student-athletes, and coaches from litigation and other negative consequences. Coaches should know that they may have a transgender student-athlete on their teams and should be equipped to make that experience a positive one for the athlete and teammates. Parents should communicate the importance of these values in meetings with prospective coaches and athletics administrators. Student-athletes can discuss these values with new team members and in public speaking opportunities.

LAURIE PRIEST

*Chair of Physical Education and Director of Athletics,
Mt. Holyoke College*

“It is imperative that administrators and coaches provide a safe and inclusive environment so that all student-athletes can participate and achieve success. Being aware of appropriate laws can help us to develop policies and implement practices to assure that all of our students are treated with respect.”



Best Practices for Athletics Administrators

Best practices for athletics administrators focus on policy development, discrimination prevention, education, enforcement procedures, and consequences. These best practices will be helpful to a wide range of athletics administrators in organizations including colleges and universities, collegiate sport-governing organizations, coaches associations, and athletics conferences.

1. If the school does not have an inclusive non-discrimination and harassment policy, work with other school administrators to adopt a policy that includes gender identity and expression.
2. Respect the right to privacy of all student-athletes with respect to personal information (including whether a student is transgender) when discussing gender identity and expression and understand that all medical information must be kept confidential in accordance with applicable state, local, and federal privacy laws.
3. Become knowledgeable about collegiate non-discrimination and harassment policies that include gender identity and expression.
4. Include gender identity and expression in departmental non-discrimination statements on all official department documents and web sites.
5. Become aware of state and federal non-discrimination laws that prohibit discrimination based on gender identity and expression (see Part 4 Appendix C for a list of relevant federal and state laws).
6. Adopt an effective and fair athletics departmental policy addressing the participation of transgender

- student-athletes that is consistent with school policy and state or federal non-discrimination laws.
7. Educate all members of the athletics department community (including staff, student-athletes, and parents) about departmental and school policy regarding the participation of transgender student-athletes in athletics.
 8. Educate yourself about transgender identity, preferred terminology, and current scientific perspectives on the participation of transgender student-athletes on men's and women's sports teams.
 9. Work with athletics conferences of which your school is a member to adopt fair and effective policies governing the participation of transgender student-athletes.
 10. Recommend that your athletics conference sponsor educational programs for coaches and student-athletes on the inclusion of transgender student-athletes, preferred terminology, and understanding transgender identity.
 11. Recommend that professional associations for athletics administrators sponsor educational programs on the inclusion of transgender student-athletes, preferred terminology, understanding transgender identity, and adopting fair and effective policies.
 12. Educate all members of the sports information department about transgender identity, preferred terminology, department policies governing the participation of transgender student-athletes, and confidentiality requirements when discussing transgender student-athlete participation with the media.

Best Practices for Coaches

Best practices for coaches focus on acquiring knowledge about transgender student-athletes, understanding legal and ethical obligations, maintaining professional conduct, and ensuring that those with whom coaches work are also educated and aware of these issues.

1. Become knowledgeable about school non-discrimination and harassment policies that include gender identity and expression.
2. Become knowledgeable about departmental and school policy regarding the participation of transgender student-athletes in athletics.
3. If your department does not have a policy addressing the participation of transgender student-athletes, ask your athletic director to adopt one.
4. Educate student-athletes on your team about transgender identity, preferred terminology, and departmental/school policies regarding the participation of transgender student-athletes on sports teams.
5. Be prepared to talk with parents of student-athletes about transgender student-athletes' participation on school teams.
6. Use respectful and preferred language and terminology when discussing transgender student-athlete participation or interacting with a transgender student-athlete.
7. Anticipate and address transgender student-athlete access issues proactively and in accordance with departmental policy regarding locker room use, toilet and shower availability, hotel room assignment, uniforms and dress codes.
8. Recommend that coaches associations to which you belong adopt fair and effective policy statements addressing the participation of transgender student-athletes.
9. Recommend that coaches associations to which you belong sponsor educational programs addressing the participation of transgender student-athletes.
10. If you are aware of discriminatory or harassing behavior from opposing teams or spectators based on the perceived or actual gender identity or expression of a student-athlete, talk to the opposing coach and ask your director of athletics to talk with the opposing school's athletic director.
11. Respect the right to privacy of all student-athletes with respect to personal information (including whether a student is transgender) when discussing gender identity and expression and understand that all medical information must be kept confidential in accordance with applicable state, local, and federal privacy laws.

JENNIFER 'JAY' HARTSHORN

Track and Field Coach, Bates College

"I think it's important for us to be aware there are transgender student-athletes who want to compete, and with a little preparation, including transgender athletes isn't a big deal."



Best Practices for Student-Athletes

Best practices for student-athletes who have transgender teammates focus on respectful behavior, safety, and valuing diversity.

1. Use respectful and preferred language and terminology when discussing transgender student-athlete participation or interacting with a transgender teammate.
2. Become familiar with departmental and school policy governing the participation of transgender student-athletes in athletics.
3. Learn about school non-discrimination and harassment policies that include gender identity and expression.
4. Encourage other student-athletes to use respectful language when discussing transgender issues in sports or interacting with a transgender student-athlete.
5. Respect the right to privacy of all student-athletes with respect to personal information (including whether a student is transgender) when discussing gender identity and expression.
6. Ask your coach and director of athletics for team and departmental educational training concerning transgender student-athlete participation.
7. If taunting or harassment from spectators or opponents occurs during competition, take the approach that these actions are never acceptable for any reason including taunting or harassment based on gender identity or expression. Make your coaches aware of discriminatory or harassing behavior and ask them to arrange a meeting with the opposing school's director of athletics to address this behavior.
8. Ask your student-athlete advisory committee to plan an activity that focuses on the participation of transgender athletes in sports and frame the issue as one of equal opportunity in sports and fair treatment for all.

KYE ALLUMS, 2008-11, CLASS OF 2012

Women's NCAA Division I Basketball Student-Athlete

George Washington University

- Coming to the realization that I am a transgender man has been an incredible and mind-blowing experience. I had to overcome a lot of mental blocks to get there, but when I got to college and had my first taste of independence, I was finally able to come to terms with how I truly felt and what I needed.
- Growing up, I felt that I had to hide a part of my self from my family because of my mother's strong beliefs against homosexuality. That was really stressful for me. After I graduated from high school, I moved away from my family. That gave me the space to figure out who I am, which turned out to be the best thing that ever happened to me.
- When I first had the feeling of being uncomfortable when someone would call me a "lady," I did some research to try to figure out what that feeling could possibly mean. The first thing that I came across was the term "transsexual," which is when a person's sex doesn't match their gender identity and they have taken the steps possible, like surgery and hormones, so that their sex and gender will match. I read about many different terms and definitions and the one that I could relate to the most was "transgender," which just means that your gender and your body don't match.
- After I had a word to describe what I was feeling, I started getting extremely distressed when other people would refer to me as "she," or hearing people refer to me and a group of women as "ladies," or seeing the label "women's" outside my locker room. The feeling of having someone call you something that you know you are not is the most frustrating, uncomfortable feeling ever. During my first and second year of college, I kept hearing those terms applied to me and feeling worse and worse about it. A pain built up in my stomach and chest as if there were a ton of bricks weighing on me and my emotions. I felt trapped and miserable—I learned that the medical term is "dysphoric"—because I could not escape the way people saw me, because the body that I was born in did not match my gender.
- Even though I was feeling so bad, it was very hard for me to build up enough courage to say anything, because I was afraid that other people wouldn't accept me. After freshmen year I told my closest teammates that I identify as a guy. At first they laughed and thought it was a joke, and I couldn't bring myself to correct them. But over time, it got to the point where it was unbearable to keep living like this. For a while I felt like I had to choose between playing basketball or quitting to transition into the person I want to become. But I didn't want to walk out on playing a game that I love, and that has afforded me a full scholarship to pay for my education. So I finally began correcting my friends and teammates every time they would refer to me as "she" or "her."
- When my friends and close teammates saw the pain and sadness it caused me when people referred to me using female pronouns, they began to use male pronouns and to correct others for me. Their respect for what I wanted to be called meant the world to me and still does. Without their support I would not be playing basketball right now.
- My teammates' support made a huge difference, but of course they could not be with me all the time to correct everyone. I didn't feel comfortable correcting people on my own all the time, because I would have to explain the entire story of why I wanted to be called a guy. I felt depressed by the constant reminders that I was "Ms. Allums" every time I had to show my identification: at the doctor's office, the gym, the bank, restaurants, stores, and pretty much anywhere I went. So I decided to take the steps needed to get my name changed so I could have some kind of tangible proof that I was becoming the man I knew I was. That process took four months, and it was very difficult and time-consuming, but the day it was done I was the happiest guy alive. The happiness wore off the next day, though, when I heard my coaches still using female pronouns. I knew then that it wasn't enough to only tell my closest friends—I had to tell everyone that I talked to on a daily basis. Once I made the difficult decision to tell my coaches, the rest of my teammates, and my family, I received nothing but support from them, which has been irreplaceable. With the love and respect of the people around me, I no longer feel like I have to choose between being true to myself and staying in school playing the sport I love.

Best Practices for Athletics Staff Interacting With Media About Transgender Student-Athlete Issues

Best practices for interacting with the media focus on the importance of understanding basic information about transgender identity, preferred terminology, and respecting confidentiality of student-athletes.

1. The school or athletics department should provide training to all athletics staff who may interact with the media.
2. Respect the confidentiality of all student-athletes when discussing transgender issues with the media and understand that all medical information must be kept confidential in accordance with applicable state, local, and federal privacy laws.
3. Use appropriate language in media interviews or presentations and insist that this terminology be used in media reports on transgender issues in athletics.
4. Focus on the importance of providing equal opportunities for all students to participate in athletics.
5. Describe how departmental policies provide equal opportunities for all students to participate in athletics.

Additional Guidelines for Transgender Student-Athlete Inclusion

The following additional guidelines will assist colleges, athletics departments, coaches, teams, and student-athletes in creating an environment in which all student-athletes are safe and fairly treated.

Facilities Access

1. **Changing Areas, Toilets, Showers** — Transgender student-athletes should be able to use the locker room, shower, and toilet facilities in accordance with the student's gender identity. Every locker room should have some private, enclosed changing areas, showers, and toilets for use by any athlete who desires them. When requested by a transgender student-athlete, schools should provide private, separate changing, showering, and toilet facilities for the student's use, but transgender students should not be required to use separate facilities.
2. **Competition at Another School** — If a transgender student-athlete requires a particular accommodation to ensure access to appropriate changing, showering, or bathroom facilities, school leaders, athletic directors, and coaches, in consultation with the transgender student-athlete, should notify their counterparts at other schools prior to competitions to ensure that the student has access to facilities that are comfortable and safe. This notification should maintain the student's confidentiality. Under no circumstances should a student-athlete's identity as a transgender person be disclosed without the student's express permission.
3. **Hotel Rooms** — Transgender student-athletes generally should be assigned to share hotel rooms based on their gender identity, with a recognition that any student who needs extra privacy should be accommodated whenever possible.

Language

1. **Preferred Names** — In all cases, teammates, coaches and all others in the school should refer to transgender student-athletes by a student's preferred name.
2. **Pronouns** — Similarly, in all cases, pronoun references to transgender student-athletes should reflect the student's gender and pronoun preferences.

Dress Codes and Team Uniforms

1. **Dress Codes**—Transgender student-athletes should be permitted to dress consistently with their gender identities. That is, a female-to-male transgender athlete should be permitted to dress as a male. A male-to-female should be permitted to dress as a female.
For reasons unrelated to trans-inclusion, schools should evaluate the necessity of gendered dress codes

and recognize that they tend to marginalize a range of students who may not feel comfortable with them. Dress codes for athletic teams when traveling or during a game day at school should be gender-neutral. Instead of requiring a girls' or women's team to wear dresses or skirts, for example, ask that team members wear dresses or slacks that are clean, neat, well cared for and appropriately "dressy" for representing their school and team.

2. Uniforms — All team members should have access to uniforms that are appropriate for their sport and that they feel comfortable wearing. No student should be required to wear a gendered uniform that conflicts with the student's gender identity.

Education

1. Institutions — All members of the university community should receive information and education about transgender identities, institutional and conference non-discrimination policies, the use of preferred names and pronouns, and expectations for creating a respectful team and school climate for all students, including transgender and gender-variant students.
2. Athletics Conference Personnel — Athletics conference leaders should be educated about the need for policies governing the participation of transgender student-athletes, develop such policies, and ensure that all schools in the conference understand and adopt the policies.
3. Opposing Teams/Universities — Without violating a transgender student's confidentiality or privacy, school leaders, athletic directors, and coaches should communicate with their counterparts at other schools prior to competitions in which a transgender athlete is participating about expectations for treatment of transgender student-athletes on and off the field. This does not require "outing" or otherwise identifying a particular student-athlete as transgender, but rather establishing general expectations for the treatment of all student-athletes, including those who may be transgender.

Media

1. Training — All school or athletics representatives (conference leaders, sports information departments and personnel, school leaders, athletics administrators, team members, and coaches) who are authorized to speak with the media should receive information about appropriate terminology, use of names and pronouns, and school and athletics conference policies regarding the participation of transgender student-athletes on school sports teams.
2. Confidentiality — Protecting the privacy of transgender student-athletes must be a top priority for all athletics department and affiliated school personnel, particularly when in the presence of the media. All medical information shall be kept confidential in accordance with applicable state, local, and federal privacy laws.

Enforcement and non-Retaliation

1. Enforcement — Any member of an athletics department who has been found to have violated this policy by threatening to withhold athletic opportunity or harassing any student on the basis of their gender identity or expression, or by breaching medical confidentiality, will be subject to disciplinary action, up to and including discharge or expulsion from the school. The athletics department should take appropriate remedial action to correct the situation. Any member of the athletics department who becomes aware of conduct that violates this policy should report the conduct to the appropriate official such as the director of athletics.
2. Retaliation — Retaliation is specifically forbidden against anyone who complains about discrimination based on gender identity or expression, even if the person was in error. Athletics departments should take steps to prevent any retaliation against any person who makes such a complaint.

PART FOUR

APPENDIX A

Definitions and Terminology: A Word About Words

Language has immense power to shape our perceptions of other people. Using accurate language can help to overcome many of the misperceptions associated with gender and transgender people. Although the vocabulary related to transgender people continues to evolve, here are some working definitions and examples of frequently used (and misused) terms.

Biological/Anatomical Sex — The physical characteristics typically used to assign a person's gender at birth, such as chromosomes, hormones, internal and external genitalia and reproductive organs. Given the potential variation in all of these, biological sex must be seen as a spectrum or range of possibilities rather than a binary set of two options.

Gender — The complex relationship between physical traits and one's internal sense of self as male, female, both or neither as well as one's outward presentations and behaviors related to that perception. Biological sex and gender are different; gender is not inherently connected to one's physical anatomy

Gender Identity — One's inner concept of self as male or female or both or neither. One's gender identity can be the same or different than the gender assigned at birth. Most people become conscious of their gender identity between the ages 18 months and 3 years. Most people have a gender identity that matches their assigned gender at birth. For some, however, their gender identity is different from their assigned gender. Some of these individuals choose to live socially as the other gender and may also hormonally and/or surgically change their bodies to more fully express their gender identity. All people have gender identity, not just transgender people.

Gender Expression — Refers to the ways in which people externally communicate their gender identity to others through behavior, clothing, haircut, voice, and other forms of presentation. Gender expression also works the other way as people assign gender to others based on their appearance, mannerisms, and other gendered characteristics. Many transgender people seek to make their external appearance—their gender expression—congruent with their internal gender identity through clothing, pronouns, names, and, in some cases, hormones and surgical procedures. All people have gender expression, not just transgender people.

Transgender — Sometimes used as an 'umbrella term' to describe anyone whose identity or behavior falls outside of stereotypical gender norms. More narrowly defined, it refers to an individual whose gender identity does not match their assigned birth gender. Being transgender does not imply any specific sexual orientation (attraction to people of a specific gender.) Therefore, transgender people may additionally identify as straight, gay, lesbian, or bisexual.

Sexual Orientation — Term that refers to being romantically or sexually attracted to people of a specific gender. Our sexual orientation and our gender identity are separate, distinct parts of our overall identity. Although a child may not yet be aware of their sexual orientation, they usually have a strong sense of their gender identity.

Genderqueer — This term represents a blurring of the lines around gender identity and sexual orientation. Genderqueer individuals typically reject notions of static categories of gender and embrace a fluidity of gender identity and sexual orientation. This term is typically assigned an adult identifier and not used in reference to preadolescent children.

Gender Nonconforming/Gender Variant — Refers to individuals whose behaviors and/or interests fall outside what is considered typical for their assigned gender at birth. Someone who identifies as "gender nonconforming" is not necessarily transgender. To the contrary, many people who are not transgender do not conform to gender stereotypes in their appearance, clothing, physical characteristics, interests, or activities.

Gender Fluidity — Gender fluidity conveys a wider, more flexible range of gender expression, with interests and behaviors that may even change from day to day. Gender fluid individuals do not feel confined by restrictive boundaries of stereotypical expectations of girls or boys.

Intersex — An estimated one in 2,000 babies is born with an “intersex” condition or Disorders of Sex Development (DSD). People with intersex conditions (DSD) are born with physically mixed or atypical bodies with respect to sexual characteristics, i.e. chromosomes, internal reproductive organs, and genitalia. These characteristics may not be visible and individuals may not be aware of the condition. Having an intersex condition does not necessarily affect a person’s gender identity.

FTM (Female-to-Male)/Affirmed male/transboy — A child or adult who was assigned to the female gender at birth but has a male gender identity.

MTF (Male-to-Female)/Affirmed female/transgirl — A child or adult who was assigned to the male gender at birth but has a female gender identity.

Transition — The process by which a transgender individual lives consistently with his or her gender identity, and which may (but does not necessarily) include changing the person’s body through hormones and/or surgical procedures. Transition can occur in three ways: social transition through changes in clothing, hair-style, name and/or pronouns; hormonal transition through the use of medicines such as hormone “blockers” or cross hormones to promote gender-based body changes; and/or surgical transition in which an individual’s body is modified through the addition or removal of gender-related physical traits. Based on current medical knowledge and practice, genital reconstructive surgery is not required in order to transition. Most transgender people in the United States do not have genital reconstructive surgery.

Transsexual — An individual whose gender identity does not match the person’s sex at birth. This individual usually desires to physically alter their bodies surgically and/or hormonally. This physical transition is a complicated, multi-step process that may take years and may include, but is not limited to, cross-gender hormone therapy and a variety of surgical procedures. The precise treatments required vary from person to person.

Transphobia — Fear or hatred of transgender people. Transphobia is manifested in a number of ways, including violence, harassment, and discrimination.

PART FOUR

APPENDIX B

Resources On Transgender Issues

Print Resources (Books, Articles, Reports)

AthletesCAN, the Canadian Centre for Ethics in Sport, and the Canadian Association for the Advancement of Women and Sport and Physical Activity, *Promising Practices: Working With Transitioned/Transitioning Athletes in Sport (2009)*.

Including Transitioning and Transitioned Athletes in Sport — Issues, Facts and Perspectives - Summary. Brenda Wagman (February 12, 2009). Available online at [http://www.caaws.ca/e/resources/pdfs/Summary_Transition_Discussion_Paper_FINAL1%20\(2\).pdf](http://www.caaws.ca/e/resources/pdfs/Summary_Transition_Discussion_Paper_FINAL1%20(2).pdf).

Including Transitioning and Transitioned Athletes in Sport - Issues, Facts and Perspectives — DISCUSSION PAPER. Brenda Wagman (February 12, 2009). Available online at http://www.caaws.ca/e/resources/pdfs/Wagman_discussion_paper_THE_FINAL.pdf.

Working with Transitioning or Transitioned Athletes in Sport - Emerging Themes. Rachel Corbett (May 26, 2009). Available online at [http://www.caaws.ca/e/resources/pdfs/Wamsley_lit_review\(2\).pdf](http://www.caaws.ca/e/resources/pdfs/Wamsley_lit_review(2).pdf).

Social Science Literature on Sport and Transitioning/Transitioned Athletes - LITERATURE REVIEW. Kevin B. Wamsley (February 2008). Available online at [http://www.caaws.ca/e/resources/pdfs/Wamsley_lit_review\(2\).pdf](http://www.caaws.ca/e/resources/pdfs/Wamsley_lit_review(2).pdf).

Do Transitioned Athletes Compete at an Advantage or Disadvantage - LITERATURE REVIEW. Michaela C. Devries (May 18, 2008). Available online at [http://http.caaws.ca/e/resources/pdfs/Devries_lit_review\(2\).pdf](http://http.caaws.ca/e/resources/pdfs/Devries_lit_review(2).pdf).

Brill, Stephanie, and Rachel Pepper, *The Transgender Child: a Handbook for Families and Professionals* (San Francisco: Cleis Press, 2008).

California Safe Schools Coalition, *Model School District Policy regarding Transgender and Gender Nonconforming Students* (2009). Available online at <http://www.casafeschools.org/csscmodelpolicy1209.pdf>.

Currah, Paisley, Richard M. Juang and Shannon Price Minter, *Transgender Rights* (Minneapolis, MN: University of Minnesota Press, 2006).

Gay Straight Alliance Network, the Transgender Law Center and the National Center for Lesbian Rights, *Beyond the Binary: A Tool Kit for Gender Activism in Schools* (2004). Available online at http://transgenderlawcenter.org/pdf/beyond_the_binary.pdf.

Goorin, Louis, and Mathijs Bunck, "Transsexuals and Competitive Sports," *European Journal of Endocrinology* 151 (2004): 425-429. Available online at <http://www.eje.org/cgi/reprint/151/4/425.pdf>.

Griffin, Pat, "Inclusion of Transgender Athletes on Sports Teams," Women's Sports Foundation (2007). Available online at <http://www.womenssportsfoundation.org/Content/Articles/Issues/Homophobia/I/Inclusion-of-Transgender-Athletes-on-Sports-Teams.aspx>.

Greytak, Emily A., Joseph G. Kosciw, and Elizabeth M. Diaz, Gay Lesbian Straight Education Network, *Harsh Realities: The Experiences of Transgender Youth in our Nation's Schools* (2009).

Lambda Legal, *Bending the Mold: An Action Kit for Transgender Students* (2009). Available online at <http://www.lambdalegal.org/publications/bending-the-mold/order-bending-the-mold.html>.

Movement Advancement Project, *Advancing Transgender Equality: A Guide for LGBT Organizations and Funders* (2009). Available online at <http://www.lgbtmap.org/advancing-transgender-equality.html>.

National Center for Transgender Equality, *Understanding Transgender: Frequently Asked Questions about Transgender People* (2009). Available online at http://transequality.org/Resources/NCTE_UnderstandingTrans.pdf.

Steinbach, Paul, "Change Candidates," *Athletic Business* (August 2008). Available online at <http://www.athleticbusiness.com/articles/article.aspx?articleid=1817&zoneid=3>.

Sykes, Heather, "Transsexual and Transgender Policies in Sport." *Women in Sport and Physical Activity Journal* 15:1 (2006): 3-13.

Transgender Law and Policy Institute, *Guidelines for Creating Policies for Transgender Children in Recreational Sports* (2009). Available online at http://www.transgenderlaw.org/resources/TLPI_GuidelinesforCreatingPoliciesforTransChildreninRecSports.pdf.

Washington Interscholastic Activities Association Gender Identity Policy
Jim Meyerhoff, Assistant Executive Director
435 main Avenue South, Renton, WA 98057
Office Phone: 425-282-5234
Office E-mail: jmeyerho@wiaa.com

Women's Sports Foundation, *Participation of Transgender Athletes in Women's Sports: A Women's Sports Foundation Position Paper* (2008). Available online at <http://www.womenssportsfoundation.org/Content/Articles/Issues/Homophobia/T/Participation-of-Transgender-Athletes.aspx>.

Organizations/Websites

American Bar Association (ABA) — The ABA opposes discrimination against those who are transgender or gender non-conforming. In 2006, the ABA House of Delegates adopted a recommendation that all federal, state, local and territorial governments enact legislation prohibiting discrimination on the basis of actual or perceived gender identity or expression, in employment, housing and public accommodations. For more information visit www.abanet.org/leadership/2006/annual/dailyjournal/hundredtwentytwob.doc.

Advocates for Informed Choice — Legal advocacy organization dedicated to promoting the civil rights of children with intersex conditions or disorders of sex development. www.aiclegal.org

American Civil Liberties Union (ACLU) — The ACLU Lesbian, Gay, Bisexual, Transgender Project fights discrimination and moves public opinion through the courts, legislatures and public education across five issue areas: Relationships, Youth & Schools, Parenting, Gender Identity and Expression and Discrimination in Employment, Housing and other areas. www.aclu.org/lgbt-rights

American Medical Association (AMA) — The AMA is a medical professional association whose mission is to promote the art and science of medicine and the betterment of public health. The AMA has adopted a number of policies supporting the right of transgender and gender-non-conforming persons to be free from discrimination on the basis of their gender identity or expression. www.ama-assn.org

American Psychological Association (APA) — In 2008, the APA Council of Representatives adopted a policy statement supporting “the passage of laws and policies protecting the rights, legal benefits, and privileges of people of all gender identities and expressions;” and as well as supporting “efforts to provide safe and secure educational environments, at all levels of education.” www.apa.org/about/governance/council/policy/transgender.aspx

Gay and Lesbian Advocates and Defenders Transgender Rights Project — Through the Transgender Rights Project (TRP), Gay and Lesbian Advocates and Defenders puts litigation, legislative, and educational assets to work in a focused way to establish clear legal protections for the transgender community. www.glad.org

Gay, Lesbian and Straight Education Network — The Gay, Lesbian and Straight Education Network strives to assure that each member of every school community is valued and respected regardless of sexual orientation or gender identity/expression. www.glsen.org

Gender Spectrum — Gender Spectrum provides education, training and support to help create a gender sensitive and inclusive environment for all children and teens. www.genderspectrum.org

It Takes A Team! Education Campaign for LGBT Issues in Sport — A Women’s Sports Foundation initiative, It Takes A Team! Education Campaign for Lesbian, Gay, Bisexual, and Transgender Issues in Sport is an education project focused on eliminating homophobia as a barrier to all women and men participating in sport. www.ittakesateam.org

Lambda Legal — Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work. www.lambdalegal.org

National Center for Lesbian Rights — NCLR is a national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. www.nclrights.org

National Center for Transgender Equality — The National Center for Transgender Equality is a social justice organization dedicated to advancing the equality of transgender people through advocacy, collaboration and empowerment. www.transequality.org

NCAA Office of Inclusion — www.ncaa.org/lgbt

National Gay and Lesbian Task Force — The mission of the National Gay and Lesbian Task Force is to build the grassroots power of the LGBT community by training activists, equipping state and local organizations with the skills needed to organize broad-based campaigns to defeat anti-LGBT referenda and advance pro-LGBT legislation, and building the organizational capacity of the movement. www.thetaskforce.org

Parents and Friends of Lesbians and Gays-TNET — The purpose of this special affiliate of PFLAG is to promote the health and well-being of transgender persons, their families and friends through: support, to cope with an adverse society; education, to enlighten an ill-informed public; and advocacy, to end discrimination and to secure equal civil rights. PFLAG TNET focuses on support for transgender people and their parents,

families, and friends; education on transgender facts and issues; and advocacy for equal rights for the transgender community at local and national levels. www.pflag.org/tnet

Transgender Law Center — Transgender Law Center (TLC) connects transgender people and their families to culturally competent legal services, increases acceptance and enforcement of laws and policies that support California's transgender communities, and works to change laws and systems that fail to incorporate the needs and experiences of transgender people. www.transgenderlawcenter.org

Transgender Law and Policy Institute — Transgender Law and Policy Institute (TLPI) is a non-profit organization dedicated to engaging in effective advocacy for transgender people in our society. The TLPI brings experts and advocates together to work on law and policy initiatives designed to advance transgender equality. www.transgenderlaw.org

World Professional Association for Transgender Health (WPATH) — WPATH is an international, interdisciplinary organization of professionals from fields of psychiatry, endocrinology, surgery, law, psychology, sociology, and counseling. WPATH publishes the internationally recognized Standards of Care for Gender Identity Disorders, an evolving consensus on best practice in the provision of medical treatments for individuals with Gender Identity Disorder. www.wpath.org

VIDEOS

Straightlaced: How Gender's Got Us All Tied Up

Straightlaced: How Gender's Got Us All Tied Up takes a powerful and intimate look at how popular pressures around gender and sexuality are shaping the lives of American teens. The film proudly showcases the diverse and unscripted voices of more than 50 high school students from a variety of different communities, all of whom speak with breathtaking honesty, insight, and humor about gender roles and their struggles to be who they really are. More information on the film is available at www.groundspark.org/our-films-and-campaigns/straightlaced

Transgender Student-Athlete

A 30-minute video presentation sponsored by the NCAA and conducted by Dr. Betsy Crane, Widener University, http://s3.amazonaws.com/ncaa/web_video/diversity_inclusion/transgenderSA.html. Dr. Crane presents a sex educator's expertise on gender awareness and diversity, and provides definition to assist the viewer in understanding best practices for including transgender students in athletics participation.

PART FOUR:

APPENDIX C

Legal Status of Transgender People

Federal, state, and local laws prohibit discrimination on the basis of gender identity/expression. In addition, many K-12 and collegiate educational institutions have adopted non-discrimination policies that include gender identity/expression. Each school or school district should be knowledgeable about specific legal requirements that apply and make sure that all school athletic staff understand their responsibilities to abide by and enforce these laws.

Federal Protections

Title IX of the Education Amendments of 1972 — The purpose of Title IX is to address sex discrimination in schools. This federal law also addresses discrimination or harassment in schools based on gender stereotypes.⁹ As described by the Department of Education's Office for Civil Rights guidance in 2010, when gender non-conforming or transgender students are targeted on the basis of their gender expression, Title IX may provide the basis for legal recourse.¹⁰ Schools are responsible for developing educational programs, preventative policy and grievance procedures to address sexual harassment, bullying and assault.

EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION — The Equal Protection clause states that "no state shall ... deny to any person within its jurisdiction the equal protection of the laws."¹¹ Several successful cases involving allegations of harassment and discrimination against lesbian, gay, bisexual, and transgender students and staff in public schools have been based on the Equal Protection clause.¹²

The Employment Non-Discrimination Act (ENDA) — ENDA is a bill that was introduced in the 111th U.S. Congress in 2009.¹³ If passed into law, ENDA would provide basic protections against workplace discrimination on the basis of sexual orientation or gender identity. The bill is closely modeled on existing civil rights laws, including Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act. ENDA prohibits public and private employers from using an individual's sexual orientation or gender identity as the basis for employment decisions, such as hiring, firing, promotion or compensation. ENDA also applies to federal, state, and local government employees.

The Matthew Shepard and James byrd, Jr. Hate Crimes Prevention Act (HCPA) — The HCPA gives the Department of Justice (DOJ) the power to investigate and prosecute bias-motivated violence by providing the DOJ with jurisdiction over crimes of violence where a perpetrator has selected a victim because of the person's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability.¹⁴ Furthermore, the HCPA requires the Federal Bureau of Investigation to track statistics on hate crimes.¹⁵

State of Non-Discrimination Law

As of July 2010, 13 states and the District of Columbia¹⁶ have enacted non-discrimination laws prohibiting discrimination on the basis of sexual orientation and gender identity or expression: California,¹⁷ Colorado,¹⁸ Hawaii,¹⁹ Illinois,²⁰ Iowa,²¹ Maine²², Minnesota,²³ New Jersey,²⁴ New Mexico,²⁵ Oregon,²⁶ Rhode Island,²⁷ Vermont,²⁸ and Washington.²⁹

Eight additional states have enacted laws prohibiting discrimination based on sexual orientation only: Connecticut, Delaware, Maryland, Massachusetts, Nevada, New Hampshire, New York, and Wisconsin.³⁰

Additionally, courts and administrative bodies in seven states have interpreted state laws against sex discrimination to prohibit discrimination against transgender and gender nonconforming people: California, Connecticut, Florida, Massachusetts, New Jersey, New York, and Pennsylvania. Courts and administrative bodies in seven states have also held that transgender people are protected by state laws prohibiting discrimina-

tion based on disability or medical condition: Florida, Illinois, Massachusetts, New Hampshire, New Jersey, New York, and Washington.³¹

State Student Rights Laws

In addition to these federal protections, as of July 2010, twelve states and the District of Columbia³² have enacted laws protecting students in schools from discrimination or harassment on the basis of sexual orientation or gender identity: California, Colorado, Illinois, Iowa, Maine, Maryland, Minnesota, New Jersey, North Carolina, Oregon, Vermont, and Washington.³³ Four additional states offer protections on the basis of sexual orientation only: Connecticut, Massachusetts, New York, and Wisconsin.³⁴

Individual School or School District Non-Discrimination Policies

For a list of colleges and universities that have enacted non-discrimination policies that include gender identity/expression, refer to the following list created by the Transgender Law and Policy Institute: www.transgenderlaw.org/college/index.htm#policies

For a list of K-12 school districts that have enacted non-discrimination policies that include gender identity/expression, refer to the following list created by the Transgender Law and Policy Institute: www.transgenderlaw.org/college/index.htm#schools **American Bar Association**

The American Bar Association (ABA) opposes discrimination against those who are transgender or gender non-conforming. The ABA is a national organization of lawyers, law students and judges, and is the largest voluntary professional association in the world, with more than 400,000 members. The control and administration of the ABA is vested in the House of Delegates, which is the policy-making body of the Association. In 2006, the ABA House of Delegates adopted a recommendation that all federal, state, local, and territorial governments enact legislation prohibiting discrimination on the basis of actual or perceived gender identity or expression, in employment, housing, and public accommodations.³⁵

ACKNOWLEDGEMENTS

The NCAA resource accepted input from the report, *“On the Team: Equal Opportunity for Transgender Student Athletes”* published in October, 2010. In October 2009 the National Center for Lesbian Rights and It Takes A Team!, an Initiative of the Women’s Sports Foundation, co-sponsored a national think tank entitled *“Equal Opportunities for Transgender Student-Athletes.”* Think Tank participants included leaders from the NCAA, the National High School Federation, transgender student-athletes, and experts on transgender issues from a range of disciplines—law, medicine, advocacy, and athletics. The NCAA also would like to acknowledge and thank George Washington University and Kyle Allums for their efforts in educating and raising awareness of transgender student-athlete participation.

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Mike Colbrese

Executive Director

Washington Interscholastic Activities Association
Renton, Washington

Joni Comstock

Senior Vice-President for Championships

NCAA Senior Woman Administrator

Indianapolis, Indiana

Morgan N. Dickens

Student Athlete

Basketball, Rugby Cornell University 2008

Ithaca College, M.S. 2009

Ithaca, New York

Sarah Dunne, Esq.

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ACLU of Washington Foundation
Seattle, Washington

Keelin Godsey

Student Athlete

Track and Field: Hammer Throw
Former Rugby
Bates College 2006
Northeastern College 2010

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FOOTNOTES

¹ Gender Spectrum, “A Word About Words,” available online

at http://www.genderspectrum.org/images/stories/Resources/Family/A_Word_About_Words.pdf.

² Intersex Society of North America, “What’s the difference between being transgender or transsexual and having an intersex condition?”

Available online at <http://www.isna.org/faq/transgender>.

³ Advocates for Informed Choice, General Brochure, available online at <http://aiclegal.files.wordpress.com/2010/02/aic-brochure.pdf>.

⁴ In addition, what counts as a competitive advantage may shift dramatically depending on the sport. What is an advantage in one context may be a disadvantage in another. For example, factors such as height, weight, reaction time, and proportion of fast twitch muscle fibers all affect competitive advantage depending on the sport. A female volleyball player may be very tall, and yet few people would consider that to be an unfair competitive advantage in her sport. Similarly, a male swimmer may have a naturally high hemoglobin count enabling him to take in more oxygen, but he is not barred from swimming for that reason. Sarah Teetzel, “On Transgendered Athletes, Fairness and Doping: An International Challenge,” *Sport in Society: cultures, commerce, media, Politics*, 1743-0445, Volume 9, Issue 2 (2006) Pages 227 – 251.

⁵ Erin Buzuvis, “Caster Semenya and the myth of the Level Playing Field.” Social Science research network (2009). Available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1521674.

⁶ Joe Leigh Simpson et al, “Gender Verification in the Olympics,” *JAmA* (2000); 284: 1568-1569; see also *Sex Typing for Sport*, supra note 8.

⁷ Kirk Mango, “The Benefits of Competitive Athletic Sports Participation in Today’s Sports Climate,” *Chicago Now* (February 16, 2010). Available online at <http://www.chicagonow.com/blogs/athletes-sports-experience/2010/02/the-benefits-of-competitive-athletic-sports-participation-in-todays-sports-climate.html>.

⁸ Recent research indicates that most salient physical changes likely to affect athletic performance occur during the first year of hormone treatment making a longer waiting period unnecessary. Goorin, Louis, and Mathijs Bunck, “Transsexuals and Competitive Sports,” *European Journal of Endocrinology* 151 (2004): 425-429. Available online at <http://www.eje.org/cgi/reprint/151/4/425.pdf>.

⁹ See *Snelling v. Fall Mt. Regional Sch. Dist.*, 2001 D.N.H. 057, 2001 WL 276975 (D.N.H. 2001); *Ricco v. New Haven Bd. of Educ.*, 467 F.Supp.2d 219 (D. Conn. 2006); *Doe v. Southeastern Greene Sch. Dist.*, 2006 U.S. Dist LEXIS 12790 (W.D. Pa. 2006).

¹⁰ See 20 U.S.C.A. § 1681 et seq.; Office of Civil Rights, Revised Sexual Harassment Guidance, § III (Jan. 2001) (“Though beyond the scope of this guidance, gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, but not involving conduct of a sexual nature, is also a form of sex discrimination to which a school must respond[.]”).

¹¹ U.S. Const. amend. XIV, § 1.

¹² See, e.g., *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130 (9th Dist. 2003) (equal protection required school district to enforce policies “in cases of peer harassment of homosexual and bisexual students in the same way that they enforce those policies in cases of peer harassment of heterosexual students”).

¹³ H.R. 3017, 110th Cong. (2010).

¹⁴ 18 U.S.C.A. § 249.

¹⁵ 28 U.S.C.A. § 534.

¹⁶ D.C. Code §§ 2-1401.01 et seq. (employment, housing, public accommodation, education, motor vehicle insurance, access to government facilities and programs), 4-754.21(10) (access to services for homeless persons), 16-914 (custody proceedings), 31-2231-11(c) & 31-2231.13(d) (insurance), 31-1603 (determination by insurance companies of likelihood of developing AIDS), 43-1507 (companies providing electricity).

¹⁷ Cal. Penal Code § 422.56, Cal. Gov't Code § 12926 et seq. (non-discrimination in employment and housing), Cal. Civ. Code § 51 (public accommodations).

¹⁸ Colo. Rev. Stat. Ann. §§ 24-34-401 et seq. (non-discrimination in public accommodation, housing and employment), 22-32-109 (non-discrimination in education).

¹⁹ Haw. Rev. Stat. §§ 489-2 (non-discrimination in public accommodations), 515-3 (real property transactions).

²⁰ 775 Ill. Comp. Stat. 5/2-102 (non-discrimination in employment, public accommodations, real estate transactions, and access to financial credit).

²¹ Iowa Code Ann. § 216.1 et seq. (non-discrimination in public accommodation, employment, housing, credit, and education).

²² Me. Rev. Stat. Ann. tit. 5, § 4552 et seq. (non-discrimination in employment, housing, public accommodation, credit and education).

²³ Minn. Stat. Ann. § 363A.03 et seq. (non-discrimination in public accommodation, housing, employment, credit, and education).

²⁴ N.J. Stat. Ann. §§ 10:5-4 (non-discrimination in employment, housing, and public accommodation), 18A:37-14 (education).

²⁵ N.M. Stat. Ann. § 28-1-2 et seq., (non-discrimination in public accommodation, employment, housing and credit).

²⁶ Or. Rev. Stat § 174.100(6), Or. Rev. Stat. §§ 659A.003 et seq. (non-discrimination in public accommodation, employment, and housing), 101.115(3) (non-discrimination in retirement communities), 179.750(2) (state institutions), 240.306(1) (state employees), 418.648(10) (selection of foster parents), , 430.550 (drug abuse diversion programs), 443.739(19) (adult foster care), 458.505(4)(h) (community service programs hosted by a community action agency), 659.850(2) (education), 744.382(4) (making life settlement contracts), 10.030(1) (jury service).

²⁷ R.I. Gen. Laws § 11-24-2 (public accommodation), R.I. Gen. Laws 1956 §§ 28-5-7 (employment), 28-5.1-4(a) (state employees), 34-37-4 (housing), 34-37-5.4 (residential real estate transactions).

²⁸ Vt. Stat. Ann. tit. 3, §§ 961(6) (state employees), 963 (state employee organizations), 1026(6) (judiciary employees), 1028 (judiciary employee organizations), 1621 (union membership); Vt. Stat. Ann. tit. 8, §§ 4724(7) (B) & (C) (insurance), 10403 (credit cards, loans, mortgages, and commercial loans); Vt. Stat. Ann. tit. 9, §§ 2362 (motor vehicle retail installment contracts), 2410 (retail installment contracts), 2488 (agricultural finance leases), 4502 (public accommodations), 4503 (housing); Vt. Stat. Ann. tit. 16, §§ 11, 565 (education); Vt. Stat. Ann. tit. 21, §§ 495(a) (employment), 1726 (municipal employees).

²⁹ Wash. Rev. Code §§ 48.30-300 (insurance), 49.60.175 (credit), 49.60.180 (employment), 49.60.190 (labor unions), 49.60.215 (public accommodation), 49.60.222 (housing).

³⁰ See Conn. Gen. Stat. § 46a-81a et seq. (employment, public accommodations, housing, credit); Del Code Ann. tit. 6, §§ 4500 et seq. (public accommodation), 4601 et seq. (housing), Del. Code Ann. tit. 19, § 710 (employment); Md. Code Ann., State Gov't §§ 20-304 (public accommodation), 20-705 (housing), 20-606 (employment); Mass. Gen. Laws Ch. 151B § 1 et seq. (generally), Mass. Gen. Laws Ch. 272 §§ 92A, 98 (public accommodation); Nev. Rev. Stat. §§ 613.330 (employment), 651.070 (public accommodation); N.H. Rev. Stat. Ann. §§ 354-A:7 (employment), 354A-10 (housing), 354-A:17 (public accommodations); N.Y. Exec. Law § 296 (employment, public accommodations, housing, credit), N.Y. Civ. Rights § 40-c (public accommodations); Wis. Stat. §§ 106.50 (housing), 106.52 (public accommodation).

³¹ For a comprehensive discussion of state court and administrative decisions applying sex and disability discrimination to transgender plaintiffs, see www.nclrights.org/site/DocServer/state_cases091004.pdf?docID=1203.

³² D.C. Code 1981 §§ 2-1401.02 & 2-1402.41.

³³ See Cal. Educ. Code §§ 220, 210.7, 212.6, & 51500; Colo. Rev. Stat. §§ 2-4-401(13.5), 22-32-109(II)(I), 12-59-106(1)(s), 22-30.5-104(3), 22-30.5-507(3), & 22-38-104(1)(d); 775 Ill. Comp. Stat. Ann. 5/1-102(A), 775 Ill. Comp. Stat. Ann. 5/1-103(O-1), (Q), & 775 Ill. Comp. Stat. Ann. 5/5-101(A)(11); Iowa Code §§ 216.9, 280.28; Me. Rev. Stat. Ann. tit. 5, §§ 4552, 4553(9-C), 4601, & 4602(4); Md. Code Ann Educ. §§ 7-424; Minn. Stat. §§ 363A.03 subd. 44, 363A.13; N.J. Stat. Ann. §§ 10:5-5, 10:5-12(f)(1), & 18A:37-14; N.C. Gen. Stat. §§ 115C-407.15, 115C-407.16; Or. Rev. Stat. §§ 659.850, 174.100, 339.351(d)(3), & 338.125; Vt. Stat. Ann. tit. 16, §§ 1,11 & 565; Wash Rev. Code §§ 49.60.030 & 49.60.040(2), (26).

³⁴ Conn. Gen. Stat. § 10-15c; Mass. Gen. Laws. Ch. 76, § 5; N.Y. Exec. Law §§ 291(2), 292(9) & (27) & 296(2); Wis. Stat. § 118.13.

³⁵ See A.B.A. Recommendation 122B (adopted August 7-8, 2006) available online at <http://www.abanet.org/leadership/2006/annual/dailyjournal/hundredtwentywob.doc> (recognizing that “[t]ransgender people are disproportionately likely to face discrimination” and that “many individuals who are not transgender continue to suffer discrimination . . . because they do not comply with gendered stereotypes.”).







Bernie Dolan <bernie.dolan@wvssac.org>

Media question on transgender bill in the WV Legislature

messages

From: Raby, John <jraby@ap.org>
To: "bernie.dolan@wvssac.org" <bernie.dolan@wvssac.org>

Wed, Mar 24, 2021 at 1:34 PM

Hi Bernie,

This is John Raby with The Associated Press. I hope you're doing well.

I'm writing a story on the transgender athlete bill (HB3293) now moving through the West Virginia Legislature.

I would like to know:

- _ Are there any transgender athletes currently competing in high school sports in West Virginia?
- _ Do you know whether any transgender athletes have competed in high school sports in previous years?
- _ What does the WVSSAC think of the bill?

Thank you!

Sincerely,

John Raby

The Associated Press

Charleston

304-550-6800



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WVSSAC000276

Wed, Mar 24, 2021 at 1:57 PM

From: Bernie Dolan <bernie.dolan@wvssac.org>
To: "Raby, John" <jraby@ap.org>

John,

1. We are unaware if there are any Transgender students participating in our activities. Our school indicate the gender on the eligibility list. We do not have access to the school records.
2. I am unaware of any transgender athletes participating. If it was a girl to a boy, it may have gone under the radar.
3. The WVSSAC has supported Title IX for the last 50 years. This has increased the quantity and quality of opportunities for girls in our schools. Title IX has non discrimination language that we support.

Bernie
(Quoted text hidden)

—
Bernie Dolan
Executive Director
WVSSAC
2875 Staunton Turnpike
Parkersburg, WV 26104
304-485-5494

Wed, Mar 24, 2021 at 2:12 PM

From: Raby, John <jraby@ap.org>
To: Bernie Dolan <bernie.dolan@wvssac.org>

Thank you, sir.

From: Bernie Dolan <bernie.dolan@wvssac.org>
Sent: Wednesday, March 24, 2021 1:57 PM
To: Raby, John <jraby@ap.org>
Subject: Re: Media question on transgender bill in the WV Legislature

[EXTERNAL]

(Quoted text hidden)
(Quoted text hidden)

WVSSAC000277



From: Bernie Dolan <bernie.dolan@wvssac.org>
Sent: 4/8/2021 12:56:11 PM
To: Melissa White
Subject: Fwd: Transgender Policy

This is a board policy but doesn't appear anywhere in our rules.
It has not been tried in court

Sent from my iPhone

Begin forwarded message:

From: Stephen Baldwin <Stephen.Baldwin@wvsenate.gov>
Date: March 31, 2021 at 3:02:01 PM EDT
To: Bernie Dolan <bernie.dolan@wvssac.org>
Subject: Re: Transgender Policy

Thx again sir

Get [Outlook](#) for iOS

From: Bernie Dolan <bernie.dolan@wvssac.org>
Sent: Wednesday, March 31, 2021 1:47:12 PM
To: Stephen Baldwin <Stephen.Baldwin@wvsenate.gov>
Subject: Fwd: Transgender Policy

Stephen,

I am in Wheeling tomorrow. I have attached our Board of Director's policy.
It has not been challenged by a parent or in court.

Bernie

--
Bernie Dolan
Executive Director
WVSSAC
2875 Staunton Turnpike
Parkersburg, WV 26104
304-485-5494

BPJ_00399



Bernie Dolan <bernie.dolan@wvssac.org>

Gazette-Mail reporter seeks transgender policy

messages

ryan Quinn <ryan.quinn@hdmediallc.com>

Thu, Apr 8, 2021 at 3:08 PM

o: "bernie.dolan@wvssac.org" <bernie.dolan@wvssac.org>, "wvssac@wvssac.org" <wvssac@wvssac.org>

Good afternoon. Could you please email me the SSAC transgender policy (or policies if there are multiple) today and explain to me how I should view it – as an "internal policy" that really has no effect, as a recommendation but not an actual rule, as an actual rule, etc.?

I'm confused on how to view it because senators debated on the floor today about whether it's merely some internal policy that doesn't actually have effect or something. You can reach me on the cell below.

Thank you,

Ryan Quinn
Education reporter
Charleston Gazette-Mail
o: 304-348-1254
c: 843-729-4990

If you don't reach me immediately on the office line, just call the cell.

[facebook.com/ryanedwinquinn](https://www.facebook.com/ryanedwinquinn)

Twitter: @RyanEQuinn

You can also email ryan.quinn@protonmail.com



ryan Quinn <ryan.quinn@hdmediallc.com>

Fri, Apr 9, 2021 at 1:12 PM

o: "bernie.dolan@wvssac.org" <bernie.dolan@wvssac.org>, "wvssac@wvssac.org" <wvssac@wvssac.org>

Could you please provide this information today?

Ryan Quinn
Education reporter
Charleston Gazette-Mail
o: 304-348-1254
c: 843-729-4990

If you don't reach me immediately on the office line, just call the cell.

[facebook.com/ryanedwinquinn](https://www.facebook.com/ryanedwinquinn)

Twitter: @RyanEQuinn

You can also email ryan.quinn@protonmail.com

WVSSAC000278

Sent: Thursday, April 8, 2021 3:08 PM

To: bernie.dolan@wvssac.org <bernie.dolan@wvssac.org>; wvssac@wvssac.org <wvssac@wvssac.org>

Subject: Gazette-Mail reporter seeks transgender policy

Good afternoon. Could you please email me the SSAC transgender policy (or policies if there are multiple) today and explain to me how I should view it -- as an "internal policy" that really has no effect, as a recommendation but not an actual rule, as an actual rule, etc.?

I'm confused on how to view it because senators debated on the floor today about whether it's merely some internal policy that doesn't actually have effect or something. You can reach me on the cell below.

Thank you,

Ryan Quinn

Education reporter

Charleston Gazette-Mail

o: 304-348-1254

c: 843-729-4990

If you don't reach me immediately on the office line, just call the cell.

[facebook.com/ryanedwinquinn](https://www.facebook.com/ryanedwinquinn)

Twitter: @RyanEQuinn

You can also email ryan.quinn@protonmail.com



Bernie Dolan <bernie.dolan@wvssac.org>

Federal lawsuit on new transgender athletes law

messages

Brad McElhinny <Brad.McElhinny@wvradio.com>
to: Bernie Dolan <bernie.dolan@wvssac.org>

Wed, May 26, 2021 at 3:54 P

Hi Bernie,

Just checking in to see if the SSAC has any comment about this federal lawsuit challenging the new transgender athletes law.



[See You in Court: ACLU-WV Joins Suit Challenging Trans Student Athlete Ban | ACLU West Virginia \(acluwv.org\)](#)

Bernie Dolan <bernie.dolan@wvssac.org>
to: Brad McElhinny <Brad.McElhinny@wvradio.com>

Wed, May 26, 2021 at 4:01 P

Not at this time.
I can only see it from my phone.

I'd better wait

Bernie

Sent from my iPhone

On May 26, 2021, at 3:54 PM, Brad McElhinny <Brad.McElhinny@wvradio.com> wrote:

[Quoted text hidden]

Brad McElhinny <Brad.McElhinny@wvradio.com>
to: Bernie Dolan <bernie.dolan@wvssac.org>

Wed, May 26, 2021 at 4:02 P

Makes sense.

WVSSAC000280

Brad

[Quoted text hidden]