

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

RILEY GAINES, REKA GYORGY, )  
KYLEE ALONS, KAITLYNN WHEELER, )  
AINSLEY ERZEN, ELLIE EADES, )  
LILY MULLENS, SUSANNA PRICE, )  
CARTER SATTERFIELD, KATE )  
PEARSON, KATIE BLANKINSHIP, )  
JULIANNA MORROW, SWIMMER A, )  
SWIMMER B, TRACK ATHLETE A, )  
AND VOLLEYBALL ATHLETE A, )

Plaintiffs, )

v. )

NATIONAL COLLEGIATE ATHLETIC )  
ASSOCIATION, UNIV. SYSTEM OF )  
GEORGIA, GEORGIA TECH, UNIV. OF )  
GEORGIA, UNIV. OF N. GEORGIA, ÁNGEL )  
CABRERA, Georgia Tech President in his )  
individual and official capacities, MEMBERS OF )  
THE BOARD OF REGENTS OF THE UNIV. )  
SYSTEM OF GEORGIA, in their individual and )  
official capacities: DOUG ALDRIDGE, TOM )  
BRADBURY, RICHARD “TIM” EVANS, W. )  
ALLEN GUDENRATH, ERIN HAMES, )  
BÁRBARA RIVERA HOLMES, SAMUEL D. )  
HOLMES, C. THOMAS HOPKINS, JR., MD, )  
JAMES M. HULL, CADE JOINER, PATRICK C. )  
JONES, C. EVERETT KENNEDY, III, SARAH- )  
ELIZABETH LANGFORD, RACHEL B. )  
LITTLE, LOWERY HOUSTON MAY, JOSE R. )  
PEREZ, NEIL L. PRUITT, JR., HAROLD )  
REYNOLDS, SACHIN SHAIENDRA, T. )  
DALLAS SMITH, MAT SWIFT, JAMES K. )  
SYFAN, III, DON L. WATERS, and JOHN )  
DOES 1-50, )

Defendants. )

No. \_\_\_\_\_

**COMPLAINT - CLASS ACTION**

**JURY TRIAL DEMANDED**

**COMPLAINT FOR DAMAGES, DECLARATORY, EQUITABLE,  
AND CLASS RELIEF AND DEMAND FOR JURY TRIAL**

*“I swam the 500 free at NCAA’s on March 17, 2022, where I got 17th, which means I didn’t make it back to the finals . . . I’m a 5th year senior. . . This is my last college meet ever and I feel frustrated. It feels like that final spot was taken away from me because of the NCAA’s decision to let someone who is not a biological female compete. . . It hurts me, my team and other women in the pool.”*

***Reka Gyorgy, Virginia Tech Univ. Swimmer, Letter to NCAA, March 20, 2022***

**INTRODUCTION**

**The Beginning**

1. Riley Gaines, Reka Gyorgy, Kylee Alons, Kaitlyn Wheeler, Lily Mullens, Susanna Price, Carter Satterfield, Kate Pearson, Katie Blankinship, Julianna Morrow and Swimmer A and Swimmer B (both proceeding under a pseudonym to protect them from retribution and reprisal) are like a lot of young girls who grow up in the United States, and indeed around the world, who enjoy a deep connection with swimming that fills their childhood days with purpose and provides them a pathway to grow in confidence toward womanhood. The glistening waters of the pool, routines of practice, relationships with teammates and camaraderie in the locker room became these girls’ safe spaces as they grew up.

2. For Ainsley Erzen, Ellie Eades, Track Athlete A, and Volleyball Athlete A, the field of play was different, but the story the same. For each Plaintiff,

sport has added vibrant color to their days, developed strength in their bodies, confidence in their minds and helped them to cultivate peace in their souls.

3. Through opportunities received and obstacles overcome in sport, Plaintiffs became leaders and strong women, confirming the vision of the framers of Title IX, who anticipated that given an equal opportunity to succeed through sex-separated sport, women would grow, and society would benefit, from the priceless advantages that women's sport offers.

### **The Purpose**

4. Plaintiffs, all current or former, collegiate, female, student-athletes, bring this case to secure for future generations of women the promise of Title IX that is being denied them and other college women by the National Collegiate Athletic Association (the "NCAA" or the "Association") working in concert with its member colleges and universities including those that are part of the University System of Georgia.

### **The Problem**

5. Each Plaintiff's story demonstrates the harm being done to women that results from the NCAA's radical departure from Title IX's original meaning.

6. The NCAA has long acted as if it were the sole arbiter of Title IX's meaning in college sports. It issues and enforces eligibility rules in collegiate sport which undermine the foundational principle of equal treatment for women upon

which Title IX rests, providing an excuse for Title IX covered institutions to violate federal law.

7. The NCAA and its members are not above the law and must comply with it.

### **The Awakening**

8. For most Plaintiffs, the realization that the NCAA was not dedicated to equal opportunity for women came during the 2021-22 women's swimming season.

9. During her junior year at the University of Kentucky in the 2020-2021 NCAA Women's Swimming Championships Plaintiff Riley Gaines finished seventh in the 200-yard freestyle event (hereafter "200 free"). Riley did not have her best race, and a goal for 2021-2022, Riley's senior year, became standing on the podium of the 200 free at nationals.

10. Riley swam well at the beginning of her senior season, turning in a great time at the mid-season meet, which all swimmers across the country use to gauge their progress against competitors in their event.

11. At the University of Kentucky, the swim practice after the mid-year meet is a much-anticipated event; it is then that the head coach hands to each team member sheets of paper listing the nation's top ranked swimmers in each event.

12. Riley and her teammates at the University of Kentucky were a highly competitive group and eagerly anticipated the information that annually served as motivation to their training over the second half of the season. But on that day in December 2021, as Riley and her teammates received the rankings, they were in for a shock.

13. In the 200 free Riley was ranked third in the nation behind Isabel Ivey, a swimmer at Cal Berkeley, whom Riley knew from national junior competitions. However, the individual ranked first was a senior swimmer from the University of Pennsylvania (“UPenn”) that neither Riley nor any of her teammates had ever heard of.

14. Incredibly, this unknown swimmer was ranked first in women’s freestyle swimming events ranging from the 200 free to the mile – *i.e.*, from the sprints to the distance events. Even prior collegiate legends like Katie Ledecky and Missy Franklin had not exhibited that breadth of dominance before. And no one in the Kentucky swim practice had previously heard of this senior swimmer at UPenn, an Ivy League school not known for its NCAA swimming prominence, the swimmer named Lia Thomas (“Thomas”).

15. The source of Thomas’ abrupt rise to dominance atop the NCAA women’s swimming world was not discovered until a few days later when a member of the University of Kentucky team found an article mentioning that

Thomas had previously competed on the UPenn men’s swimming team as Will Thomas.

16. The secret of Thomas’ meteoric ascendance and dominance in NCAA women’s swimming was retained male<sup>1</sup> advantage; now the question became, what would the NCAA do about it?

### **The Association and Its Practices**

17. The NCAA is an unincorporated, voluntary, association comprised of more than 1,100 member colleges and universities.

18. Most of the NCAA’s members receive federal funding and are covered by Title IX.

19. The NCAA is the largest scholastic sport rulemaking and enforcement body in the United States.

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<sup>1</sup> The terms “male” and “female” and “women” and “men” are used in this Complaint in their strict biological sense and as these terms are used in Title IX’s sport-specific regulations adopted in chronological proximity to Title IX’s passage, without regard for “gender identity.” Likewise, “sex” is used herein, as it was meant in Title IX, to refer solely to binary, biological sex. *See Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 818 (11th Cir. 2022) (Lagoa, J., specially concurring); *Black’s Law Dictionary* (5th ed. 1979) (“**Sex.** The sum of the peculiarities of structure and function that distinguish a male from a female organism[.]”); *see also Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 655 (2020) (proceeding on the understanding that the term “sex” as used in the Civil Rights Act of 1964 “referr[ed] only to biological distinctions between male and female”). “Retained male advantage” refers to the retention of sport performance enhancing advantages of being biologically male that persist after testosterone suppression and other “gender affirming hormone treatment” (“GAHT”).

20. The NCAA is also a multi-billion-dollar business venture intended to, among other things, maximize the revenue flowing from college sports and reduce the expenses of members by dictating and expositing the rules under which college sports are played.

21. Through its ability to obtain compliance with its rules from its members the NCAA has turned college sports in the United States into big business.

22. For this purpose, colleges and universities cede their control over the regulation of college sports to the NCAA.

23. Most of the NCAA's revenues derive from the monetization of men's collegiate sports, as exemplified by the NCAA men's basketball tournament trademarked as "March Madness."

24. Over the last decade-and-a-half the exploitive conduct of the NCAA and the enormous profits that the NCAA and its member institutions derive from the monopolization of men's college sports has come under increasing public scrutiny and legal challenge, leading to the U.S. Supreme Court's unanimous decision in *Nat'l Collegiate Athletic Ass'n v. Alston*, 594 U.S. 69 (2021) on June 21, 2021, and Justice Kavanaugh's pointed admonition in concurrence that "[t]he NCAA is not above the law." *Id.* at 112 (Kavanaugh, J., concurring).

25. During the same fifteen-year-period, the NCAA has simultaneously imposed a radical anti-woman agenda on college sports, reinterpreting Title IX to define women as a testosterone level, permitting men to compete on women's teams, and destroying female safe spaces in women's locker rooms by authorizing naked men possessing full male genitalia to disrobe in front of non-consenting college women and creating situations in which unwilling female college athletes unwittingly or reluctantly expose their naked or partially clad bodies to males, subjecting women to a loss of their constitutional right to bodily privacy.

26. Promoting policies that deprive women of equal opportunities and safe spaces in collegiate sport appears to facilitate the NCAA's goal of retaining control of the monetization of college sport.

27. Through the NCAA's transgender eligibility policies (the "Transgender Eligibility Policies")<sup>2</sup> the NCAA has aligned with the most radical elements of the so-called diversity, equity, and inclusion agenda on college campuses, facilitating the NCAA's effort to shore up its flagging on campus approval ratings in furtherance of the NCAA's relentless drive to monetize collegiate sport, and diverting attention from the financial exploitation of college

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<sup>2</sup> The NCAA's Transgender Eligibility Policies obtained from the NCAA's website are attached to the Complaint as **Appendix A** (hereafter referred to as "App. A") and Bates labeled NCAA 000001 – NCAA 000147.

athletes by NCAA colleges and universities, all at the expense of female student-athletes.

28. To minimize dissent from its policies which harm women, the NCAA in coordination with its member institutions, including public colleges and universities, has sought to suppress the speech of female athletes by exerting pressure on them and all who resist to enforce a Code of Silence.

29. The NCAA seeks to have college athletics departments impose upon all student-athletes what the NCAA calls “*LGBTQ-Inclusive Codes of Conduct*” which “outlin[e] consequences for engaging in homophobic and transphobic behaviors” and proclaim offending “language or conduct will not be tolerated.”<sup>3</sup>

30. The NCAA understands that in some quarters, including on many college campuses, merely standing up for fairness in women’s sports will be labeled “transphobic.”

31. Thus, the NCAA’s “Sample Team Code of Conduct” is a speech code, calculated to chill student-athletes from expressing personal opinions about transgender eligibility in the female category that are contrary to those imposed by the NCAA.

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<sup>3</sup> See <https://www.ncaa.org/sports/2016/12/8/five-ways-to-have-an-lgbtq-inclusive-athletics-department.aspx> (accessed Mar. 14, 2024) (App. A, NCAA 000143-44).

## **BASIS FOR TITLE IX JURISDICTION OVER THE NCAA**

32. This is an action under Title IX of the Education Amendments of 1972, (Pub. L. 88-352), codified at 20 U.S.C. § 1681(a) and associated regulations (“Title IX”), and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution to remedy discrimination against women in college athletics.

33. Section 901(a) of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

34. A regulation adopted thereunder by the Department of Education defines a “recipient” of federal financial assistance as any entity “to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance.” 34 C.F.R. § 106.2(i).

35. This regulation also provides that “[p]rogram or activity” means “all of the operations of” “[a]ny . . . entity that is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.” 34 C.F.R. § 106.2(h)(4).

36. “A college, university, or other postsecondary institution, or a public system of higher education” is an entity described by 34 C.F.R. § 106.2(h)(1).

37. A private organization which receives federal financial assistance or “[w]hich is principally engaged in the business of providing education” is an entity described by 34 C.F.R. § 106.2(h)(3).

38. All, or virtually all, NCAA members are entities described by 34 C.F.R. § 106.2(h)(1) and/or (h)(3).

39. In *Nat’l Collegiate Athletic Ass’n v. Smith*, 525 U.S. 459, 469 (1999), the U.S. Supreme Court decided that the NCAA was not covered by the predecessor to 34 C.F.R. § 106.2(i) merely because the Association received dues from recipients of federal funds.

40. In *NCAA v. Smith*, however, the Court was careful to point out that its decision was “narrow” and addressed only the question of whether *the receipt of dues alone* from colleges and universities created Title IX coverage. *NCAA v. Smith*, 525 U.S. at 469.

41. Both *Smith* and the United States as *amicus curiae* argued that the NCAA should be accountable under Title IX as colleges and universities are recipients of federal financial assistance and when “a recipient cedes controlling authority over a federally funded program to another entity, the controlling entity is

covered by Title IX regardless whether it is itself a recipient.” *NCAA v. Smith*, 525 U.S. at 469-70.

42. Yet, because this basis for Title IX coverage of the NCAA had *not* been raised below and was only raised for the first time at the Supreme Court by *Smith* and the U.S. government, the Court declined to consider the ceding control argument as a potential ground for Title IX coverage of the NCAA.

43. Subsequently, courts have applied the ceding control standard to find Title IX coverage over athletic associations and other entities. *See, e.g., Williams v. Bd. of Regents of Univ. Sys. of Georgia*, 477 F.3d 1282, 1294 (11th Cir. 2007) (applying the ceding control argument applicable to the University of Georgia Athletic Association); *A. B. by C.B. v. Hawaii State Dep’t of Educ.*, 386 F. Supp. 3d 1352, 1357 (D. Haw. 2019) (applying ceding control argument to Oahu Interscholastic Association); *Barrs v. Southern Conference*, 734 F. Supp. 2d 1229, 1235 (N.D. Ala. 2010) (collegiate athletic conference that governed, regulated, operated, and controlled intercollegiate athletics of its member schools could be liable under Title IX if member schools delegated and assigned authority to do so to conference); *Cmtys. for Equity v. Mich. High Sch. Athletic Ass’n*, 80 F.Supp.2d 729, 733–34 (W.D. Mich.2000); *see also Horner v. Kentucky High Sch. Ath. Ass’n*, 43 F.3d 265, 272 (6th Cir.1994) (Kentucky High School Athletic Association

properly sued under Title IX where it had control over interscholastic athletic programs that were receiving federal financial assistance).

44. Therefore, the instant case presents the opportunity for a decision on the issue expressly left open by the U.S. Supreme Court in *NCAA v. Smith* — Title IX’s applicability to the NCAA because colleges and universities which are recipients of federal financial assistance cede control over aspects of college athletics to the NCAA.

45. It is beyond question that NCAA member educational institutions delegate rulemaking and enforcement authority to the NCAA over college athletic programs and that such programs provide a significant aspect of the student experience at the NCAA’s member colleges and universities.

46. In fact, the NCAA recently took just this position in *NCAA v. Alston*, agreeing that: “the NCAA and its member schools . . . oversee intercollegiate athletics ‘as an integral part of the undergraduate experience.’” *NCAA v. Alston*, 594 U.S. at 94 quoting “Brief for Petitioner [NCAA] in No. 20–512, at 31.” *Id.*

47. In *Alston* the NCAA admitted it engages in a “joint venture” with colleges and universities, conceding thereby that it establishes rules which guide and control important aspects of member institutions’ mission related to college athletics. *See NCAA v. Alston*, 594 U.S. at 87-90.

48. “[F]or a joint venture to exist, *there must be* not only a joint interest in the purpose of the enterprise ... but also an equal right, express or implied, to direct and *control* the conduct of one another[.]” *Taylor v. Texaco, Inc.*, 510 F. Supp. 2d 1255, 1262 (N.D. Ga. 2007) (cleaned up; emphasis added). “The element of mutual control is a crucial element of a joint venture.” *Id.*

49. Thus, the NCAA’s members covered by Title IX have ceded control over the rules and regulation of collegiate athletics to the NCAA. This makes the Association subject to Title IX.

50. Should the NCAA contest whether it exercises control over aspects of intercollegiate sport, making it accountable under Title IX, Plaintiffs are entitled to discovery on this question and other factors that make the NCAA subject Title IX.

51. Furthermore, this case raises the question of whether the NCAA as an unincorporated association established by Title-IX-covered-entities satisfies the definition of 34 C.F.R. § 106.2(h)(4), *see supra* at ¶ 35, thereby imposing Title IX accountability upon the Association for that reason as well.

52. A third basis for NCAA liability for certain Title IX violations is 42 U.S.C. § 1983 which makes the NCAA liable for violations of Title IX undertaken under color of law, such as the locker room violations described below.

## OVERVIEW OF TITLE IX CLAIMS AGAINST THE NCAA AND GEORGIA PUBLIC UNIVERSITIES

### **The Premise of the NCAA’s Transgender Eligibility Policies—that Men Can Equally, Fairly, and Lawfully Compete in Women’s Sports Through Testosterone Suppression—is Flawed**

53. The NCAA’s Transgender Eligibility Policies on their face and in practice deprive women of equal opportunity in comparison to men in college sports governed by the NCAA.<sup>4</sup>

54. The sole justification of the Association for its discriminatory Transgender Eligibility Policies, which are *imposed* by the NCAA upon all member colleges and universities in NCAA Divisions I, II and III, is that biological differences between males and females can allegedly be overcome by a program of testosterone suppression in males who identify as transgender.<sup>5</sup>

55. In 19 out of 25 NCAA women’s sports the testosterone threshold for males who want to compete as women is 10 nanomoles per liter (nmol/L) which is five times (5x) greater than the highest level of testosterone any woman produces without doping.

56. In six NCAA women’s sports the threshold is lower than 10 nmol/L. However, in *every* single NCAA women’s sport *the NCAA’s testosterone threshold*

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<sup>4</sup> Additional allegations concerning the NCAA’s Transgender Eligibility Policies can be found *infra* at ¶¶ 54 – 61; ¶¶ 179 – 316.

<sup>5</sup> Additional allegations concerning the NCAA’s testosterone suppression requirement can be found *infra* at ¶¶ 179 – 246.

*applicable to males who seek to compete against women is higher than the highest testosterone level women can produce without doping.*

57. Thus, while there are a handful of sports (*i.e.*, 6 out of 25 NCAA women's sports) in which the NCAA applies a slightly lower testosterone suppression threshold for men seeking to compete as women than the threshold of 10 nmol/L that is most frequently used by the NCAA, every single testosterone threshold applied by the NCAA *is higher than the highest testosterone level women can produce without doping.*

58. Most importantly, the NCAA Transgender Eligibility Policies *as applied to every single NCAA women's sport* are grounded in the same illegal premise: that testosterone suppression and personal choice alone can make a male eligible to compete on a women's sports team.

59. The NCAA's testosterone suppression rationale is wrong as a matter of scientific fact and peer-reviewed research. *See infra* at ¶¶ 179 – 246.

60. Just as importantly, the NCAA's testosterone suppression excuse is wrong as a matter of law.

61. Title IX cannot be reasonably interpreted to permit males to take females' places in women's sports merely if males are willing to suppress their testosterone level.

**The NCAA Transgender Eligibility Policies Fail to Effectively Accommodate the Physical Abilities of Women and Give Women Equal Competitive Opportunities in Comparison to Men**

62. Title IX was enacted by Congress to increase women's opportunities, therefore, no policy which authorizes males to take the place of women on women's college sports teams or in women's college sports locker rooms is permissible under Title IX.

63. Moreover, *the NCAA's Transgender Eligibility Policies* are not sex neutral in operation but *disproportionality burden female athletes* by reducing female competitive opportunities, forcing female athletes to compete against males in sex-separated sports, depriving women of equal opportunities to protect their bodily privacy, and authorizing males to access female safe spaces necessary for women to prepare for athletic competition, including showers, locker rooms and restrooms.

64. The NCAA and the other Defendants knew or should have known that the NCAA's Transgender Eligibility Policies violate Title IX because they result in the following discriminatory impacts against women ("Discriminatory Impacts"):

- a. authorize the actual or potential eligibility of males to compete on women's teams or in the women's category of competitions,
- b. permit males to be awarded points, prizes, awards, medals, trophies, places, rankings, or results in women's competitions,

- c. deprive women of equal access to separate showers, locker rooms, and associated restroom facilities which protect their right to bodily privacy,
- d. diminish equal opportunities and resources for women,
- e. divert opportunities and resources to males,
- f. subject women to a loss of privacy and emotional harm,
- g. deprive women of a fair opportunity to prepare to compete in college sports by allowing males to access women's spaces including women's locker rooms, and
- h. disproportionately impact and suppress the free speech rights of women advocating for their rights, safe spaces and a reasonable and correct application of Title IX and equal protection principles.

65. Congress recognized when enacting Title IX that men and women are not interchangeable.

66. Title IX's implementing regulations and guidance require that, if an entity subject to Title IX provides athletic programs or opportunities separated by sex, then it must do so in a manner that "provide[s] equal athletic opportunity for members of both sexes." 34 C.F.R. § 106.41(c).

67. One aspect of assessing “equal athletic opportunity for members of both sexes” is ascertaining, “[w]hether the selection of sports and **levels of competition effectively accommodate the interests and abilities of both sexes.**” 34 C.F.R. § 106.41(c)(1) (emphasis added).

68. On the effective accommodation prong, the “governing principle” is that “the athletic interests and abilities of male and female students must be equally **effectively accommodated.**” 44 Fed. Reg. 71,413, 71,414 (1979) (the “Policy Interpretation”) (emphasis added). More specifically, the covered institution must accommodate the physical abilities of girls and women “to the extent necessary to provide equal opportunity in . . . levels of competition,” and competitive opportunities “which equally reflect their abilities.” *Id.* at 71,417-418.

69. As another aspect of equal athletic opportunity, implementing regulations and guidance state that male and female athletes “should receive equivalent treatment, benefits and opportunities.” Policy Interpretation, 44 Fed. Reg. 71,414 (emphasis added). Factors two through ten of 34 C.F.R. § 106.41(c) are used to evaluate equal terms. The “equal treatment” to which girls and women are entitled includes equal “opportunities to engage in . . . post-season competition,” *id.* at 71,416, equal opportunities for public recognition, 34 C.F.R. § 106.41(c), and the right to be free of any policies which are “discriminatory in . . .

effect” or that have the effect of denying “equality of athletic opportunity.” *Id.* at 71,417.

70. In 1979, the Department of Education Office for Civil Rights (OCR) issued a policy interpretation of Title IX and the Regulations to provide more specific guidance about the statute’s application to intercollegiate athletics. Policy Interpretation, 44 Fed. Reg. 71,413 *et seq.*

71. The Policy Interpretation was further clarified by OCR through issuance of OCR’s 1996 Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (the “OCR Clarification”). 44 Fed. Reg. at 71,417.

72. In determining “whether the selection of sports and levels of competition effectively accommodates the interests and abilities of members of both sexes,” both the 1979 Policy Interpretation and the 1996 OCR Clarification state that compliance with the effective accommodation prong is assessed by examining:

- a. The determination of athletic interests and abilities of students;
- b. The selection of sports offered; and
- c. The levels of competition available, including the opportunity for team competition.

73. Finally, an overall determination of compliance will be made based on:

- a. Whether the institution's policies are discriminatory in language or effect;
- b. Whether substantial and unjustified disparities exist in the program as a whole between male and female students; or
- c. Whether substantial disparities exist in individual segments between opportunities afforded to male and female students.

Policy Interpretation, 44 Fed. Reg. 71,418.

74. As the Title IX regulations enacted soon after the law was passed recognize, due to inherent biological differences women must be affirmatively protected with sex-separated sports teams, competitions, and locker rooms to achieve equality and equal opportunity for women.

75. Specifically in terms of the requirements for women to have competitive opportunities "which equally reflect their abilities," equal "opportunities to engage in . . . post-season competition," and equal opportunities for public recognition, it is clear that the NCAA's Transgender Eligibility Policies breach Title IX by permitting men to compete against women in women's competitions where a man may rely upon inherent aspects of their maleness, including physical and athletic advantages, to take women's places, titles and public recognition, which Title IX requires to be protected for women and made equally available to them.

76. That female athletes are harmed by having to compete against males is in no sense surprising or unexpected. “This is because it is neither myth nor outdated stereotype that there are inherent differences between those born male and those born female and that those born male, including transgender women and girls, have physiological advantages in many sports.” *Adams*, 57 F.4th at 819 (special concurrence; citing scientific literature).

77. What is disappointing and unlawful is that the NCAA aggressively applies its radical Transgender Eligibility Policies which diminish women’s opportunities despite the clear Title IX imperative to hold separate competitions and separate championships for women where physiological advantages of men preclude mixed (or open) competitions and despite vast scientific and experiential evidence demonstrating the NCAA’s policies harm women.

#### **The NCAA Purports to Interpret Title IX for All Association Members**

78. The NCAA’s discrimination against women through its Transgender Eligibility Policies is driven by its intentional decision to reinterpret the term “sex” in Title IX to force biological women to cede opportunities and equal treatment to those whom the NCAA defines as “transwomen” but which faithful adherence to the plain language of Title IX requires be defined as “males” for purposes of Title IX’s application to college sports.

79. Part of the NCAA’s current Transgender Eligibility Policies is an August 2011 guidance document from the NCAA Office of Inclusion entitled *NCAA Inclusion of Transgender Student-Athletes* (the “*NCAA Guidance on Transgender Student Athletes*” or “*NCAA Guidance on TSA*”).<sup>6</sup>

80. The *NCAA Guidance on TSA* states, “[t]he 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.”<sup>7</sup>

81. The NCAA purports to base its guidance to college and universities on “legal access” for transgender student-athletes upon Title IX.<sup>8</sup>

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[https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/INC\\_TransgenderHandbook.pdf](https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/INC_TransgenderHandbook.pdf) (accessed Mar. 14, 2024) (App. A, NCAA 000019).

<sup>7</sup> *Id.* (*NCAA Guidance on TSA*, p. 2) (App. A, NCAA 000016 – 53).

<sup>8</sup> *Id.* (*NCAA Guidance on TSA*, p. 5 (App. A, NCAA 000022; referencing “federal laws, regulations, and legal decisions”), p. 15 (App. A, NCAA 000032; “Colleges and universities often have legal obligations to provide equal opportunity to student-athletes[.]”), p. 16 (App. A, NCAA 000033; “state and federal non-discrimination laws . . . prohibit discrimination based on gender identity and expression”), pp. 16-17 (App. A, NCAA 000033 – 34; recommending as a “best practice” to adopt a “athletics departmental policy addressing the participation of transgender student-athletes that is consistent with school policy and state or federal non-discrimination laws”), p. 28 (App. A, NCAA 000045; identifying Title IX and the Equal Protection Clause of the Fourteenth Amendment as sources of federal law upon which the *NCAA Guidance on TSA* is based).

82. Thus, through its Transgender Eligibility Policies, the NCAA instructs 1,100+ Association members how these colleges and universities *must* interpret Title IX to comply with NCAA rules.

83. For instance, the *NCAA Board of Governors Statement on Transgender Participation* issued on April 12, 2021, states “The NCAA Board of Governors firmly and unequivocally supports the opportunity for transgender student-athletes to compete in college sports,” and references the NCAA’s “*long-standing policy* that provides a more inclusive path for transgender participation in college sports,”<sup>9</sup> including a hyperlink directly to the *NCAA Guidance on TSA*.

84. Another NCAA resource made available to colleges and universities is entitled “*On The Team: Equal Opportunity for Transgender Student Athletes*” (“*On The Team*”).<sup>10</sup>

85. The *On The Team* document likewise conveys the NCAA’s “*guidance to high school and collegiate athletic programs about how to ensure transgender student athletes fair, respectful, and legal access to school sports teams.*”<sup>11</sup>

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<sup>9</sup> <https://www.ncaa.org/news/2021/4/12/ncaa-board-of-governors-statement-on-transgender-participation.aspx> (accessed Mar. 14, 2024) (emphasis added).

<sup>10</sup> <https://www.nclrights.org/wp-content/uploads/2013/07/TransgenderStudentAthleteReport.pdf> (accessed on March 14, 2024) (App. A, NCAA 000054 – 110), accessible through link on NCAA website at: <https://www.ncaa.org/sports/2016/12/8/five-ways-to-have-an-lgbtq-inclusive-athletics-department.aspx#TCOC> (accessed March 14, 2024).

<sup>11</sup> *Id.*, p. 2 (emphasis added) (App. A, NCAA 000056).

86. *On The Team* is similar to (and appears to be an earlier version of) the *NCAA Guidance on TSA* and likewise purports to found the NCAA's guidance on interpretation of Title IX.<sup>12</sup>

87. The NCAA's interpretation of Title IX as requiring a pathway for males who identify as transgender to be included on female teams is in some respects consonant with pending regulatory guidance and rulemaking issued for public comment in 2023 by the Office of the Civil Rights in the Department of Education. See *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams*, Proposed Rule by the United States Department of Education to amend 34 CFR Part 106.41(b), 88 Fed. Reg. 22860 (April 13, 2023).

88. This agency guidance and rulemaking, however, is not faithful to the ordinary meaning of Title IX's language, nor is it a reasonable interpretation of it, nor is it consistent with DOE regulations issued in far closer chronological proximity to the passage of Title IX.

89. Therefore, such interpretive guidance is not entitled to deference and cannot justify the NCAA's Transgender Eligibility Policies. See *Adams*, 57 F.4th at 817 ("equating 'sex' to 'gender identity' or 'transgender status' would also call

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<sup>12</sup> *Id.* (*On the Team*, p. 50) (App. A, NCAA 000104).

into question the validity of sex-separated sports teams” contrary to the meaning of Title IX); *cf. Loper Bright Enterprises, Inc. v. Raimondo*, 45 F.4th 359, 365 (D.C. Cir. 2022), cert. granted in part sub nom. *Loper Bright Enterprises v. Raimondo*, 143 S. Ct. 2429 (2023); *Relentless, Inc. v. United States Dep’t of Com.*, 62 F.4th 621, 628 (1st Cir.), cert. granted in part sub nom. *Relentless, Inc. v. Dep’t of Com.*, 144 S. Ct. 325 (2023) (both discussing limitations on deference to agency guidance).

90. The NCAA’s misinterpretation of Title IX, which is being imposed nationwide upon collegiate sport, cannot stand.

**In 2022 the Defendants’ Title IX Violations Harmed  
Hundreds of Student-Athletes at the 2022 Women’s Swimming  
and Diving Championships in Atlanta, Georgia**

91. The NCAA serially violated Title IX in 2022 by purposefully adopting and amending policies and taking multiple actions specifically intended to authorize Thomas, a biologically male student-athlete, to compete on the UPenn women’s swim team and access women’s locker rooms in NCAA competitions in 2021-22.<sup>13</sup>

92. Georgia Tech University (“George Tech”) President Ángel Cabrera, the individual members of the Board of Regents of the University System of Georgia and their agents and employees, including John Does 26-50 in their

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<sup>13</sup> Allegations regarding the tortuous path followed by the NCAA to ensure Thomas’ continuing eligibility can be found *infra* at ¶¶ 318 - 352.

individual and official capacities (the “Georgia Individual Defendants”) alongside or acting under the imprimatur of, or with apparent authority from, Georgia Tech and the NCAAA jointly organized the 2022 NCAA Women’s Swimming and Diving Championships held at Georgia Tech’s McAuley Aquatic Center on the Georgia Tech campus (the “2022 NCAA Championships”).

93. One or more of the Georgia Individual Defendants alongside or acting under the imprimatur of, or with apparent authority from, Georgia Tech participated in the NCAA’s Title IX violations in 2022 by supporting, recognizing, facilitating, joining in, and implementing the decisions and actions of the NCAA to implement and enforce its Transgender Eligibility Policies which resulted in Discriminatory Impacts in violation of Title IX and the U.S. Constitution.

94. Acting in concert, the NCAA and one or more of the Georgia Individual Defendants alongside or acting under the imprimatur of, or with apparent authority from, Georgia Tech, intentionally authorized and enabled Thomas to compete in the 2022 NCAA Championships and to access the women’s showers, locker rooms, and restrooms at the 2022 NCAA Championships.

95. Particularly given the high-profile nature of Thomas’ qualification for the 2022 NCAA Championships, the NCAA, one or more of the Georgia Individual Defendants and Georgia Tech knew or should have known the

Discriminatory Impacts and Title IX violations which did occur were likely to occur at the 2022 NCAA Championships.

96. These purposeful actions by the NCAA in coordination with public colleges and universities and others, including one or more of the Georgia Individual Defendants, upended and undermined the competitive seasons, mental and emotional health and well-being, and academic and athletic experiences of hundreds of female swimmers and their families.

**The NCAA, the Georgia Individual Defendants and Georgia Educational Institutions Are Liable for Applying the NCAA's Incorrect Interpretation of Title IX in Georgia**

97. Plaintiffs for themselves and a class of female athletes injured by the NCAA's Transgender Eligibility Policies and by the actions of the NCAA and the Georgia Individual Defendants which violated Title IX and the U.S. Constitution seek restoration through injunctive relief, compensatory, and nominal damages, attorneys fees and costs under Title IX and the Equal Protection Clause as well as actual and punitive damages under the Equal Protection Clause along with injunctive relief changing the official and public records of the NCAA and the Georgia Individual Defendants, the Georgia University System and Georgia Tech in relation to Thomas' unlawful eligibility and participation in the 2022 NCAA

Championships where Thomas competed in three swimming event Finals finishing first, tied for fifth, and eighth, and earning 45 points for the UPenn team.<sup>14</sup>

**Plaintiffs are Entitled to Injunctive Relief Enjoining Future Applications of the NCAA's Transgender Eligibility Policies**

98. The NCAA and the Georgia Individual Defendants acting in concert with each other and with the University System of Georgia and its public universities have engaged in a continuing pattern and practice of discrimination against women in violation of Title IX by implementing policies which allow males who identify as transgender to access female locker rooms and take the places of women on women's teams in collegiate athletic competitions in the State of Georgia.

99. Essentially the same discriminatory, and unlawful NCAA policies are in force today as applied in 2022 when the NCAA Championships were held in Atlanta, Georgia and the current NCAA Transgender Eligibility Policies continue to subject female student-athletes to unequal treatment and discrimination in collegiate athletics as a litany of more recent examples illustrate.

100. Pursuant to Federal Rule of Civil Procedure 20(a) a group of current student-athletes with remaining college eligibility who have been injured by the

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<sup>14</sup> Emotional distress and punitive damages are specifically sought for Constitutional violations, recognizing the potential applicability to Title IX remedies of the U.S. Supreme Court's decision in *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212 (2022).

NCAA Transgender Eligibility Policies, who are injured by the NCAA's adoption of the policies and application of the policies to collegiate sport by being threatened with having to compete with males, or who are reasonably likely to be injured by these policies have joined in this action to seek declaratory and injunctive relief regarding the policies.

101. All Plaintiffs with remaining NCAA eligibility seek an injunction against the NCAA enjoining the NCAA's Transgender Eligibility Policies which adversely impact female athletes in violation of Title IX and enjoining the Georgia Individual Defendants, the University System of Georgia and its universities, Georgia Tech, the University of Georgia, and the University of North Georgia, from implementing any aspects of the NCAA's eligibility policies which violate Title IX in future NCAA sanctioned competitions in the State of Georgia hosted by, organized in whole or in part by, or which take place in any facility owned, operated or controlled by them, including, but not limited to:

- a. the Southeastern Conference (SEC) Swimming and Diving Championships to be hosted by the University of Georgia on February 18-22, 2025,
- b. the 2026 NCAA Division I Women's Swimming and Diving Championships to be held at the McAuley Aquatic Center at Georgia Tech University,

- c. the 2026 NCAA Division I, II and III Women’s Rowing Championships to be hosted by the University of North Georgia, and
- d. the 2026 NCAA Division 1 Women’s Tennis Championships to be hosted by the University of Georgia.

**OVERVIEW OF FOURTEENTH AMENDMENT CLAIMS  
AGAINST THE INDIVIDUAL MEMBERS OF THE BOARD OF REGENTS  
OF THE UNIVERSITY SYSTEM OF GEORGIA, GEORGIA TECH,  
PRESIDENT CABRERA AND THE NCAA**

102. Derived from the Civil Rights Act of 1871, 42 U.S.C. § 1983 imposes civil liability, including legal and equitable remedies, on one:

who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws[.]

103. “A state university without question is a state actor.” *Nat’l Collegiate Athletic Ass’n v. Tarkanian*, 488 U.S. 179, 192 (1988).

104. The NCAA can be held accountable under 42 U.S.C. § 1983 for actions which violate constitutional rights where it collaborates or participates in a constitutional violation for which a state actor may also be held responsible.

105. For instance, in *Tarkanian* the U.S. Supreme Court explained that “[s]tate action [may] lie if [a state actor, including a state college or university], by

embracing the NCAA’s rules, transformed them into state rules and the NCAA into a state actor.” *Id.* at 194.

106. Likewise, liability for constitutional violations by agents or employees of the University System of Georgia, its Board of Regents, Georgia Tech, President Cabrera, and the NCAA may be imposed on the NCAA or its agents where the state actor “delegates . . . authority to the private actor [*e.g.*, the NCAA]” or “provided a mantle of authority that enhanced the power of the [NCAA].” *Id.* at 192.

107. In *Fortner v. Thomas*, 983 F.2d 1024, 1030 (11th Cir. 1993), the United States Court of Appeals for the Eleventh Circuit recognized a sex-based “constitutional right to bodily privacy because most people have ‘a special sense of privacy in their genitals, and involuntary exposure of them in the presence of people of the other sex may be especially demeaning and humiliating.’” (citation omitted).

108. Without notice to female swimmers competing in the 2022 NCAA Championships, the NCAA and the Georgia Individual Defendants and/or one or more other state actors or actors with apparent state authority, acting in concert and under color of law, changed the designation of the locker rooms to be used by the women swimmers at the 2022 NCAA Championships to “unisex” locker rooms

and directed women swimmers and teams that Thomas was entitled to use all designated locker rooms allocated to the women swimmers and teams.

109. This change was made so that Thomas, a fully grown adult male with full male genitalia, would use the same locker rooms to be used by more than 300 female student-athletes, depriving the female student-athletes of sex-separated women's locker room facilities and bathroom and restroom facilities where their right to bodily privacy could be protected, exposing the women to shock, humiliation, and embarrassment in violation of their constitutional right to bodily privacy.

110. Not only did the foregoing conduct, described *supra* at ¶¶ 91 – 96, 108 – 09 above and *infra* at ¶¶ 361 – 417 by the NCAA and/or its agents and the Georgia Individual Defendants and/or other state actors or others acting with apparent authority from the state violate Title IX, that conduct also violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution by treating women unequally in comparison to men, depriving women of competitive opportunities equal to those afforded men, and violating women's right to bodily privacy, all under color of law.

111. This conduct by the NCAA and its agents and the Georgia Individual Defendants and/or other state actors or others acting with apparent authority from the state subjected Plaintiffs Gaines, Alons, Wheeler, Swimmer A, Swimmer B,

and a class of similarly situated female swimmers and divers to discriminatory treatment and severe emotional distress for which Plaintiffs and members of the class are entitled to declaratory relief, compensation, punitive damages and attorneys' fees pursuant to 42 U.S.C. §§ 1983 and 1988.

### **JURISDICTION & VENUE**

112. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1343 and 42 U.S.C. §§ 1983, 1988.

113. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202.

114. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) as all Defendants reside in the State of Georgia within the meaning of the venue statute. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events complained of herein occurred in this District and Division.

### **THE PARTIES**

115. **Swimmer A** resides in the United States and competed in the 2022 NCAA Championships. Swimmer A is moving to proceed under a pseudonym because she is currently enrolled at and attending an NCAA institution and

reasonably fears retribution and reprisal for bringing the claims set forth in this Complaint.<sup>15</sup>

116. **Swimmer B** resides in the United States and also competed in the 2022 NCAA Championships. Swimmer B is moving to proceed under a pseudonym because she is currently employed at an NCAA institution and reasonably fears retribution and reprisal for bringing the claims set forth in this Complaint.

117. Plaintiff **Kylee Alons** is an All-American swimmer who competed at North Carolina State University and in the 2022 NCAA Championships.

118. Plaintiff **Riley Gaines** is an All-American swimmer who competed at the University of Kentucky and in the 2022 NCAA Championships.

119. Plaintiff **Reka Gyorgy** is an All-American swimmer who competed at Virginia Tech University and in the 2022 NCAA Championships.

120. Plaintiff **Kaitlynn Wheeler** is an All-American swimmer who competed at the University of Kentucky and in the 2022 NCAA Championships.

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<sup>15</sup> **Note regarding pseudonym filings:** After the Clerk's Office has assigned a cause number and given notice of the Court assignment, counsel for Plaintiffs intends to file a motion for Swimmer A, Swimmer B, Track and Field Athlete A and Volleyball Athlete A to proceed under pseudonym and supporting brief (along with other required documents). These filings will include some documents filed under seal. Plaintiffs believe these filings can be most efficiently made after a case number has issued and assignment to a Judge has been accomplished.

121. Plaintiff **Ainsley Erzen** is a sophomore two-sport athlete in soccer and track and field at the University of Arkansas, a NCAA Division I school where she is an 800-meter runner and a member of Arkansas' 2024 NCAA Division I National Champion Women's Indoor Track and Field Team and a member of Arkansas' 2023 Southeastern Conference Champion Women's Soccer Team. In high school Ainsley was the first runner from the State of Iowa to win a national championship, winning the 800m national championship in 2:06.52.

122. Plaintiff **Ellie Eades** is a junior NCAA tennis player at the University of Kentucky where she competes on the women's tennis team in NCAA Division I.

123. Plaintiff **Lillian "Lily" Mullens** is a junior NCAA swimmer at Roanoke College, where she competes on the women's swimming team in NCAA Division III.

124. Plaintiff **Elizabeth "Carter" Satterfield** is a sophomore NCAA swimmer at Roanoke College, where she competes on the women's swimming team in NCAA Division III.

125. Plaintiff **Kaitlin "Katie" Blankinship** is a sophomore NCAA swimmer at Roanoke College, where she competes on the women's swimming team in NCAA Division III.

126. Plaintiff **Susanna Price** is a junior NCAA swimmer at Roanoke College, where she competes on the women's swimming team and the women's cross country and outdoor track and field teams in NCAA Division III.

127. Plaintiff **Kate Pearson** is a sophomore NCAA swimmer at Roanoke College, where she competes on the women's swimming team in NCAA Division III.

128. Plaintiff **Julianna Morrow** is a sophomore NCAA swimmer at Roanoke College, where she competes on the women's swimming team in NCAA Division III.

129. **Track Athlete A** is a junior track and field athlete who competes on a women's track and field team in NCAA Division III. Track Athlete A is moving to proceed under a pseudonym because she is currently enrolled at and attends an NCAA institution and reasonably fears retribution and reprisal for bringing the claims set forth in this Complaint.

130. **Volleyball Athlete A** is a freshman volleyball athlete who competes on a women's volleyball team in NCAA Division II. Volleyball Athlete A is moving to proceed under a pseudonym because she is currently enrolled at and attends an NCAA institution and reasonably fears retribution and reprisal for bringing the claims set forth in this Complaint.

131. Each Plaintiff is female by biological sex.

132. Each Plaintiff is a current or former women's athlete at a NCAA member college or university who has been harmed by, or is threatened harm by, the NCAA's policies which violate Title IX and Equal Protection by permitting men to compete on women's teams and who has competed on a women's team in collegiate athletics regulated by the NCAA at the NCAA Division I, II or III level.

133. Each Plaintiff except for Riley Gaines, Reka Gyorgy, Kylee Alons, Kaitlynn Wheeler, and Swimmer B have remaining NCAA eligibility.

134. Defendant NCAA is an unincorporated association with headquarters and principal place of business in Indianapolis, Indiana at 700 West Washington Street, Indianapolis, Indiana 46202.

135. The NCAA is subject to Title IX.

136. NCAA members are primarily institutions which receive federal funds and are subject to Title IX.

137. The NCAA exists in part to dictate and enforce the rules of college sport for its member institutions.

138. NCAA members pay dues to the NCAA.

139. In return for the payment of dues Association members expect the NCAA to regulate intercollegiate athletics in which member colleges and universities participate.

140. NCAA members agree to comply with, and be governed by, the rules of the NCAA relating intercollegiate athletics, scholarships, their athletic departments, their sports teams and facilities and the actions which the NCAA decides to permit (or restrict) from all students and staff members involved in college athletics.

141. NCAA members submit to NCAA rules and regulations regarding, among other things:

- a. how members may recruit student-athletes,
- b. when members may recruit student-athletes,
- c. when representatives of members may contact prospective student athletes,
- d. how members may provide benefits to student-athletes,
- e. the value of scholarships that may be provided to student-athletes,
- f. the value of other benefits that may be provided to student-athletes,
- g. how many scholarships can be given to student-athletes,
- h. how, when and for how long student-athletes and their teams may practice and train,

- i. the start date, end date and length of season in which student-athletes may play their sport(s),
- j. the grades that must be achieved by student-athletes,
- k. when games may be scheduled between Association members,
- l. when games can be scheduled against non-Association members,
- m. who may coach members' student-athletes,
- n. who may tutor members' student-athletes,
- o. how many classes student-athletes must attend,
- p. what roles non-athlete students can play in the athletic departments of Association members,
- q. what roles supporters of a college or university can play in relation to an Association member's athletic department and student-athletes,
- r. what drugs and medications student-athletes can use without notification to the Association,
- s. the rules under which athletic contests between Association members will be played,
- t. the venues at which national championships among Association members will be played,

- u. the rules for national championships among Association members,
- v. the distribution of revenues from certain tournaments in which Association members may participate,
- w. when student athletes may consider transferring to another Association member,
- x. who is considered a male and who is considered a female for purposes of playing on member schools' sports teams, and
- y. the NCAA Transgender Eligibility Policies.

142. NCAA sponsored, regulated and/or organized competitions and NCAA national championships in which NCAA policies and rules are applied are frequently hosted by public colleges and universities in the State of Georgia.

143. For instance, in 2006, 2016 and 2022 the NCAA Division 1 Women's Swimming and Diving Championships were hosted by Georgia Tech University at the McAuley Aquatic Center on the Georgia Tech campus in Atlanta, Georgia in the Northern District of Georgia.<sup>16</sup>

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<sup>16</sup> <https://ramblinwreck.com/sports/genrel/facilities/mcauley-aquatic-center/> (accessed Mar. 14, 2024)

144. This year the NCAA Division 1 Women’s Swimming and Diving Championships will be held March 20-23, 2024, at the Ramsey Center in Athens, Georgia.<sup>17</sup>

145. In 2026 the NCAA Division I Men’s and Women’s Swimming and Diving Championships will return to Atlanta to again be hosted by Georgia Tech University at the McAuley Aquatic Center.<sup>18</sup>

146. Defendant University System of Georgia through its Board of Regents (the Board of Regents) is the unitary governing and management authority which manages, governs, controls, supervises, and oversees the public colleges and universities that comprise the University System of Georgia, including but not limited to the University of Georgia in Athens, Georgia, the Georgia Institute of Technology in Atlanta, Georgia and the University of North Georgia in Dahlonega, Georgia. The headquarters and principal place of business of the University System of Georgia and the Board of Regents is 270 Washington Street, SW, Atlanta, GA 30334. Defendant University System of Georgia is sued solely for injunctive relief under Title IX.

147. Defendant Georgia Institute of Technology (aka “Georgia Tech University” or “Georgia Tech”) is a research university of the University System

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<sup>17</sup> [https://www.ncaa.com/\\_flysystem/public-s3/files/Host%20Sites%202022-2026\\_1.pdf](https://www.ncaa.com/_flysystem/public-s3/files/Host%20Sites%202022-2026_1.pdf) (accessed Mar. 14, 2024)

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

of Georgia, located in Atlanta, Georgia, which is governed by the Board of Regents of the University System of Georgia. Defendant Georgia Tech is sued solely for injunctive relief under Title IX.

148. Defendant University of Georgia is a research university of the University System of Georgia, located in Athens, Georgia, which is governed by the Board of Regents of the University System of Georgia. Defendant University of Georgia is sued solely for injunctive relief under Title IX.

149. Defendant University of North Georgia is a state university of the University System of Georgia, located in Dahlonega, Georgia, which is governed by the Board of Regents of the University System of Georgia. Defendant University of North Georgia is sued solely for injunctive relief under Title IX.

150. Defendant Ángel Cabrera, the President of Georgia Tech University, is sued in his individual and official capacities.

151. President Cabrera had the authority to control and direct and was aware of, or should have been aware of, all actions of Georgia Tech and other State Defendants described in this Complaint.

152. Defendant Doug Aldridge, a member of the Board of Regents of the University System of Georgia since February 8, 2022, is sued in his individual and official capacities.

153. Defendant Tom Bradbury, a member of the Board of Regents of the University System of Georgia since January 7, 2022, is sued in his individual and official capacities.

154. Defendant Richard “Tim” Evans, a member of the Board of Regents of the University System of Georgia since January 9, 2022, is sued in his individual and official capacities.

155. Defendant W. Allen Gudenrath, a member of the Board of Regents of the University System of Georgia since January 1, 2018, is sued in his individual and official capacities.

156. Defendant Erin Hames, a member of the Board of Regents of the University System of Georgia since January 1, 2018, is sued in her individual and official capacities.

157. Defendant Samuel D. Holmes, a member of the Board of Regents of the University System of Georgia since July 16, 2019, is sued in his individual and official capacities.

158. Defendant Bárbara Rivera Holmes, a member of the Board of Regents of the University System of Georgia since January 1, 2018, is sued in her individual and official capacities.

159. Defendant C. Thomas Hopkins, Jr., MD, a member of the Board of Regents of the University System of Georgia from January 1, 2018 through January 1, 2024, is sued in his individual and official capacities.

160. Defendant James M. Hull, a member of the Board of Regents of the University System of Georgia since January 8, 2016, is sued in his individual and official capacities.

161. Defendant Cade Joiner, a member of the Board of Regents of the University System of Georgia since January 3, 2020, is sued in his individual and official capacities.

162. Defendant Patrick C. Jones, a member of the Board of Regents of the University System of Georgia since June 30, 2022, is sued in his individual and official capacities.

163. Defendant C. Everett Kennedy, III, a member of the Board of Regents of the University System of Georgia since January 3, 2020, is sued in his individual and official capacities.

164. Defendant Sarah-Elizabeth Langford, a member of the Board of Regents of the University System of Georgia since February 10, 2017, is sued in her individual and official capacities.

165. Defendant Rachel B. Little, a member of the of Regents of the University System of Georgia from November 22, 2016, is sued in her individual and official capacities.

166. Defendant Lowery Houston May, a member of the Board of Regents of the University System of Georgia since January 3, 2020, is sued in her individual and official capacities.

167. Defendant Jose R. Perez, a member of the Board of Regents of the University System of Georgia since July 16, 2019, is sued in his individual and official capacities.

168. Defendant Neil L. Pruitt, Jr., a member of the Board of Regents of the University System of Georgia since February 10, 2017, is sued in his individual and official capacities.

169. Defendant Harold Reynolds, a member of the Board of Regents of the University System of Georgia since January 3, 2020, and current Chair of the Board, is sued in his individual and official capacities.

170. Defendant Sachin Shailendra, a member of the Board of Regents of the University System of Georgia from January 1, 2021, is sued in his individual and official capacities.

171. Defendant T. Dallas Smith, a member of the Board of Regents of the University System of Georgia since January 3, 2020, and current Vice Chair of the Board, is sued in his individual and official capacities.

172. Defendant Mat Swift, a member of the Board of Regents of the University System of Georgia since January 5, 2024, is sued in his individual and official capacities.

173. Defendant James K. Syfan, III, a member of the Board of Regents of the University System of Georgia since January 9, 2022, is sued in his individual and official capacities.

174. Defendant Don L. Waters, a member of the Board of Regents of the University System of Georgia from 2013, is sued in his individual and official capacities.

175. John Does 1-25 are agents of the NCAA who acting under color of law undertook the actions attributed to the NCAA in this Complaint and are therefore liable for the constitutional and Title IX violations described herein pursuant to 42 U.S.C. § 1983. Plaintiffs do not currently know, and cannot without discovery reasonably determine, the names of these individuals.

176. John Does 26-50 are additional members of the Board of Regents of the University System of Georgia or their agents and/or individual agents or employees of the University System of Georgia and/or agents or employees of one

or more public colleges or universities in Georgia who engaged in the conduct attributed to the Georgia Individual Defendants that are described in this Complaint, including those individuals who directed operations and made decisions in relation to the 2022 NCAA Championships and/or who will do so in relation to other collegiate athletic events described in this Complaint. Each of these individuals is sued in their individual and/or official capacities. Plaintiffs do not currently know, and cannot without discovery reasonably determine, the names of these individuals.

177. The identified individual members of the Board of Regents of the University System of Georgia in their individual and official capacities, or some of them, at all relevant times had, and currently have, the authority or apparent authority to control and direct, and did knowingly, intentionally and purposefully control and direct, all actions of the University System of Georgia and/or any public college or university in the State of Georgia described in this Complaint.

178. The identified individual members of the Board of Regents of the University System of Georgia, President Cabrera and/or John Does 26-50, each in their individual and official capacities did knowingly, intentionally and purposefully control and direct and/or co-direct and/or jointly control all actions attributed in this Complaint to the Georgia Individual Defendants, the University

System of Georgia, Georgia Tech, the University of Georgia and/or the University of North Georgia.

**ADDITIONAL FACTUAL ALLEGATIONS**

**THE NCAA’S TRANSGENDER ELIGIBILITY POLICIES  
DEPRIVE WOMEN OF EQUAL OPPORTUNITIES  
CONTRARY TO TITLE IX AND EQUAL PROTECTION**

**The Male-Female Sport Performance Gap**

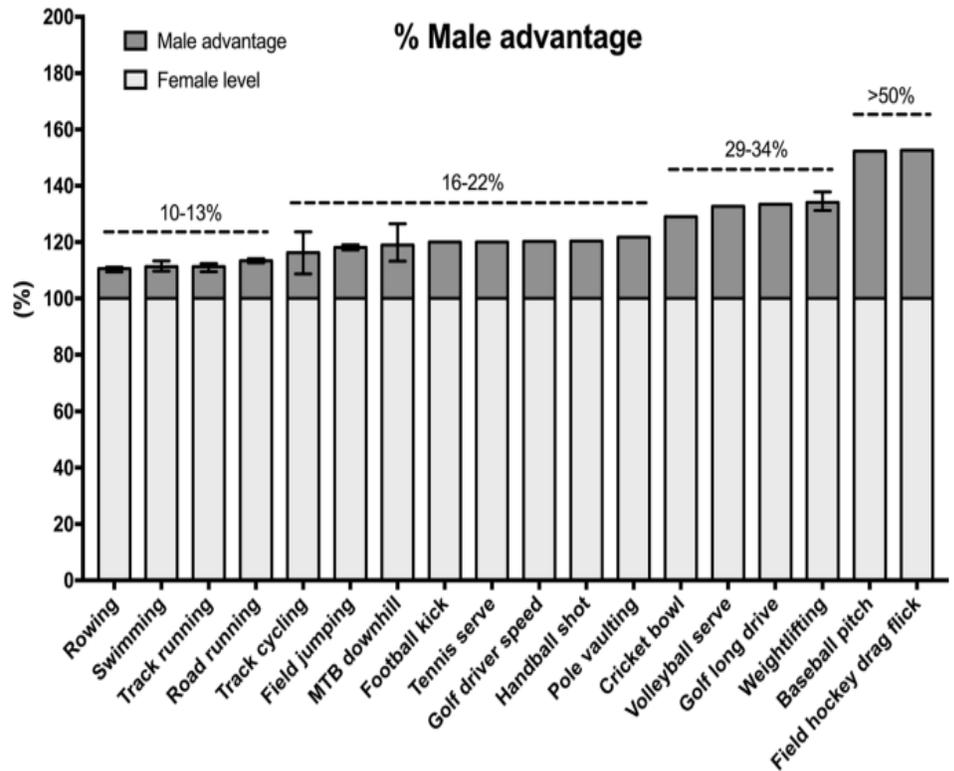
179. The reason for sex-separated sport (*i.e.*, for creating separate men’s and women’s teams or a separate women’s category) and the reason the Title IX regulations endorse sex-separated sports teams is to give women a meaningful opportunity to compete that they would be denied were they required to compete against men.

180. Biological differences between men and women prevent meaningful competition between men and women in almost all sports contested at a collegiate level in NCAA Divisions I, II and/or III.

181. Developmental biologist Dr. Emma N. Hilton and sport physiologist Dr. Tommy R. Lundberg report that “the performance gap between males and females . . . often amounts to 10 – 50% depending on sport.” Hilton, E.N., Lundberg, T.R., “Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage,” *Sports Medicine* (2021) 51:199-214, p. 199.

182. Hilton and Lundberg note that the sport performance gap between men and women is not limited to certain sports but applies generally to most skills necessary for success in sport. *Id.* Here is a chart that illustrates male sport performance advantages across a wide group of discrete sport skills:

**Fig. 1** The male performance advantage over females across various selected sporting disciplines. The female level is set to 100%. In sport events with multiple disciplines, the male value has been averaged across disciplines, and the error bars represent the range of the advantage. The metrics were compiled from publicly available sports federation databases and/or tournament/competition records. *MTB* mountain bike



Reproduced from: Hilton, E.N., Lundberg, T., “Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage,” *Sports Medicine*, (2021) 51:199-214, p. 202, Fig. 1.

183. The source of male athletic performance advantages over women (sometimes described as the “Male-Female Sport Performance Gap”) is attributed by many scientists to genetic differences between males and females and the

effects higher levels of testosterone have on the male body throughout male development.

184. The developmental and physiological effects brought about by genetic differences between males and females and higher levels of circulating testosterone in males begin well before puberty.

185. In the womb and in the 6-9 month “mini puberty” phase immediately post birth natal males experience endogenous synthesis and secretion of higher levels of testosterone than natal females, triggering differentiation in male body structure beginning even before birth.

186. The result is “is a clear sex difference in both muscle mass and strength even adjusting for sex differences in height and weight. On average women have 50% to 60% of men’s upper arm muscle cross-sectional area and 65% to 75% of men’s thigh muscle cross-sectional area, and women have 50% to 60% of men’s upper limb strength and 60% to 80% of men’s leg strength. Young men have on average a skeletal muscle mass of >12 kg greater than age-matched women at any given body weight.”<sup>19</sup> The impact of these differences is “an

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<sup>19</sup> Handelsman, D.J., Hirschberg, A.L., Bermon, S., “Circulating Testosterone as the Hormonal Basis of Sex Differences in Athletic Performance,” *Endocr. Rev.* 2018 Oct; 39(5): 803-829.

obvious performance enhancing effect, in particular in sports that depend on strength and (explosive) power, such as track and field events.”<sup>20</sup>

187. Also, “levels of circulating hemoglobin are androgen-dependent and consequently higher in men than in women by 12%[.]”<sup>21</sup> Increased levels of hemoglobin are due to the fact that, “[t]estosterone increases secretion of and sensitivity to erythropoietin, the main trophic hormone for erythrocyte production and thereby hemoglobin synthesis[.]”<sup>22</sup> These effects from testosterone and erythropoietin “[i]ncreas[e] the amount of hemoglobin in the blood [with] the biological effect of increasing oxygen transport from lungs to tissues, where the increased availability of oxygen enhances aerobic energy expenditure. This is exploited to its greatest effect in endurance sports. . . It may be estimated that as a result the average maximal oxygen transfer will be ~10% greater in men than in women, which has a direct impact on their respective athletic capacities.”<sup>23</sup>

188. Further, due to the impacts of testosterone, and perhaps other factors, on male development, “on average men are 7% to 8% taller with longer, denser, and stronger bones, whereas women have shorter humerus and femur cross-sectional areas being 65% to 75% and 85%, respectively, those of men.”<sup>24</sup> The

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

athletic advantages conferred by men's larger and stronger bones includes, "greater leverage for muscular limb power exerted in jumping, throwing, or other explosive power activities" and greater male protection from stress fractures.<sup>25</sup>

189. Additionally, there is a sex difference in pulmonary function which "may be largely explained by the androgen-sensitive difference in height, which is a strong predictor of lung capacity and function."<sup>26</sup>

190. There are many ways to illustrate the Male-Female Sport Performance Gap and demonstrate that men competing on women's teams is incompatible with equal opportunities for women.

191. A point of comparison that helps put the Male-Female Sport Performance Gap in perspective is to understand that *every* women's world record in *every* track and field event is bested *every* year by dozens, and in many cases hundreds, of high school age males.

192. The following chart illustrates the performance gap by comparing the times of three 400m female Olympic gold medalists to thousands of males in 2017:

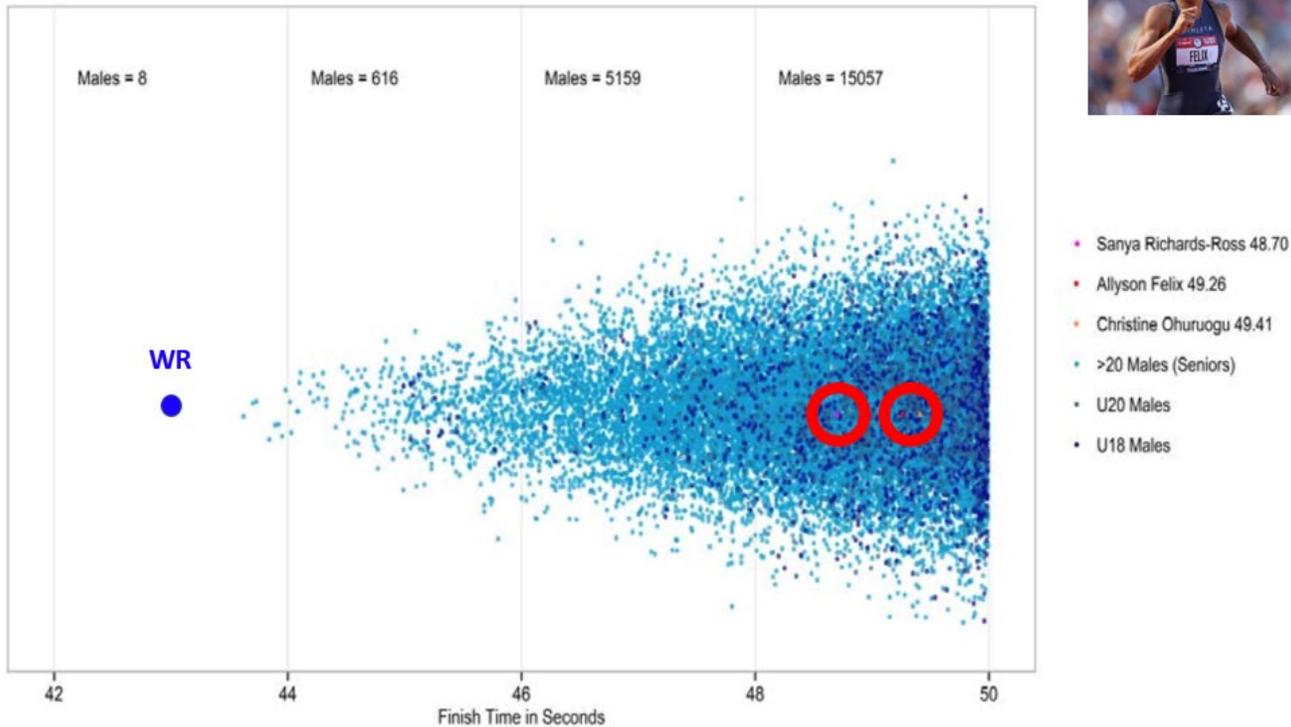
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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

## Performance gap in elite sports

Comparing the Best Elite Females to Boys and Men:  
Personal Bests for 3 Female Gold Medalists versus 2017 Performances by Boys and Men



Above chart used with permission from Ross Tucker and derived from: Coleman, D.L., Joyner, M.J., Lopiano, D., “Re-Affirming the Value of the Sports Exception to Title IX’s General Non-Discrimination Rule,” *Duke Journal of General Law & Policy*, Vol. 27:69-134, p. 89.

193. As demonstrated in the chart, in a single year tens of thousands of males outperformed the best female 400m runners in the world.

194. Here is a table which shows that high school boys ages 14-15 have eclipsed many women’s world records by large margins:

**Table 3** Selected junior male records in comparison with adult elite female records

Event	Schoolboy male record	Elite female (adult) record
100 m	10.20 (age 15)	10.49
800 m	1:51.23 (age 14)	1:53.28
1500 m	3:48.37 (age 14)	3:50.07
Long jump	7.85 m (age 15)	7.52 m
Discus throw	77.68 m (age 15)	76.80 m

*M* meters

Time format: minutes:seconds.hundredths of a second

Reproduced from: Hilton, E.N., Lundberg, T., “Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage,” *Sports Medicine*, (2021) 51:199-214, p. 204, Table 3.

195. These examples reflect that the plain language of Title IX which speaks in terms of binary, biological sex (*i.e.*, male and female) is well supported by science. There are highly relevant and extremely large differences between the sexes in terms of athletic and physical capacity and this translates into a large Male-Female Sport Performance Gap.

196. Thus, in terms of fairness and equality for women competing in collegiate sport, the eligibility line of “biological sex” drawn by Title IX is the appropriate dividing line to ensure equal athletic opportunities for women.

197. Deviation from the line drawn by Title IX harms females by making them compete against males, which is not fair, and in many cases can be unsafe.

198. Because of the Male-Female Sport Performance Gap any quest to assign eligibility in male and female sport on terms other than biological sex is quixotic, doomed to fail scientifically, practically, and legally.

**Testosterone Suppression Does Not Bridge the Male-Female Sport Performance Gap**

199. Nevertheless, despite the science-backed dividing line for eligibility in women's sport provided by Title IX, which is sex and sex alone, the NCAA has chosen to define eligibility in women's collegiate sport in terms of testosterone suppression by allowing men to compete as women merely by suppressing testosterone to a certain level that is still above the female range.

200. In other words, the NCAA gives males who wish to compete against women the option to suppress testosterone to a level that is still above the highest level a female can produce without doping.

201. For a male who wishes to begin competing against females in NCAA competitions, the NCAA Transgender Eligibility Policies require only a year of testosterone suppression before a male may compete against females.

202. However, multiple peer reviewed scientific research papers confirm that testosterone suppression does not work to bridge the Male-Female Sport Performance Gap.

203. In one peer reviewed article researchers studied the effects of a year of hormone suppression on males and found that while males on hormone

suppression experienced some reduction in muscle mass, they “generally maintained their strength levels.”<sup>27</sup>

204. In another report, researchers Hilton and Lundberg concluded “that under testosterone suppression regimes typically used in clinical settings, and which comfortably exceed the requirements of sports federations for inclusion of transgender women in female sports categories by reducing testosterone levels to well below the upper tolerated limit, *evidence for loss of the male performance advantage*, established by testosterone at puberty and translating in elite athletes to a 10–50% performance advantage, *is lacking*.”<sup>28</sup>

205. Hilton and Lundberg continued:

Rather, the data show that strength, lean body mass, muscle size and bone density are only trivially affected. The reductions observed in muscle mass, size, and strength are very small compared to the baseline differences between males and females in these variables, and thus, there are major performance and safety implications in sports where these attributes are competitively significant. These data significantly undermine the delivery of fairness and safety presumed by the criteria set out in transgender inclusion policies, particularly given the stated prioritization of fairness as an overriding objective (for the IOC). If those policies are intended to preserve fairness, inclusion and the safety of biologically female athletes, sporting

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<sup>27</sup> Wiik, Anna, et al., “Muscle Strength, Size, and Composition Following 12 Months of Gender-affirming Treatment in Transgender Individuals,” *J Clin Endocrinol Metab*, March 2020, 105(3):e805–e813, available at: <https://academic.oup.com/jcem>. (accessed Mar. 14, 2024)

<sup>28</sup> Hilton, E.N., Lundberg, T., “Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage,” *Sports Medicine*, (2021) 51:199-214, p. 211.

organizations may need to reassess their policies regarding inclusion of transgender women.

*Id.*

206. Thus, peer reviewed scientific studies demonstrate testosterone suppression does relatively little to mitigate the strength, speed, size, power and other athletically relevant differences between men and women (*i.e.*, the Male-Female Sport Performance Gap).

207. A review published in April 2023 reported that there have been a total of 19 published peer reviewed research reports on the effects of testosterone suppression (as part of gender affirming hormone treatment or “GAHT”) on performance.<sup>29</sup>

208. “Collectively, the existing research indicates that while GAHT affects biology, the changes it creates are minimal compared to the initial biological differences between typical males and typical females, which means that both biological attributes and performance differences are retained even after years of GAHT.” *Id.*

209. “In spite of testosterone suppression in transwomen reducing circulating hemoglobin concentration to the levels of reference women, all of these

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<sup>29</sup> “Should Transwomen be allowed to Compete in Women’s Sports?” Brown, Gregory A., Ph.D. and Lundberg, Tommy, Ph.D., available at: <https://www.sportpolicycenter.com/news/2023/4/17/should-transwomen-be-allowed-to-compete-in-womens-sports> (accessed Mar. 14, 2024)

reviews came to the conclusion that even after 3 years of testosterone suppression there are still lasting male athletic advantages in transwomen.” *Id.*

210. Thus, while testosterone suppression is the supposed backbone of the NCAA’s Transgender Eligibility Policies in which the NCAA authorizes men to compete in women’s sports after only a year of testosterone suppression, peer reviewed scientific research confirms that the NCAA’s reliance upon testosterone suppression is not supported by reliable scientific data.

211. Nor has the NCAA ever published any data or studies supporting its testosterone suppression policy.

212. Clearly, there is nothing about the NCAA’s reliance on male testosterone suppression that can justify the discriminatory effects of the NCAA’s Transgender Eligibility Policies on females.

213. Testosterone suppression does not bridge the Male-Female Sport Performance Gap.

214. Relevantly as well, as explained below, close analysis of the NCAA Gender Eligibility Policies demonstrates they have been thrown together in slapdash fashion, without apparent rhyme or reason, making it painfully clear that in this area the NCAA is focused upon gender ideology alone and is not even attempting to pursue competitive fairness for women.

**The NCAA's Transgender Eligibility Policies Allow Men to Compete Against Women While Retaining Higher Levels of Testosterone Than Women**

215. The ranges of testosterone produced by males and females do not overlap.

216. Men produce far more testosterone than women and there is a significant gap between the upper end of the testosterone range for women and the lower end of the testosterone range for men.

217. A 2018 metanalysis established that in healthy individuals there is “a clear bimodal distribution of testosterone levels, with the lower end of the male range being four- to five-fold higher than the upper end of the female range (males 8.8-30.9 nmol/L, females 0.4-2.0 nmol/L).” Clark RV, Wald JA, Swerdloff RS, *et al.*, “Large divergence in testosterone concentrations between men and women: Frame of reference for elite athletes in sex-specific competition in sports, a narrative review.” *Clin Endocrinol (Oxf)*. 2019; 90:15–22.

<https://doi.org/10.1111/cen.13840>.

218. Currently, in 19 out of 25 women's sports the NCAA only requires males who want to compete against females to show testosterone suppression to a level of less than 10 nanomoles per liter (<10 nmol/L).

219. The <10 nmol/L testosterone threshold used by the NCAA for granting eligibility to males to compete against females in most NCAA sports is five times higher than the upper end of the female testosterone range, twenty-five

times higher than the testosterone level of females at the lower end of the female range, and *includes testosterone levels that are within the normal male range* of 8.8 nmol/L to 30.9 nmol/L.

220. Importantly, the female range of 0.4 nmol/L to 2.0 nmol/L *includes elite female athletes*.

221. This means that even after “suppression” males are allowed to compete in the female category with testosterone levels far higher than any female athlete could ever achieve without doping.

222. Moreover, under current NCAA rules, some males (those falling within the lower end of the normal male testosterone range (*i.e.*, between 8.8 to 10.0 nmol/L or so) could compete in NCAA women’s sports without substantially reducing their testosterone level at all.

223. These facts further confirm a discriminatory NCAA policy that disparately impacts women.

224. To be sure, as explained above, Plaintiffs do not concede that rules that permit a man to compete in women’s scholastic sports through engaging in any level of testosterone suppression can pass muster under Title IX.

225. Yet, even were it to be found somehow that a process of relying upon male testosterone suppression to permit men to access women’s sports and sports teams could preserve equal opportunities for women in sports under Title IX, *the*

*NCAA's current eligibility rules* would still fail because they *provide a testosterone advantage to men* competing as women *that women cannot replicate without doping*.

226. However, the facts about the NCAA's Transgender Eligibility Policies get even worse.

227. As explained below, the <10 nmol/L testosterone suppression level, which is the central feature of the NCAA's Transgender Eligibility Policy requirements for males wishing to compete as females is not supported by robust scientific research and it was formally dispensed with years ago by the International Olympic Committee (IOC), yet the NCAA still relies upon it.

**The 2015 IOC Consensus Statement, Still Relied on by the NCAA, Was Withdrawn by the IOC in 2021**

228. The current NCAA Transgender Eligibility Policies stem from changes made by the NCAA in 2022 to take what the NCAA represents is a “sport-by-sport approach” that “aligns transgender student-athlete participation with the Olympic Movement.”<sup>30</sup>

229. Specifically, the NCAA claims that “the updated NCAA policy calls for transgender student-athlete participation for each sport to be determined by the policy for the national governing body [(“NGB”)] of that sport. If there is no NGB

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<sup>30</sup> <https://www.ncaa.org/sports/2022/1/27/transgender-participation-policy.aspx> (accessed Mar. 14, 2024) (App. A, NCAA 000001).

policy for a sport, it would then be determined by the policy for that sport's international federation. If there is no international federation policy, it would be determined by policy criteria previously established by the International Olympic Committee."<sup>31</sup>

230. However, the NCAA's claim of substantial alignment of the NCAA Transgender Eligibility Policies with the Olympic Movement is false.

231. Instead, the NCAA has adopted a hodgepodge of sport-by-sport testosterone suppression levels (*i.e.*, threshold testosterone levels below which the NCAA allows men to compete in the women's category) which are applied inconsistently with how comparable athletes are treated in the Olympic Movement.

232. The unifying theme of all iterations of the NCAA's transgender eligibility rules since 2022 is that men can compete on women's teams merely by demonstrating suppression of testosterone below a certain level.

233. (Before 2022 the NCAA did not even require suppression below a defined level.)

234. Most of the NCAA's testosterone suppression thresholds, *i.e.*, those currently applied in 19 out of 25 women's sports, are set at 10 nmol/L of serum testosterone.

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<sup>31</sup> <https://www.ncaa.org/sports/2022/1/27/transgender-participation-policy.aspx> (accessed Mar. 14, 2024) (App. A, NCAA 000001).

235. In general, this means that a male student-athlete who affirms they are transgender will be allowed to compete on a women's team if the student-athlete provides a single blood test result showing serum testosterone of less than 10 nmol/L twenty-eight (28) days before competing and obtains a signature of a single medical professional affirming the student-athlete has undergone hormone suppression for a year (however, no demonstration of a continuous level of suppression within that one year is required).

236. The NCAA's claim that the <10 nmol/L suppression level is sourced from current Olympic Movement policies is untrue.

237. Rather, the level of <10 nmol/L used by the NCAA in most women's sports is derived from an outdated, non-peer reviewed, two-and-a-half-page statement issued by the participants in an IOC-organized meeting *in 2015* which included four lawyers, multiple IOC employees, four IOC Medical & Scientific Commission members and ten academicians.<sup>32</sup>

238. The document relied on by the NCAA is headlined *IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism November 2015* (the "2015 IOC Consensus Statement"). *Id.*

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[https://stillmed.olympic.org/Documents/Commissions\\_PDFfiles/Medical\\_commission/2015-11\\_ioc\\_consensus\\_meeting\\_on\\_sex\\_reassignment\\_and\\_hyperandrogenism-en.pdf](https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf) (accessed Mar. 14, 2024).

239. The first page of the 2015 IOC Consensus Statement merely lists the participants in the meeting. *Id.*

240. The portion of the document dealing with transgender eligibility is a one-page outline of concepts for consideration by sports organizations with no references to scientific literature, studies, data, or testing. *Id.*

241. Moreover, the 2015 IOC Consensus Statement, which again is currently relied upon by the NCAA for 19 of the 25 women's sports governed by the NCAA, *was in fact replaced by the IOC on November 16, 2021.*

242. On that date, the IOC transferred responsibility for developing transgender eligibility rules to its member international sport federations and expressly “replac[ed] . . . previous IOC statements on this matter, *including the 2015 Consensus Statement.*”<sup>33</sup>

243. Therefore, *in 2022* when the NCAA first claimed to apply Olympic Movement policies to NCAA women's sports and at that time relied upon the 2015 IOC Consensus Statement to implement a <10 nmol/L testosterone suppression level for all NCAA women's sports, the NCAA was applying an outmoded, previously replaced, no longer operative, and withdrawn, IOC recommendation.

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<sup>33</sup> <https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Human-Rights/IOC-Framework-Fairness-Inclusion-Non-discrimination-2021.pdf> (accessed Mar. 14, 2024) (emphasis added).

244. Of course, as noted above, one of the problems with the nearly decade-old 2015 IOC Consensus Statement and its <10 nmol/L testosterone suppression level is that it discriminates against women by allowing men to compete on women's teams with a testosterone level that is five times higher than the highest recorded testosterone level for elite female athletes.<sup>34</sup>

245. As also noted above, by 2021 when the NCAA adopted its testosterone suppression threshold robust scientific evidence demonstrated testosterone suppression of men wishing to compete against women was not sufficient to protect women.

246. These facts are indicative of a NCAA policy driven by ideology and not science, but it gets even worse.

247. The NCAA adds insult to injury by claiming sport-by-sport alignment with Olympic Movement policies and then in case-after-case not following Olympic Movement policies.

**The NCAA's Transgender Policies Are in Fact  
Dramatically Out-of-Step with Current Olympic Movement Policies**

248. The sport-by-sport testosterone suppression levels currently used by the NCAA are found on the NCAA website by clicking on three separate links (for fall sports, winter sports and spring sports) in the NCAA "Transgender Student-

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<sup>34</sup> See *supra* at ¶¶ 215 – 225.

Athlete Eligibility Review Procedures”<sup>35</sup> or in a document referred to on the NCAA website as the “NCAA Transgender Student-Athlete Participation Policy Phase Two: 2022-23 and 2023-24 Academic Years Eligibility Review Form - Instructions.”<sup>36</sup>

249. Review of these documents on the NCAA website – to which student-athletes and NCAA institution athletic staff are directed by the NCAA in order to comply with the NCAA’s policies – demonstrates massive inconsistencies between current Olympic sport policies and the NCAA’s radically out-of-step and dangerous approach to transgender eligibility in women’s sports.

250. The extraordinary underlying principle of the NCAA’s Transgender Eligibility Policies which the NCAA applies in every women’s sport—that males may compete on women’s teams with only a single year of testosterone suppression—does not, in fact, align with the policies of key Olympic Movement governing bodies.

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<sup>35</sup> <https://www.ncaa.org/sports/2022/1/28/transgender-student-athlete-eligibility-review-procedures.aspx> (accessed Mar. 14, 2024) (Note on NCAA website: Approved: Jan. 27, 2022, Distributed Jan. 28, 2022, Updated: Jan. 19, 2023) (App. A, NCAA 000003).

<sup>36</sup>

[https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/SSI\\_TransgenderSAEligibilityReviewForm.pdf](https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/SSI_TransgenderSAEligibilityReviewForm.pdf) (accessed Mar. 14, 2024) (App. A, NCAA 000005).

251. Nor does the NCAA offer a shred of scientific data on its website supporting this underlying principle which, as demonstrated below, lies dramatically outside practices of the leading governing bodies in Olympic sport.

### **Swimming**

252. For instance, in the NCAA's category of "Women's Swimming & Diving" *the NCAA claims it applies* USA Swimming's policy for transgender eligibility merely because the NCAA has set a testosterone suppression threshold of 5 nmol/L.<sup>37</sup>

253. However, for male athletes who identify as transgender and seek to compete in the women's category the eligibility policy of USA Swimming, the U.S. NGB for swimming, states "it shall be presumed that the athlete is not eligible unless the athlete demonstrates that the concentration of testosterone in the athlete's serum has been less than 5 nmol/L (as measured by liquid chromatography coupled with mass spectrometry) continuously *for a period of at least thirty-six (36) months before the date of Application*. This must include at a minimum three (3) separate blood tests within the past three hundred sixty-five days (365) days preceding the Application, with the last test conducted within

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[https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/SSI\\_TransgenderSADeadlinesAndThresholdsWinter.pdf](https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/SSI_TransgenderSADeadlinesAndThresholdsWinter.pdf) (accessed Mar. 14, 2024) (NCAA TRANSGENDER STUDENT-ATHLETE PARTICIPATION POLICY SPORT-SPECIFIC TESTOSTERONE THRESHOLDS AND CHAMPIONSHIP ELIGIBILITY DEADLINES 2023-24 WINTER SPORTS) (App. A, NCAA 000012).

ninety (90) days prior to the athlete’s Application.”<sup>38</sup> Thus, USA Swimming requires testosterone suppression *under the maximum threshold for 36 months* before the date of application.

254. In contrast, the NCAA only requires, “[l]aboratory results demonstrating *a one-time total serum testosterone level* that is within the allowable levels for the sport in which the student-athlete plans to compete . . . within four weeks (28 days) prior to the applicable competition date”<sup>39</sup> and a male athlete’s “medical professional” (a physician certification is not required by the NCAA) need only certify “[t]he identified student-athlete has, as of the date identified below, received hormone suppression treatment for at least one calendar year.”<sup>40</sup>

255. Thus, while USA Swimming rules require more than three years of suppression below the 5 nmol/L level, in contrast NCAA procedures only require a

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<sup>38</sup> [https://www.usaswimming.org/docs/default-source/governance/governance-lsc-website/rules\\_policies/usa-swimming-policy-19.pdf](https://www.usaswimming.org/docs/default-source/governance/governance-lsc-website/rules_policies/usa-swimming-policy-19.pdf) (accessed Mar. 14, 2024) (USA Swimming Athlete Inclusion, Competitive Equity, and Eligibility Policy) (emphasis added).

<sup>39</sup> <https://www.ncaa.org/sports/2022/1/28/transgender-student-athlete-eligibility-review-procedures.aspx> (accessed Mar. 14, 2024) (NCAA Transgender Student-Athlete Eligibility Review Procedures) (emphasis added) (App. A, NCAA 000003).

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[https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/SSI\\_TransgenderSAEligibilityReviewForm.pdf](https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/SSI_TransgenderSAEligibilityReviewForm.pdf) (accessed Mar. 14, (2024) (NCAA Transgender Student-Athlete Participation Policy Eligibility Review Form: Section Two – Medical Professional Attestation) (App. A, NCAA 000007).

single blood test result below 5 nmol/L within 28 days of the male athlete's first competition date.

256. While the NCAA requires certification from a medical professional of one year of testosterone suppression, the NCAA does not require that "suppression" during that year be continuously below the 5 nmol/L threshold.

257. Furthermore, USA Swimming's policy specifies that "[a]s a condition of eligibility, the athlete must satisfy the Elite Athlete/Event Fairness Panel that . . . [f]rom a medical perspective, the prior physical development of the athlete as a Male, as mitigated by any medical intervention, does not give the athlete a competitive advantage over the athlete's cisgender Female competitors."<sup>41</sup>

258. The NCAA has no comparable process directed at ensuring competitive fairness and disqualifying male athletes who should not compete against females due to Retained Male Advantage.

259. Thus, the NCAA's claim to be following "transgender student-athlete participation [policies] . . . determined by" USA Swimming is plainly not accurate.

### **Diving**

260. Furthermore, the NCAA's application of a 5 nmol/L threshold *to Diving athletes* is also inconsistent with the NCAA's stated approach of applying

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<sup>41</sup> [https://www.usaswimming.org/docs/default-source/governance/governance-lsc-website/rules\\_policies/usa-swimming-policy-19.pdf](https://www.usaswimming.org/docs/default-source/governance/governance-lsc-website/rules_policies/usa-swimming-policy-19.pdf) (accessed Mar. 14, 2024) (USA Swimming Athlete Inclusion, Competitive Equity, and Eligibility Policy).

the policy “determined by the . . . national governing body of that sport [and] [i]f there is no NGB policy for a sport . . . the policy for that sport’s international federation.”<sup>42</sup>

261. USA Diving is the U.S. NGB for the sport of diving, not USA Swimming.

262. Thus, if the NCAA were applying sport-by-sport NGB eligibility policies as it claims it would have looked to the rules of USA Diving or its international federation World Aquatics.<sup>43</sup>

263. USA Diving does not have transgender eligibility rules, therefore, pursuant to the sport-by-sport approach to which the NCAA claims it subscribes, the NCAA should, but does not, apply the eligibility rules of World Aquatics to diving athletes.

264. World Aquatics’ rules do not permit a male athlete to compete in the women’s category in World Aquatics events, regardless of gender identity, unless the athlete has undertaken gender transition and hormone suppression starting at the developmental stage known as Tanner Stage 2 (which starts for most people

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<sup>42</sup> <https://www.ncaa.org/sports/2022/1/27/transgender-participation-policy.aspx> (accessed Mar. 14, 2024) (App. A, NCAA 000001).

<sup>43</sup> World Aquatics, formerly known as the Fédération Internationale de Natation (FINA), is the international federation for swimming, open water swimming, diving, water polo and other aquatic sports. *See* <https://www.worldaquatics.com/about> (accessed Mar. 14, 2024).

around age 12) and have maintained continuous suppression of testosterone under 2.5 nmol/L since then.<sup>44</sup>

265. Therefore, the NCAA's policies for both swimmers and divers *do not comply* with the NCAA's claimed sport-by-sport Olympic alignment policy.

### **Water Polo**

266. Nor does the NCAA's eligibility policy for Women's Water Polo comply with the NCAA's Olympic alignment claim.

267. The NCAA sets a "Approved Testosterone Threshold"<sup>45</sup> of <2.5 nmol/L for Women's Water Polo and cites the international federation now known as World Aquatics (previously known as FINA) as the source of this "benchmark."  
*Id.*

268. However, as explained above, World Aquatics' eligibility policy requires hormone suppression *beginning at Tanner Stage 2* (*i.e.*, approximately age 12) as the starting point for any effort to qualify for eligibility in the women's category.

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<sup>44</sup> <https://resources.fina.org/fina/document/2022/06/19/525de003-51f4-47d3-8d5a-716dac5f77c7/FINA-INCLUSION-POLICY-AND-APPENDICES-FINAL-.pdf> (accessed Mar. 14, 2024) (World Aquatics POLICY ON ELIGIBILITY FOR THE MEN'S AND WOMEN'S COMPETITION CATEGORIES) (Section F.4. Eligibility for the Women's Category).

<sup>45</sup>

[https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/SSI\\_TransgenderSADeadlinesAndThresholdsSpring.pdf](https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/SSI_TransgenderSADeadlinesAndThresholdsSpring.pdf) (accessed Mar. 14, 2024) (App. A, NCAA 000015).

269. Thus, the NCAA is clearly not undertaking a faithful application of World Aquatics' eligibility rules for men who wish to compete in Women's Water Polo, nor therefore is the NCAA seeking to protect the opportunities of female water polo players.

270. Thus, *in all three women's aquatics sports* (swimming, diving, and water polo) governed at the collegiate level by the NCAA, *the NCAA does not apply Olympic sport policies*, contrary to what the NCAA claims.

### **Cross-country and Track and Field**

271. Similarly, the NCAA governs three women's athletics (*i.e.*, running and track and field) sports at the collegiate level, namely women's cross country, women's indoor track and field and women's outdoor track and field.

272. *For each of these three running sports the NCAA likewise does not apply relevant Olympic sport policies*, despite claiming otherwise.

273. Each of the running and track and field sports fall under the purview of USA Track & Field (USATF) as the U.S. NGB and World Athletics as the international federation.

274. As to each of these sports, the NCAA seeks to justify applying a <10 nmol/L testosterone threshold by linking to a USATF webpage entitled USATF Statement Regarding Transgender/Transsexual Policy (the “USATF Statement”).<sup>46</sup>

275. The USATF Statement references the IOC policy “updated in November of 2015” which as discussed above is the 2015 IOC Consensus Statement which has been superseded. *See supra* at ¶¶ 228 - 246.

276. The USATF Statement may have at one time contained a hyperlink to the 2015 IOC Consensus Statement, however, the hyperlink has been removed, likely in recognition of the fact that the 2015 IOC Consensus Statement has been withdrawn.

277. Nor does the USATF Statement reference a testosterone threshold of <10 nmol/L as the NCAA Transgender Eligibility Policy inaccurately claims.<sup>47</sup> The USATF Statement does not reference a testosterone suppression threshold.<sup>48</sup>

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<sup>46</sup> <https://www.usatf.org/governance/policies/usatf-statement-regarding-transgender-transsexual-> (accessed Mar. 14, 2024).

<sup>47</sup> *See, e.g.,*

[https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/SSI\\_TransgenderSADeadlinesAndThresholdsFall.pdf](https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/SSI_TransgenderSADeadlinesAndThresholdsFall.pdf) (accessed March 14, 2024) (NCAA TRANSGENDER STUDENT-ATHLETE PARTICIPATION POLICY SPORT-SPECIFIC TESTOSTERONE THRESHOLDS AND CHAMPIONSHIP ELIGIBILITY DEADLINES 2023 FALL SPORTS) (Approved Testosterone Threshold for Women’s Cross-Country) (App. A, NCAA 000008).

<sup>48</sup> *See* <https://www.usatf.org/governance/policies/usatf-statement-regarding-transgender-transsexual-> (accessed Mar. 14, 2024)

278. Nor is the USATF Statement relied on by the NCAA indicative of current USATF eligibility standards for athletes comparable to NCAA athletes.

279. The appropriate USATF eligibility rule had the NCAA wanted to apply equivalent Olympic sport standards is Rule 1(a) of the USATF Competition Rules which makes the eligibility rules of World Athletics applicable to USATF national championships, including U.S. junior national championships such as the U20 Championships.<sup>49</sup>

280. World Athletics eligibility rules are virtually identical to the previously described standards applied by World Aquatics which require transitioning and continuous testosterone suppression below 2.5 nmol/L *starting by Tanner Stage 2*.<sup>50</sup>

281. Thus, *in women's cross country, women's indoor track and field and women's outdoor track and field the NCAA does not apply Olympic aligned policies, despite claiming otherwise.*

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<sup>49</sup> See <https://www.flipsnack.com/USATF/2024-usatf-competition-rules/full-view.html> (accessed Mar. 14, 2024).

<sup>50</sup> See World Athletics Book of Rules, Book C, Rule C3.5 – Eligibility Regulations Transgender Athletes – effective 31 March 2023, Section 3.2, available at: <https://worldathletics.org/about-iaaf/documents/book-of-rules> (accessed Mar. 14, 2024).

## Rowing

282. *In the sport of Women’s Rowing as well, the NCAA does not follow the applicable Olympic Movement policy.*

283. Instead, the NCAA applies a 5 nmol/L threshold which the NCAA inaccurately claims is based on US Rowing policy.

284. However, US Rowing’s policies do not reference a testosterone threshold.<sup>51</sup>

285. Here again, the NCAA’s supposed Olympic alignment standard should have it look to the policy of World Rowing (also known as FISA) which policy states on this point:

As a general guideline, a rower who has changed their gender, or intends to do so, and seeks to be determined as eligible to compete as a woman, will be required:

- a. First, to satisfy the Gender Advisory Panel that the rower’s serum testosterone concentration has been *less than 2.5 nmol/L continuously for a period of at least the previous 24 months*; and
- b. Secondly, meet any other requirements reasonably set by the Gender Advisory Panel and endorsed by the Executive Committee.”<sup>52</sup>

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[https://usrowing.org/documents/2020/8/13/USRowing\\_Policy\\_Manual\\_06112020.pdf](https://usrowing.org/documents/2020/8/13/USRowing_Policy_Manual_06112020.pdf) (accessed Mar. 14, 2024).

<sup>52</sup> Appendix R1 – Bye-Law to Rule 13 Men’s and Women’s Events, World Rowing Rule Book, available at: <https://worldrowing.com/technical/rules/2021-rule-book/> (emphasis added) (accessed Mar. 14, 2024).

286. Accordingly, Women’s Rowing is yet another women’s sport in which the NCAA is not following relevant Olympic sport policies, contrary to what it claims.

### **Triathlon**

287. Another example is the sport of triathlon where the NCAA has adopted a testosterone suppression threshold of  $<2.5$  nmol/L.<sup>53</sup>

288. Yet, the World Triathlon rules which the NCAA claims to be following state, “[t]he athlete must demonstrate that the concentration of [serum] testosterone . . . has been less than 2.5 nmol/L *continuously for a period of at least 24 months*”<sup>54</sup> and, as explained above, the NCAA only has a one year look back period for testosterone suppression and does not require suppression below a specified threshold during that one year period.

289. Thus, *in the sport of Women’s Triathlon as well the NCAA is not following the Olympic “sport-by-sport” standards it claims to be following.*

290. The NCAA’s patent failures to meet even its own announced Olympic alignment standards demonstrate the NCAA is not focused upon competitive fairness in women’s sport nor upon ensuring equal opportunities for women.

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<sup>53</sup>

[https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/SSI\\_TransgenderSADeadlinesAndThresholdsFall.pdf](https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/SSI_TransgenderSADeadlinesAndThresholdsFall.pdf) (accessed Mar. 14, 2024) (App. A, NCAA 000009).

<sup>54</sup> [https://www.triathlon.org/uploads/docs/TRI\\_Gender\\_Eligibility\\_Guidelines.pdf](https://www.triathlon.org/uploads/docs/TRI_Gender_Eligibility_Guidelines.pdf) (accessed Mar. 14, 2024).

## **The NCAA's Transgender Eligibility Policies Expose Women to Higher Safety Risks in Contact Sports**

291. Another clear indicator that the NCAA's goal is not equal opportunities for women is that in women's contact sports prone to violent collisions such as rugby, field hockey, lacrosse, soccer, softball, basketball and wrestling the NCAA allows a man to compete against women while maintaining Retained Male Advantage,<sup>55</sup> (including male advantages in size, strength, power, weight and speed) if the man merely applies to do so and satisfies the 10 nmol/L testosterone ceiling, in each case requiring only affirmation of a year of suppression without any particular level below which the male athlete's testosterone must be suppressed within that year.

292. By failing to protect women in contact sports, increasing the risk of injury for females, and allowing male bodied athletes to compete against women, the NCAA is depriving women of an equal opportunity—in comparison to men—to receive the benefits of safe sport.

### **Concussions**

293. Concussions raise serious long term health implications and can have lifelong debilitating effects.

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<sup>55</sup> Retained Male Advantage is defined as the significant athletic advantages that males retain over females due to male biology and physical development even after testosterone suppression. *See supra* at p. 6, fn. 1 and at ¶¶ 199 – 213.

294. “[Y]oung athletes may suffer significant long-term cognitive, memory, and fine motor impairment secondary to sports related, mild, traumatic brain injuries.” Brown, K.A., Patel, D.R., “Participation in sports in relation to adolescent growth and development,” *Transl Pediatr* 2017;6(3):150-159, p. 156, available at <https://tp.amegroups.com/article/view/14626/14780>

295. “[D]amage to the brain from collisions has been shown to cause greater instance of mental illness such as depression and psychosis. Through . . . even one substantial head injury, the connections between brain neurons can be profoundly disrupted.” “What Parents Should Know About Youth Athletics and Mental Health,” Skyland Trail.org, available at <https://www.skylandtrail.org/what-parents-should-know-about-youth-athletics-and-mental-health/> (Skyland Trail is a non-profit mental health treatment organization based in Atlanta.).

296. “Studies from US collegiate sports have shown that female athletes are 1.9 times more likely to develop a sports-related concussion than are their male contemporaries in comparable sports.” Sanderson, K. Why Sports Concussions Are Worse for Women, *Nature* (Aug. 3, 2021), <https://www.nature.com/articles/d41586-021-02089-2>.

297. Concussions are just one type of serious athletic injury for which female athletes are at higher risk than males and the NCAA’s discriminatory

eligibility policy hurts women by imposing an even higher risk of concussions and other injuries on them.

298. The NCAA has diminished equal opportunities for women in sport by permitting athletes with retained male advantage, size, strength, power, and speed to compete on women's sports teams in contact sports, increasing female athletes' risk of injury in violation of Title IX.

### **No NCAA Monitoring of Male Testosterone Suppression**

299. In addition to the problems with the NCAA's Transgender Eligibility Policies described above, they inadequately protect women for the additional reason that the NCAA does not have a monitoring and enforcement program for its testosterone suppression requirement.

300. This demonstrates another discriminatory aspect of the NCAA's program.

301. The NCAA drug tests women for performance enhancing drugs, including synthetic testosterone, at its championships and makes them subject to no advance notice drug testing throughout the season.

302. However, the NCAA does not monitor the testosterone levels of men who are required to suppress testosterone to compete in women's sports.

303. Therefore, even if the NCAA's testosterone suppression requirement could have an effect on reducing the massive performance advantages that males

have over females in sport the NCAA neither monitors or enforces its published testosterone suppression standards nor does it have a program to deter non-compliance.

304. For instance, the NCAA does not conduct independent, arms-length blood testing or other monitoring of compliance with testosterone thresholds.

305. The NCAA could hardly show less attention to protecting competitive fairness for women in its Transgender Eligibility Policies.

### **Summary of Defects in NCAA's Transgender Eligibility Policies**

306. The NCAA's Transgender Eligibility Policies are a house of cards, ill grounded and insubstantial in every way, and without scientific substance or merit. They exist only as a fig leaf for the NCAA's ideology-driven decision to subordinate women's opportunities in sport to the interests of men who declare themselves transgender.

307. No men are disadvantaged by the NCAA's Transgender Eligibility Policies only women are.

308. As the Thomas case described below, *see infra* ¶¶ 519 - 521, demonstrates, men who perform at a relatively low level when competing against other men can shift to the women's category and achieve at a much higher level relative to women.

309. The NCAA's Transgender Eligibility Policies allow a man to make the relatively easy (in terms of comparative athletic challenge) shift to a women's team, depriving women of athletic accomplishments, recognition, awards, scholarships, and roster spots.

310. But the same easy opportunity to shift to a men's team and reap relative sport performance benefits and the awards and recognition that flow from those relative sport performance benefits is non-existent for women.

311. Women far more rarely move to men's teams for the simple reason that women are not generally (if ever at a high collegiate level) competitive on men's teams even if they receive a therapeutic use exemption to use testosterone as part of gender affirming hormone treatment.

312. Perhaps for this reason, another transgender swimmer who competed in the 2022 Women's National Swimming and Diving Championships and is a biological woman elected to continue to compete on the women's swimming team. This transgender competitor did reach an event Final in the NCAA Women's Swimming National Championships but would not have been competitive in the NCAA Men's Swimming Championships.

313. As explained above, the only real hurdle the NCAA places before a man who wishes to compete on a NCAA women's team and have access to

women's showers and locker rooms is a requirement of one-year of unmonitored (by the NCAA) testosterone suppression.

314. This hurdle is low indeed and toothless for maintaining a level playing field. For the reasons explained above, it does not come close to meeting the NCAA's Title IX obligation to preserve equal opportunities for women.

315. Therefore, the NCAA Transgender Eligibility Policies disparately and adversely affect women and reduce their opportunities in college sport. These Policies violate Title IX, and an injunction should issue enjoining the NCAA's use of these Policies or any policies which allow a man to participate in the women's category, on a women's team or in a women's competition, event, or championship.

316. Thus far, the NCAA's Transgender Eligibility Policies, considered largely in the abstract, have been demonstrated to be manifestly inconsistent with the NCAA's claims about them, massively out-of-step with the policies of other sports organizations, and totally unsupported by scientific literature, reasoning or analysis.

317. The next section explains how in practice the NCAA's regressive policies have harmed Plaintiffs and other women similarly situated, depriving them of an equal and fair opportunity to compete in college sport.

## **EVENTS LEADING TO 2022 NCAA WOMEN’S SWIMMING AND DIVING CHAMPIONSHIPS AT GEORGIA TECH**

318. The NCAA’s 2010 NCAA Transgender Participation Policy stated that men who wished to compete in NCAA competition on a women’s team<sup>56</sup> could do so by “completing one calendar year of testosterone suppression treatment.”<sup>57</sup> No specific level of testosterone suppression was required. Nor was independent testing or monitoring of hormone levels or of testosterone suppression required. Nor did the policy include any provisions requiring evaluation of any competitive advantage of male athletes competing on a women’s team and there was no requirement to evaluate risk of injury to female student-athletes.

319. The NCAA’s 2010 NCAA Transgender Participation Policy remained unchanged until 2022.

### **April 12, 2021, NCAA Board of Governors Statement**

320. On April 12, 2021, the NCAA Board of Governors released a statement widely interpreted as directed at state legislators considering legislation to protect female athletes from males competing on female sports teams.

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<sup>56</sup> The Policy (as updated in 2022 to, in the wording of the NCAA, “remove outdated language”) refers to such individuals as “[a] trans female (MTF) student-athlete being treated with testosterone suppression medication for gender dysphoria[.]”

<sup>57</sup>

[https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/INC\\_TransgenderStudentAthleteParticipationPolicy.pdf](https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/INC_TransgenderStudentAthleteParticipationPolicy.pdf) (accessed Mar. 14, 2024)

321. As they had in 2016 in relation to state legislatures considering legislation related to male and female bathroom usage, the NCAA Board of Governors threatened to withdraw NCAA events from states where “Saving Women’s Sports” legislation was passed. Commenting on the NCAA’s Transgender Eligibility Policies, the NCAA’s top leadership proclaimed:

The NCAA Board of Governors firmly and unequivocally supports the opportunity for transgender student-athletes to compete in college sports. This commitment is grounded in our values of inclusion and fair competition.

The NCAA has a long-standing policy that provides a more inclusive path for transgender participation in college sports. Our approach — which requires testosterone suppression treatment for transgender women to compete in women’s sports — embraces the evolving science on this issue and is anchored in participation policies of both the International Olympic Committee and the U.S. Olympic and Paralympic Committee. Inclusion and fairness can coexist for all student-athletes, including transgender athletes, at all levels of sport. Our clear expectation as the Association’s top governing body is that all student-athletes will be treated with dignity and respect. We are committed to ensuring that NCAA championships are open for all who earn the right to compete in them.

When determining where championships are held, NCAA policy directs that only locations where hosts can commit to providing an environment that is safe, healthy and free of discrimination should be selected. We will continue to closely monitor these situations to determine whether NCAA championships can be conducted in ways that are welcoming and respectful of all participants.

322. Through this and other such communications the NCAA has made clear that it will retaliate against those which criticize or oppose its Transgender Eligibility Policies.

323. The NCAA apparently believes that tough statements like this on transgender eligibility and threats of retaliation will generate support for the NCAA on college and university campuses.

324. The NCAA also recognizes that the atmosphere on many college campuses makes it difficult for anyone, and particularly for female athletes, to oppose its Transgender Eligibility Policies.

325. At the time the above quoted public statement on the NCAA's Transgender Eligibility Policies was released, the NCAA was preparing for the imminent release of what it understood was likely to be an embarrassing and damaging loss in the *NCAA v. Alston* case then pending in the U.S. Supreme Court (for which a decision was anticipated to be announced in June 2021).

326. Thus, the NCAA's April 12, 2021, statement on its Transgender Eligibility Policies appears to have been calculated to further its collegiate sport monetization aims and deflect attention from an upcoming loss in the courts by engendering support for the NCAA among activist groups and on college and university campuses in advance of the *Alston* ruling.

**January 19, 2022, NCAA Board of Governors Announces NCAA Will Follow Transgender Eligibility Rules of U.S. Governing Bodies of Olympic Sports**

327. As explained above, *see* ¶¶ 1-16, in the Fall of 2021 Lia Thomas swam the fastest times in the nation in women's freestyle events from the 200 free to the mile, making it apparent that if allowed to compete in the 2022 NCAA

Women's Swimming Championships Thomas would be competitive if not dominant, taking places and results from women.

328. Thomas' competitive performances focused attention upon the NCAA's Transgender Eligibility Policies.

329. Riley Gaines was confident that the NCAA would see the unfairness of letting Thomas, who had previously competed on the UPenn men's team, compete in the women's national championship, and she believed the NCAA would not allow Thomas to compete in Atlanta.

330. Many other women shared Riley's initial optimism, they trusted the NCAA to do the right thing and protect equal opportunities and competitive fairness for women.

331. To the contrary, however, the NCAA had made up its mind on what it would do; it just needed to figure out how to get there with the least possible off-campus damage to its reputation.

332. The NCAA knew it could expect on-campus support on this issue, one of the few issues on which the NCAA could expect such support even as it battled name, image, and likeness (NIL) issues in the wake of the *Alston* decision, which had been highly critical of the NCAA's exploitation of college athletes and violation of antitrust laws.

333. To generate support for its policies the NCAA regularly participated in organizing forums and shows of public support for the NCAA and its' policies on transgender eligibility issues.

334. Furthermore, an NCAA-approved speech code was in place in many college athletic departments, helping to ensure athletes would not vocally dissent, as if they did so they could risk losing their scholarship or other discipline.<sup>58</sup>

### **Ivy League Support of NCAA**

335. On January 6, 2022, the Ivy League issued the following statement supporting the NCAA:

**PRINCETON, N.J.** – The Ivy League releases the following statement of support regarding Penn's Lia Thomas' participation on the women's swimming & diving team:

*Over the past several years, Lia and the University of Pennsylvania have worked with the NCAA to follow all of the appropriate protocols in order to comply with the NCAA policy on transgender athlete participation and compete on the Penn women's swimming and diving team. The Ivy League has adopted and applies the same NCAA policy.*

*The Ivy League reaffirms its unwavering commitment to providing an inclusive environment for all student-athletes while condemning transphobia and discrimination in any form.*

*The league welcomes her participation in the sport of women's swimming and diving and looks forward to celebrating the success of all of our student-athletes throughout the season.<sup>59</sup>*

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<sup>58</sup> See *supra* at ¶¶ 28-31.

<sup>59</sup> <https://ivyleague.com/news/2022/1/6/general-the-ivy-league-releases-statement-of-support-regarding-penns-lia-thomas-participation-in-womens-swimming-diving.aspx> (accessed Mar. 14, 2024)

336. On January 19, 2022, the NCAA Board of Governors made an announcement which did not change the NCAA's policy of allowing men identifying as transgender to compete on collegiate women's teams, but which did seek additional political cover for the NCAA's Transgender Eligibility Policy by purporting to align the NCAA's Policy more closely with the sport-by-sport rules of NGBs in Olympic sports.

337. The NCAA press release stated:

**Board of Governors updates transgender participation policy  
Policy will take effect immediately, and impacted athletes can  
regain eligibility later if approved by divisions**

Media Center

Posted: 1/19/2022 8:41:00 PM

The NCAA Board of Governors on Wednesday voted in support of a sport-by-sport approach to transgender participation that preserves opportunity for transgender student-athletes while balancing fairness, inclusion and safety for all who compete. The new policy, effective immediately, aligns transgender student-athlete participation for college sports with recent policy changes from the United States Olympic and Paralympic Committee and International Olympic Committee.

Like the Olympics, the updated NCAA policy calls for transgender participation for each sport to be determined by the policy for the national governing body of that sport, subject to ongoing review and recommendation by the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports to the Board of Governors. If there is no NGB policy for a sport, that sport's international federation policy would be followed. If there is no international federation policy, previously established IOC policy criteria would be followed.

The Board of Governors urged the divisions to provide flexibility to allow for additional eligibility if a transgender student-athlete loses eligibility based on the policy change provided they meet the newly adopted standards.

The policy is effective starting with the 2022 winter championships. Transgender student-athletes will need to document sport-specific testosterone levels beginning four weeks before their sport's championship selections. Starting with the 2022-23 academic year, transgender student-athletes will need documented levels at the beginning of their season and a second documentation six months after the first. They will also need documented testosterone levels four weeks before championship selections. Full implementation would begin with the 2023-24 academic year.

“We are steadfast in our support of transgender student-athletes and the fostering of fairness across college sports,” said John DeGioia, chair of the board and Georgetown president. “It is important that NCAA member schools, conferences and college athletes compete in an inclusive, fair, safe and respectful environment and can move forward with a clear understanding of the new policy.”

“Approximately 80% of U.S. Olympians are either current or former college athletes,” said Mark Emmert, NCAA president. “This policy alignment provides consistency and further strengthens the relationship between college sports and the U.S. Olympics.”

Additionally, the NCAA's Office of Inclusion and the Sport Science Institute released the Gender Identity and Student-Athlete Participation Summit Final Report. The report assists ongoing membership efforts to support inclusion, fairness, and the mental and physical health of transgender and non-binary student-athletes in collegiate sport.

338. Via the revised Transgender Eligibility Policy stated above, the NCAA pledged to apply the eligibility policy of the relevant U.S. Olympic Sport NGB, or, if the NGB had no policy, the rules of the relevant international federation.

339. But, as explained above, *see* ¶¶ 228 - 290, there was not an honest realignment of NCAA policies at that time, nor has there been such since then.

340. The NCAA's claim to be substantially in accord with Olympic Movement policies is not accurate.

341. Events in the wake of the NCAA's announcement of its supposed realignment further demonstrate the insincerity of the NCAA's approach.

### **February 1, 2022, USA Swimming Adopts Transgender Eligibility Rules**

342. As of January 19, 2022, when the NCAA issued its public pledge to follow the eligibility rules of the relevant NGB, neither FINA (then the name of the international swimming federation) nor USA Swimming had rules on the books regarding eligibility for transgender athletes.

343. However, on February 1, 2022, less than two weeks after the NCAA Board of Governors' announcement, USA Swimming adopted detailed transgender eligibility rules.

344. The new USA Swimming rules, discussed above, which remain in effect today, provide that males wishing to compete as a transgender athlete in the female category must demonstrate they have maintained a testosterone level below 5 nanomoles per liter *continuously for at least 36 months before competition*. These athletes must also *provide evidence they do not have a competitive advantage from retained male advantage which must be submitted to a review*

*panel of three independent medical experts.* USA Swimming’s rules were adopted with an express goal of promoting competitive fairness and are applicable to events such as the U.S. Open and Junior Nationals, to USA Swimming members, and to those wishing to be eligible to set American records beginning with the 13-14 age group.

345. Had they been applied by the NCAA, USA Swimming’s rules would have prevented Thomas from competing in the 2022 NCAA Women’s Swimming Championships because Thomas had not sought to suppress testosterone under the required level for at least three years before the competition, nor had any scientific analysis been conducted to establish Thomas did not retain male competitive advantage.

### **NCAA Declines to Apply USA Swimming Rules**

346. However, notwithstanding the NCAA Board of Governors’ January 19, 2022, announcement supposedly adopting “a sport-by-sport approach to transgender participation” in which “transgender participation for each sport [would] be determined by the policy for the national governing body of that sport,” *the NCAA acted swiftly to reject USA Swimming’s rules.*

347. On February 10, 2022, the NCAA announced that “implementing additional changes at this time could have unfair and potentially detrimental

impacts on schools and student-athletes intending to compete in 2022 NCAA women's swimming championships[.]”<sup>60</sup>

348. Instead, the NCAA announced that student-athletes who had been in compliance with the 2010 transgender policy need only demonstrate a serum testosterone level below the “maximum allowable limit” for that sport within four weeks of the championship.

349. Thus, USA Swimming’s rule requiring testosterone suppression for at least three years in advance of competition and requiring scientific review of male competitive advantage was rejected by the NCAA just days after the NCAA Board of Governors said it intended to follow the transgender eligibility rules of U.S. NGBs.

350. The NCAA also said that notwithstanding USA Swimming’s lower 5 nanomole per liter limit, the testosterone threshold for women’s swimming would be 10 nanomoles per liter, double the threshold in the new USA Swimming policy.

351. Thus, although Thomas did not qualify to compete in the women’s category under USA Swimming’s rules, the NCAA permitted Thomas to compete for the remainder of the 2022 season, including in the Ivy League Championships

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<sup>60</sup> <https://www.ncaa.org/news/2022/2/10/media-center-csmas-subcommittee-recommends-no-additional-changes-to-testosterone-threshold-for-trans-women-at-2022-womens-swimming-and-diving-championships.aspx> (accessed Mar. 14, 2024).

and in the 2022 NCAA Women's Swimming Championships under a far less stringent standard.

352. Thomas won the Ivy League Championships in the 500-yard, 200-yard and 100-yard freestyle events and qualified for the 2022 NCAA Championships in all three events.

### **2022 NCAA WOMEN'S SWIMMING CHAMPIONSHIPS**

353. On March 2, 2022, the NCAA announced the 281 swimmers who qualified for the 2022 NCAA Division I Women's Swimming and Diving Championships.<sup>61</sup>

354. The 41 divers who qualified were to be announced on March 10, 2022.

355. The field at the 2022 NCAA Championships was an elite one, comprised of the best collegiate women's swimmers and divers in the country, including numerous All Americans and Olympic and World Championship competitors from the U.S. and other countries.

356. In the lead-up to the 2022 NCAA Championships female athletes traveling to Georgia to compete from schools across the country began receiving the same message from coaches, compliance staff, sports information directors and

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<sup>61</sup> <https://www.ncaa.com/news/swimming-women/article/2022-03-02/2022-ncaa-division-i-womens-swimming-and-diving-championships-qualifying> (accessed Mar. 14, 2024).

other university staff: that criticism of the NCAA for permitting a male bodied athlete to compete in the women's competition would not be tolerated.

357. Female student-athletes were warned that they were scholarship athletes and did not have the right to speak out on this issue.

358. Similarly, at the 2022 NCAA Championships meet officials at the McAuley Aquatic Center at Georgia Tech sought to prevent speech and actions which communicated disagreement with the NCAA's policies and practices.

359. Implicit in these warnings and other actions was that if women athletes, or their coaches or other team personnel did speak up they could lose their scholarships or positions or be punished in other ways.

360. On information and belief, this organized effort was promoted and supported by the NCAA which willfully participated, conspired, coordinated, collaborated and/or substantially cooperated with public colleges and universities, including but not limited to Georgia Tech and the University System of Georgia and Georgia Individual Defendants, to, under color of law and acting within the ambit of state authority, chill, discourage and deprive women student-athletes, coaches, staff, and administrators from exercising their rights to freely speak and communicate on this issue and discouraging public statements in opposition to the NCAA's policies.

**Violation of the Constitutional Right to Bodily Privacy of Female Swimmers and Divers at the McCauley Aquatics Center on the Georgia Tech Campus**

361. The locker rooms at the McCauley Aquatics Center are relatively small, such that swimmers and divers disrobing in them are generally within 10-15 feet of most of the other athletes in the room.

362. Modern technical swimsuits in which competitors in the NCAA Division I Women's Swimming and Diving Championships compete are very difficult to put on and take off due to the tightness of the suits and the materials from which they are made.

363. It is not uncommon for it to take 30 or 40 minutes for a female competitor to put on a competition suit, and almost all swimming and diving athletes require at least 15-20 minutes to put on their "tech suit."

364. Thus, while putting on their swimsuits women must stand or sit undressed or partially clad and with the private parts (*i.e.*, breasts, buttocks, and genital area) of their bodies exposed for long periods of time, making the process of putting on competition swimsuits a private activity that many women swimmers and divers prefer to engage in only in a secure and safe place, shielded from male access.

365. Additionally, during a competition such as the 2022 NCAA Division I Women's Swimming and Diving Championships competitors must frequently change swimsuits and attire, often changing from street clothes or warm up gear to

practice swimsuits for practice or warming up and to competition or tech suits shortly before competing and back into street clothes or warmup gear or a practice swimsuit. A competitor may have to repeat this cycle of dressing, undressing, and showering multiple times in a single day, particularly if they are competing in more than a single event.

366. Nationals is different from in season competitions for several reasons, not only are there far more athletes, and the pressure is higher, but at nationals the athletes are changing with far more strangers in the room. All of these factors argue in favor of a need for greater, rather than lesser, privacy standards.

367. To accommodate the large number of women swimmers and divers for the Championships both the locker room regularly designated as a women's locker room and the locker room regularly designated as the men's locker room were reserved by the NCAA, Georgia Tech, the University System of Georgia and one or more Georgia Individual Defendants for use of the women swimmers and divers.

368. However, unbeknownst to all or most female swimmers and divers and, on information and belief, by agreement of the NCAA and Georgia Tech, the University System of Georgia and/or one or more of the Georgia Individual Defendants, both locker rooms (including the adjacent restrooms) were designated

as “unisex” in order to permit Thomas uninhibited access to the locker rooms and restrooms used by, and designated for, the female swimmers and divers.

369. No *written* “unisex” designation or warning was, however, placed on the locker rooms or restrooms.

370. Nor were any of the Plaintiffs who competed in the NCAA Championships advised that the locker rooms had been temporarily designated “unisex” and that there was no locker room where female swimmers and divers could disrobe and dress in private without the prospect that a male would intrude upon their privacy.

371. Thus, throughout the 2022 NCAA Division I Women’s Swimming and Diving Championships Thomas, who is approximately six feet four inches tall and possessed full male genitalia, had complete and unrestricted access to the women’s locker rooms, showers, and restrooms at the McCauley Aquatics Center.

372. The first time most of the Plaintiffs became aware of Thomas’ access to the women’s locker rooms and restrooms at the McCauley Aquatics Center was: (1) when Thomas walked in on them while they were fully naked or in a state of substantial undress, revealing their bodies and private parts to Thomas and subjecting them to distress, shame, humiliation and embarrassment, (2) when they unwittingly walked in on Thomas and observed Thomas undressed with male genitalia exposed, subjecting them to distress, shame, humiliation and

embarrassment, or (3) when Thomas undressed in front of them, causing them distress, shame, humiliation and embarrassment.

373. Swimmer A had no advance warning she would encounter a male body in the locker room at the NCAA Championships.

374. On the first competition day Swimmer A walked into the locker room and was shocked to see a naked Thomas 10 feet in front of her and a full-frontal view of Thomas' male genitalia.

375. Swimmer A found the experience "disturbing" and "violating," and promptly gathered her belongings and walked into the hallway without changing.

376. Swimmer A immediately felt physical symptoms of a racing heartbeat and a racing mind. It felt like someone had "flipped an adrenaline switch" and she experienced a "huge element of shock." She was "upset."

377. As Swimmer A thought about what had happened, she thought "I really don't like this" and she felt "very uncomfortable" and realized that for the rest of the competition she would have to "change [her] approach" and a focus for her would have to be "trying to navigate the locker room."

378. She felt this had a "negative impact" on her trying to prepare to compete as she had to try to "mentally multi-task" to figure out how she could try to maintain privacy while she was preparing to compete.

379. The next day Swimmer A “decided to brave the locker room” because she had to put on her racing suit, a difficult and time-consuming chore.

380. As she walked in, she saw Thomas in the locker room changing.

381. She again felt sensations of anxiety and went to the adjacent bathroom where she changed in a bathroom stall even though changing in bathroom stalls is not supposed to be done by the swimmers and is difficult because of the reduced space and difficulty of getting into the racing suit.

382. It took Swimmer A 30-minutes in a bathroom stall to get into her tech suit.

383. Swimmer A’s perspective on NCAA Nationals was that the locker room experience very much detracted from her preparation to compete and “that’s the last thing we should have to focus on at a NCAA Championship.”

384. On one of the early days of the NCAA Championship Kylee Alons saw Thomas in the locker room; that was the first moment that Kylee understood that Thomas had access to the women’s locker room.

385. From that moment on, the locker room became an “uncomfortable” place for Kylee.

386. She was “stressed out” by having a male body in the locker room. She felt that her “privacy and sense of safety was violated.” “It was not a private locker room anymore.”

387. She also recognized that “any male official or other man could walk into” the locker room, as the NCAA and Georgia Tech were not protecting women’s privacy.

388. As a result, Kylee looked for another place to change and found an equipment storage closet in an area behind the bleachers.

389. Kylee said that although she much preferred changing in the women’s locker room at meets where that was a safe space, at the point in the 2022 NCAA Championships when she began using a storage closet to undress and change clothes and swimsuits, she was just “relieved” to be able to change in some place that had more privacy from men than the women’s locker room did at that moment.

390. Kylee was disappointed that the NCAA never got women swimmers’ feelings on the topic of locker room access.

391. Because the NCAA never reached out and just assumed female athletes would go along with having no dedicated women’s locker room or changing area, Kylee felt disrespected and taken advantage of.

392. Kylee believes NCAA officials were well aware of how much pressure the women competitors would be under at the NCAA Championships and felt they could “take advantage of us.”

393. She noted that, “men don’t have to go through this.”

394. Kylee felt the way the NCAA handled the entire meet was very disruptive to concentration and competing at her best.

395. Riley Gaines “had no idea that Thomas was going to be using the women’s locker room until he was in the locker room.”

396. Riley remembered the moment she found out about Thomas’ locker room access.

397. Riley described the locker room at a swimming competition as a place where women are “vulnerable” but it is not a quiet place.

398. Riley recalled that in this moment girls were laughing, chatting, crying.

399. Riley said she was “fully undressed” amidst the typical locker room clamor, when the room suddenly became silent, and Riley turned around to see Thomas “towering over every girl in the room.”

400. Riley, who had no clothes on, was mortified and said she, “felt very uncomfortable and wanted to hide.”

401. Riley said it was “dead silence” in the room before she let out an “uncomfortable laugh,” although she was “hurting inside.”

402. Riley recalled, “Thomas put his things down near her” and immediately “took all his clothes off.”

403. Riley pulled her clothes on and immediately went to the pool deck to find an NCAA official.

404. Riley found a male wearing an official's uniform and demanded to know why there was a male body undressing in the women's locker room.

405. The official's response to Riley was: "we had to get around this by changing the locker room to unisex."

406. Although Riley was distressed by the thought of changing day-after-day in the locker room with Thomas, she did not see any other option.

407. Riley was scheduled to swim in multiple events on three out of the four days of the Championships which required many changes of swimsuits and clothing daily. Her heavy competition schedule did not allow time for diversions.

408. Thereafter, Riley used the locker room with the added burden and worry of the need to shield her body with towels and trying to change as quickly as possible. Every day she felt uncomfortable about the entire experience.

409. Kaitlynn Wheeler was with her teammate Riley in the locker room and like Riley was also undressed when Thomas walked into the women's locker room.

410. Kaitlynn too felt emotions of shame, desperation and humiliation and longed to be anywhere else in that moment.

411. For Kaitlynn it was a traumatic moment that has driven her to speak up for other women as she hopes her sisters, her nieces, and other women never have to go through such a degrading experience where bodily privacy is violated without consent.

412. The actions, policies and/or practices of the NCAA and the Georgia Individual Defendants and/or Georgia Tech or the University System of Georgia to provide Thomas access to the women's locker rooms, restrooms, and showers at the 2022 NCAA Division I Women's Swimming and Diving Championships caused significant mental and emotional disruption for women preparing to compete in one of the most significant athletic competitions of their lives and adversely affected the ability of many women to prepare for their competitions.

413. The unconstitutional locker room, showers, and restroom policies and/or practices of the NCAA and the Georgia Individual Defendants and/or Georgia Tech or the University System of Georgia caused some women, including one or more Plaintiffs, to engage in difficult, uncomfortable, and degrading responses such as "deck changing," *i.e.*, changing or disrobing in one's parka in a hallway or other area to avoid exposure to Thomas, furtively changing in a storage closet, and/or not showering or not changing and as a result wearing wet clothing on the team bus.

414. Plaintiffs' experience was that the unconstitutional locker room, showers, and restroom practices of the NCAA and the Georgia Individual Defendants and/or Georgia Tech or the University System of Georgia ruined the competition for them and was a significant distraction that undermined their focus and competitive edge and thereby impugned the fairness and integrity of the competition.

415. Additionally, these women lost the opportunity for camaraderie that they typically experience in the locker room at meets.

416. Kylee Alons said, in place of that camaraderie was a pervasive sense of: "Why can't we get the respect that male competitors would get?"

417. For many women, the trauma caused by the unconstitutional locker room, showers, and restroom actions and practices of the NCAA, the Georgia Individual Defendants and/or Georgia Tech and/or the University System of Georgia thoroughly undermined their ability to enjoy the achievement of competing at the most significant swimming competition at which they would ever have the chance to compete in their lives.

### **Competition at the 2022 NCAA Championships**

418. As noted above, the NCAA Women's Swimming and Diving Championships is one of the most noteworthy and memorable competitions in which a female swimming or diving athlete can compete.

419. For all Plaintiffs this elite event, more competitive than many World Cup races and other international competitions, was one of the most, and for some, the most, significant athletic competition(s) in which they would ever participate.

420. Yet, for all their hard work, training, passion, determination, and extraordinary level of physical fitness, these young athletes were vulnerable.

421. They were vulnerable to the views of peers on the college campuses to which they would soon return.

422. They were vulnerable to the powerful effect of their own hopes, dreams and aspirations which compelled them to try to focus on their competitions and avoid distractions at all costs.

423. They were vulnerable to the rules of the NCAA by which they could be disqualified and to the aura of the NCAA which they dared not challenge.

424. The NCAA and its leaders were aware of these vulnerabilities, and they relied upon them when adopting the NCAA's discriminatory and repressive policies; they played upon these vulnerabilities to create an environment that discouraged women from drawing attention to the stripping of their constitutional freedoms and to the oppression of women that was daily taking place just outside the public's eye.

425. For the reasons described above, the women competitors were already disadvantaged by the time the Championships started.

426. The stress of the competition only increased the isolation, disadvantage, and sense of unfairness they experienced.

427. Each competition day at the Championships in which individual races (as opposed to relays) are contested involves Heats in the morning, followed by Finals in the evening.

428. The evening Finals are divided into an A Final (or “Championship Final”) comprised of the 8 fastest swimmers in the Heats and a B Final (or “Consolation Final”) comprised of the next 8 fastest swimmers in the Heats.

429. Each placement in the Finals is significant.

430. Swimmers’ teams receive a descending value of points for each of the 16 places won in the A and B Finals.

431. Thus, the places in which the top 16 swimmers finish directly affect the team competition.

432. Additionally, competitors in the A Final are named “All-Americans,” while competitors in the B Final are named “Second Team All-Americans.”

433. It is a great honor just to compete in either Final in the evening session.

434. Further, the NCAA awards trophies and an opportunity to stand on the podium to the top five finishers in each A Final.

435. Thus, for each A Final in which Thomas competed, a woman who otherwise would have competed in that A Final was knocked down to the B Final.

436. For each Final in which Thomas competed, a woman who otherwise would have competed in the B Final was knocked out of the B Final, losing the honor of competing in the evening session and the opportunity to win points for her team.

437. Of course, one of the points of an athletic competition is placement, therefore, regardless of All-American awards or trophies, each place and each rank in a NCAA championship or other NCAA competition is of value to those who compete in it.

438. Thus, each competitor who lost a placement or rank to an ineligible athlete necessarily experienced a devaluation of the competitor's placement in the competition.

439. The female athletes recognized the supreme advantage possessed by the 6-foot 4-inch Thomas who was far bigger than any other swimmer at the competition and was the only swimmer who possessed the biological advantage of a male body structure, strength, power and increased aerobic capacity.

440. When Swimmer B, a very accomplished swimmer, learned she would be competing against Thomas the magnitude of the task of competing against a male was so overwhelming and felt so "unfair" that she "felt helpless" and began

uncontrollably crying. Swimmer B had never cried about facing any opponent. It was a humiliating experience she should never have been put through.

**Wednesday, March 16 – Events Include:  
200-yard Medley Relay and 800-yard Freestyle Relay<sup>62</sup>**

441. The McCauley Aquatics Center pools were open for training and warmups on Wednesday, March 16, 2022.

442. The first competitions contested in the Championships were two relays conducted on Wednesday evening.

443. In the 200-yard medley relay the team from the University of Kentucky on which Plaintiff Riley Gaines competed was in Heat 2, and the North Carolina State team of Plaintiff Kylee Alons competed in Heat 3.<sup>63</sup>

444. Kylee anchored the NC State team which finished second in 1:32.96, less than a second out of first place.<sup>64</sup> Riley anchored the Kentucky team which finished twentieth in a time of 1:36.47.

445. In the 800-yard freestyle relay the University of Kentucky team competed in Heat 3<sup>65</sup> and finished ninth overall.<sup>66</sup> In this relay Riley Gaines held

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<sup>62</sup> The competition summary in this Complaint focuses primarily upon participation in the meet by the Plaintiffs and the competitions in which Thomas took part and is not a comprehensive summary of all events at the meet.

<sup>63</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/WedFinalsHeatSheet.pdf>

<sup>64</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/Wednesday-Timed-Finals-Results.pdf>

<sup>65</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/WedFinalsHeatSheet.pdf>

down the second position and her teammate, Plaintiff Kaitlynn Wheeler, anchored the Kentucky team.<sup>67</sup>

**Thursday, March 17 – Events Include:  
500-yard Freestyle, 50-yard Freestyle and 200-yard Freestyle Relay**

446. There were 60 entries in the women’s 500-yard freestyle and 8 Heats.<sup>68</sup> The prelims for the 500 freestyle were contested on Thursday, March 17 beginning at 10:01 am.<sup>69</sup> Thomas competed in Heat 8 which was scheduled to commence at 10:40 am.<sup>70</sup>

447. The 50-yard freestyle was also contested on Thursday.<sup>71</sup> There were 68 entrants in the 50-yard freestyle and prelims for the 50-freestyle consisted of 9 Heats commencing at 11:16 am.<sup>72</sup> Kylee Alons competed in Heat 7 which took place at 11:23 am.<sup>73</sup>

448. In Heat 8 in the prelims Thomas (UPenn) (4:34.06, qualifying time) competed against Brooke Forde (Stanford) (4:36.96), Kensey McMahan (Alabama) (4:38.34), Erica Laning (Arizona State) (4:38.80), Abigail McCulloh

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<sup>66</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/Wednesday-Timed-Finals-Results.pdf>

<sup>67</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/Wednesday-Timed-Finals-Results.pdf>

<sup>68</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/ThursdaySchedule.pdf>

<sup>69</sup> *Id.*

<sup>70</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/ThursdayPrelimsHeatSheet.pdf>

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

(Georgia) (4:39.17), Myra Geringer (Ohio State) (4:39.55), Ching Hwee Gan (Indiana) (4:40.39), and Ayla Spitz (California) (4:40.89).

449. Along with Thomas, McMahon (4:38.76) and Forde (4:38.19) made it to the Championship Final in the 500-yard freestyle with the seventh and eighth fastest qualifying times. McCulloh (4:40.58) and Laning (4:40.70) made it to the Consolation Finals.

450. The qualifiers and alternates for the 500-yard freestyle finals<sup>74</sup> are set forth below:

**Event 3 Women 500 Yard Freestyle**

NCAA: 4:24.06 3/16/2017 Katie Ledecky  
 Meet: 4:24.06 3/16/2017 Katie Ledecky  
 American: 4:24.06 3/16/2017 Katie Ledecky  
 US Open: 4:24.06 3/16/2017 Katie Ledecky  
 Pool: 4:30.81 3/17/2016 Leah Smith

Lane	Name	Yr	School	Prelims
<b>Heat 1 Consolation Final</b>				
1	Laning, Erica	5Y	ASU	4:40.70
2	McCulloh, Abigail	FR	Georgia	4:40.58
3	Donohoe, Madelyn	JR	Virginia	4:39.61
4	Mathieu, Tylor	JR	Florida	4:39.07
5	Mrozinski, Julia	FR	Tennessee	4:39.60
6	Coetzee, Dune	FR	Georgia	4:40.24
7	Mull, Lola	SO	Northwestern	4:40.70
8	Nordin, Emma	5Y	ASU	4:40.78
<b>Heat 2 Championship Final</b>				
1	Tankersley, Morgan	SR	Stanford	4:38.65
2	Pfeifer, Evie	5Y	Texas	4:37.39
3	Weyant, Emma	FR	Virginia	4:37.25
4	Thomas, Lia	5Y	Penn	4:33.82
5	Sullivan, Erica	FR	Texas	4:36.79
6	McKenna, Paige	FR	Wisconsin	4:37.36
7	Forde, Brooke	5Y	Stanford	4:38.19
8	McMahon, Kensey	SR	Alabama	4:38.76
<b>Alternates</b>				
1	Gyorgy, Reka	5Y	VT	4:41.06
2	Stege, Kristen	JR	Tennessee	4:41.34

<sup>74</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/ThursdayFinalsHeatSheet.pdf>

451. The Championship Final in the 500 freestyle was held at 6:11 pm on the same day.<sup>75</sup> The Consolation Final was held at 6:03 pm.<sup>76</sup>

452. Tylor Mathieu of the University of Florida was the ninth fastest swimmer in the prelims, missing out on competing in the Championship Final due to Thomas' participation.

453. Plaintiff Reka Gyorgy an All-American swimmer from Virginia Tech University knows from experience what a career milestone and achievement it is to compete in the NCAA Women's Swimming Championships.

454. Reka competed in the 2016 Olympic Games for the country of Hungary and in multiple European Championships and she competed in several NCAA Championships.

455. As an Olympian and experienced international swimmer Reka confirms from personal experience that the NCAA Women's Swimming Championships is one of the fastest meets in the world.

456. The depth in the NCAA Finals can be even deeper than at the Olympic Games because there are limits at the Olympics on how many swimmers from each country can compete.

457. Reka came into the 2022 NCAA Championships excited to be able to compete in what she knew would be one of the last competitions in her career.

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<sup>75</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/ThursdaySchedule.pdf>

<sup>76</sup> *Id.*

458. In the 500 free Reka strongly hoped to make it to the Finals and obtain an All-American ranking.

459. The field in the 500 free was very accomplished and Reka knew that she would have to give it her best.

460. After she completed her Heat, Reka sat in the stands watching the other competitors with pressure mounting. Finally, she watched Heat 8, the last of the heats for the 500 free, a heat in which Thomas would compete and win.

461. When the times flashed on the board from Thomas' heat, Reka realized immediately that she had fallen to 17th place and would miss competing in the Consolation Final by one placement.

462. Shortly afterwards Reka walked outside the venue where she cried in the hallway with a friend.

463. Reka later shared that missing out on the Consolation Final in the 500 free in her last collegiate swimming competition was the biggest disappointment of her career.

464. It was a very difficult way for an Olympian to end her collegiate career, deprived of an opportunity to race in a Finals event because the NCAA had allowed a male swimmer into the competition.

465. After the 500 free Reka poured out her heart in a thoughtfully composed letter to the NCAA in which she explained how unfair the rules are that allowed Thomas to compete against women.<sup>77</sup>

466. Reka handed her letter to an NCAA official on the last day of the Championships. However, no one at the NCAA has ever responded to Reka's letter.

467. Reka found it ironic that at the 2022 National Championships the NCAA was passing out t-shirts celebrating "50 years of Title IX."

468. Looking back, Reka believes that the NCAA showed through its actions at the 2022 National Championships that the NCAA does not care about protecting women or their rights.

469. Although the NCAA never responded to Reka's letter, the Hungarian Swimming Federation found out about her letter and thanked Reka for sending it.

470. Reka was told the Hungarian Federation sent her letter to the international swimming federation and urged the international federation to change its rules to provide more protection for women.

471. The Championship Final was won by Thomas with a time of 4:33.24. Emma Weyant (Virginia) finished second in 4:34.99. Erica Sullivan (Texas)

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<sup>77</sup> An accurate copy of the content of Reka's letter to the NCAA is attached as **Appendix B**.

finished third in 4:35.92. Brooke Forde (Stanford) swam a personal best of 4:36.18 to finish fourth.

472. The second, third and fourth place finishers in the Final that Thomas won were all medalists for the United States Olympic Team at the Tokyo Olympic Games held the prior summer, just a little over six months before the NCAA Championships.

473. Not only did Thomas beat these decorated Olympians, Thomas trounced them, finishing over a second-and-a-half in front of the nearest competitor.

474. By finishing in first place Thomas achieved 20 points for the UPenn Team.

475. Kylee Alons competed in the 50-yard Championship Final also held that day which began at 6:42 pm.<sup>78</sup> Kylee finished in eighth place.<sup>79</sup>

476. The Women's 200-yard freestyle relay was also contested on Thursday with heats at 7:37 pm, 7:41 pm and 7:46 pm. Kylee Alons competed in Heat 3 on the North Carolina State team which finished in third place.<sup>80</sup> Swimmer A competed in a relay on this day as well.

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<sup>78</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/ThursdaySchedule.pdf>

<sup>79</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/Thursday-Finals-Results.pdf>

<sup>80</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/Thursday-Finals-Results.pdf>

**Friday, March 18 – Events Include:  
200-yard Freestyle, 100-yard Butterfly and 400-yard Medley Relay**

477. On Friday, March 18, 2022, the Women’s 200-yard Freestyle was contested with the first of seven prelims beginning at 10:47 am and the Consolation Final at 6:35 pm and the Championship Final at 6:40 pm.

478. Riley Gaines competed in Heat 6 of the prelims of the 200-yard Freestyle at 10:59 am. Thomas competed in Heat 7 of the prelims at 11:02 am.

479. Both Riley and Thomas qualified for the Championship Final.

480. The qualifiers and alternates for the 200-yard freestyle finals are set forth below:

**Event 10 Women 200 Yard Freestyle**

**NCAA: 1:39.10 3/20/2015 Missy Franklin**

**Meet: 1:39.10 3/20/2015 Missy Franklin**

**American: 1:39.10 3/20/2015 Missy Franklin**

**US Open: 1:39.10 3/20/2015 Missy Franklin**

**Pool: 1:41.35 3/16/2022 Isabel Ivey**

<b>Lane</b>	<b>Name</b>	<b>Yr</b>	<b>School</b>	<b>Prelims</b>
<b>Heat 1 Consolation Final</b>				
1	Spitz, Ayla	JR	California	1:44.92
2	Coetzee, Dune	FR	Georgia	1:44.65
3	Stepanek, Chloe	SO	TAMU	1:44.43
4	Tiltmann, Reilly	FR	Virginia	1:43.59
5	Laning, Erica	5Y	ASU	1:44.38
6	Peplowski, Anna	FR	Indiana	1:44.55
7	Bates, Talia	JR	Florida	1:44.74
8	Atkinson, Emma	SO	VT	1:44.93
<b>Heat 2 Championship Final</b>				
1	Gaines, Riley	SR	Kentucky	1:43.05
2	Transom, Laticia-Leigh	SR	USC	1:42.93
3	Ivey, Isabel	SR	California	1:42.24
4	Ruck, Taylor	JR	Stanford	1:41.89
5	Thomas, Lia	5Y	Penn	1:42.09
6	Pash, Kelly	JR	Texas	1:42.78
7	Nordmann, Lillie	FR	Stanford	1:43.02
8	Tankersley, Morgan	SR	Stanford	1:43.53
<b>Alternates</b>				
1	Nikonova, Ekaterina	FR	Florida	1:45.05
2	Hetrick, Paige	SO	Louisville	1:45.11

481. Yet, Riley entertained strong doubts about whether she should even compete in the Championship Final against Thomas.

482. Riley was concerned that by participating she would be endorsing the NCAA's discrimination against women.

483. Ultimately, however, her loyalty to her teammates caused Riley to compete.

484. In the Championship Final Riley touched the wall and immediately searched for Thomas' name on the screen and saw a "5" next to it, signifying Fifth place.

485. Riley felt momentary pride for the women swimmers who had finished in front of Thomas.

486. Then, Riley looked for her own name and saw a "5" next to her name. She was shocked.

487. Riley and Thomas had tied for Fifth place in a time of 1:43.40.<sup>81</sup>

488. By finishing in a tie for Fifth place both Riley and were awarded 13.5 points for their respective teams, and Fifth place winners were to receive a trophy.

489. Had Riley finished in Fifth place alone she would have received 14 points for the University of Kentucky Swim Team.

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<sup>81</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/Friday-Finals-Results-1.pdf>

490. As she prepared to participate in the podium ceremony following the Championship Final for the 200 free, Riley was told that there was only a single Fifth Place trophy, and the NCAA had decided Riley would not be permitted to hold the trophy on the podium.

491. Instead, only Thomas would be allowed to hold the Fifth place trophy.

492. Riley was perplexed and she questioned a meet official about why she would not be allowed to also hold the Fifth-place trophy she had won but instead a “male” would be holding the Fifth-place trophy.

493. The official said that they were proceeding in “chronological order.” To which Gains responded: “What do you mean? We tied with the exact same time.”

494. Riley asked: “Do you mean alphabetical order? Because Gaines comes before Thomas.”

495. At that, the official appeared to soften and responded, “I’m so sorry, we have been advised that when photos are taken it is crucial that Lia Thomas holds the trophy.”

496. Thus, the NCAA purposefully deprived Riley Gaines of her podium moment with the trophy she won, and should have been able to hold on the podium, for the achievement of finishing Fifth in the women’s 200 free at the 2022 NCAA Championships.

497. Reilly Tiltmann of the University of Virginia was left out of the Championship Final, finishing with the ninth fastest time of 1:43.59 in the prelims.<sup>82</sup>

498. Ekaterina Nikonova from the University of Florida had the seventeenth best time in the prelims, missing out on competing in the Consolation Final by a single place.

499. Also on Friday, the 100-yard Butterfly was contested with prelims beginning at 10:33 am and the Consolation Final at 6:23 pm and the Championship Final at 6:28 pm, just 12 minutes before the Finals of the 200-yard Freestyle.<sup>83</sup>

500. Kylee Alons competed in Heat 5 of the 100-yard Butterfly at approximately 10:40 am.<sup>84</sup>

501. Kylee finished fifth in the Finals of the 100-yard Butterfly.<sup>85</sup> By finishing fifth Kylee achieved 14 points for her team.

502. The last event of the evening on Friday was the 400-yard medley relay. Riley Gaines competed for the University of Kentucky team<sup>86</sup> in Heat 3<sup>87</sup> at 8:24 pm.<sup>88</sup> The Kentucky team finished thirteenth out of twenty-five teams.<sup>89</sup>

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<sup>82</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/FridayFinalsHeatSheet.pdf>

<sup>83</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/FridaySchedule.pdf>

<sup>84</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/FridayPrelimsHeatSheet.pdf>

<sup>85</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/Friday-Finals-Results-1.pdf>

**Saturday, March 19 – Events Include:  
100-yard Freestyle, 200-yard Butterfly and 400-yard Relay**

503. The 2022 NCAA Championships concluded on Saturday, March 19, 2022.

504. Among the events contested on March 19 was the 100-yard Freestyle in which Thomas competed, with prelims commencing at 10:24 am, the Consolation Final taking place at 6:41 pm and the Championship Final occurring at 6:45 pm.

505. Kylee Alons also competed in the 100-yard freestyle, competing in the first preliminary heat at 10:24 am.<sup>90</sup> Thomas competed in prelim Heat 8 at 10:35 am.<sup>91</sup> Thomas had the fourth fastest prelim time at 47.37. Kylee Alons had the fourteenth fastest prelim time at 48.02.

506. The qualifiers and alternates for the 100-yard freestyle finals are set forth below:

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<sup>86</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/Friday-Finals-Results-1.pdf>

<sup>87</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/FridayFinalsHeatSheet.pdf>

<sup>88</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/FridaySchedule.pdf>

<sup>89</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/Friday-Finals-Results-1.pdf>

<sup>90</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/SaturdayPrelimsHeatSheet.pdf>

<sup>91</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/SaturdayPrelimsHeatSheet.pdf>

**Event 17 Women 100 Yard Freestyle**

NCAA:	45.56	3/18/2017	Simone Manuel
Meet:	45.56	3/17/2017	Simone Manuel
American:	45.56	3/18/2017	Simone Manuel
US Open:	45.56	3/18/2017	Simone Manuel
Pool:	46.70	3/19/2016	Olivia Smoliga

Lane Name	Yr	School	Prelims
<b>Heat 1 Consolation Final</b>			
1 Huske, Torri	FR	Stanford	48.12
2 Flynn, Lindsay	FR	Michigan	47.94
3 Antoniou, Kalia	SR	Alabama	47.84
4 Ivey, Isabel	SR	California	47.61
5 MacNeil, Maggie	SR	Michigan	47.77
6 Zenick, Katherine	SO	Ohio St	47.91
7 Alons, Kylee	SR	NCSU	48.02
8 Bates, Talia	JR	Florida	48.14
<b>Heat 2 Championship Final</b>			
1 Dupre, Cora	JR	Alabama	47.51
2 Albiero, Gabi	SO	Louisville	47.45
3 Scott, Morgan	SR	Alabama	47.27
4 Walsh, Gretchen	FR	Virginia	46.78
5 Berkoff, Katharine	JR	NCSU	46.89
6 Thomas, Lia	5Y	Penn	47.37
7 Countie, Grace	SR	UNC	47.50
8 Henig, Iszac	JR	Yale	47.55
<b>Alternates</b>			
1 Stepanek, Chloe	SO	TAMU	48.21
2 Nikonova, Ekaterina	FR	Florida	48.24

507. In the 100-yard freestyle Championship Final Thomas finished in eighth place with a time of 48.18, well off Thomas' pace of 47.37 in the prelim.<sup>92</sup>

508. In the Consolation Final Kylee Alons finished fourth in 47.68, a time that would have bested Thomas' time in the Championship Final had they been racing head-to-head.

509. For her finish Alons earned 5 points for her NC State team. Had she finished one place higher she would have earned 6 points for her team. The UPenn Swim Team obtained 11 points for Thomas' eighth place finish.

<sup>92</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/Saturday-Finals-Results.pdf>

510. Isabel Ivey of the University of California, Berkley, was left out of the Championship Final finishing with the ninth fastest time of 47.61 in the prelims.<sup>93</sup>

511. Chloe Stepanek from Texas A&M University finished with the seventeenth best time in the prelims, missing out on competing in the Consolation Final by a single place.

512. Also on that Saturday, the Women's 200-yard Butterfly was contested. In her preliminary heat which took place at 11:14 am<sup>94</sup> Riley Gaines had a time of 1:53.63 finishing in a tie for ninth with Lillie Nordmann of Stanford University just .26 second out of eighth and a spot in the Championship Final.<sup>95</sup>

513. Riley competed in the Consolation Final at 7:09 pm<sup>96</sup> finishing fifth in the Consolation Final with a time of 1:53.67. Riley's finish earned 4 points for the University of Kentucky Swim Team.

514. The 400-yard relay was also contested on Saturday with Riley Gaines competing for the Kentucky team<sup>97</sup> in Heat 1 at 8:10 pm.<sup>98</sup> Kylee Alons competed

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<sup>93</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/SaturdayFinalsHeatSheet.pdf>

<sup>94</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/SaturdayPrelimsHeatSheet.pdf>

<sup>95</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/Saturday-Prelims-Results.pdf>

<sup>96</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/SaturdayPrelimsSchedule.pdf>

<sup>97</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/Saturday-Finals-Results.pdf>

for the North Carolina State relay team in Heat 4 at 8:30 pm.<sup>99</sup> Kylee's NC State team finished tied for fourth with the University of Michigan in a time of 3:09.95.<sup>100</sup>

515. As a result of Thomas' three top eight finishes, which totaled 44.5 points, the UPenn Team finished in 20<sup>th</sup> place in the 2022 NCAA Women's Swimming and Diving Championship meet with 44.5 points, ahead of Minnesota (21<sup>st</sup>), Miami (Florida) (22<sup>nd</sup>), Virginia Tech (23<sup>rd</sup>), Duke (24<sup>th</sup>), Missouri (25<sup>th</sup>), Arizona State (26<sup>th</sup>), Rutgers (27<sup>th</sup>), Arkansas (28<sup>th</sup>), Yale (29<sup>th</sup>), Purdue (30<sup>th</sup>), South Carolina (31<sup>st</sup>), LSU (32<sup>nd</sup>), Notre Dame (33<sup>rd</sup>), Wyoming (tie 34<sup>th</sup>), UCLA (tie 34<sup>th</sup>), Florida International (36<sup>th</sup>), San Diego State (tie 37<sup>th</sup>), Harvard (tie 37<sup>th</sup>) and Texas A&M (39<sup>th</sup>).<sup>101</sup>

516. Reka Gyorgy's Virginia Tech team would have finished higher in the team competition absent Thomas' participation, as would have at least 20 other teams.

517. Riley Gaines' and Kaitlynn Wheeler's Kentucky team finished 12th with 115.5 points just .5 points behind Indiana in 11th and would have at least tied

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<sup>98</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/SaturdayPrelimsSchedule.pdf>

<sup>99</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/SaturdayPrelimsSchedule.pdf>

<sup>100</sup> <https://ramblinwreck.com/wp-content/uploads/2022/03/Saturday-Finals-Results.pdf>

<sup>101</sup> <https://swimswam.com/2022-womens-ncaa-championships-results-records-summary/>

Indiana had Riley taken sole position of fifth place in the 200 free, rather than tying with Thomas.

518. One person can disrupt so much.

**Comparing Thomas' NCAA Competition Times Before and After Transition Demonstrates Thomas' Retained Male Advantage and the Failure of the NCAA's Transgender Eligibility Policies to Ensure Equal Opportunities for Women**

519. On April 5, 2022, *Swimming World Magazine* published a comparison of Thomas' times in NCAA competitions when competing in the male vs. female categories.

520. *Swimming World's* analysis demonstrates Thomas' Retained Male Advantage when competing in the female category.

521. The article explained:

Just how much of an advantage did Lia Thomas possesses over biological females? The numbers paint a clear picture. The fact that the University of Pennsylvania swimmer soared from a mid-500s ranking (554th in the 200 freestyle; all divisions) in men's competition to one of the top-ranked swimmers in women's competition tells the story of the unfairness which unfolded at the NCAA level.

In her final meet, Thomas finaled in three events at the NCAA Championships, highlighted by a victory in the 500 freestyle. She also finished fifth in the 200 freestyle and was eighth in the 100 freestyle. Although she didn't contest the event at the NCAA Champs, Thomas had one of the country's top times in the 1650 freestyle. Here's a look at her performances throughout the season, including their comparative status to her times as a member of Penn's men's squad.

- In the 500 freestyle, Thomas' time of 4:33.24 from her NCAA-title swim handed her the fastest time in the nation by more than a second over Arizona State's **Emma Nordin** (4:34.87). Additionally, Thomas' difference from her personal best with the Penn men's program was just 6%, as opposed to the typical 10% to 11% difference generally seen between men and women.
- Thomas' best time in the 200 freestyle ended up being her 1:41.93 mark from the Zippy Invitational in December. That effort ultimately ended up 3.76% slower than her best time before her transition. Again, that time was between 7% and 8% faster than the typical separation between men and women.
- When Thomas won the 200 freestyle at the Ivy League Champs in 1:43.12, she was even with runnerup **Samantha Shelton** at the midway point, but crushed the Harvard swimmer over the last 100, highlighted by a 25.04 split for the last 50 yards. The closing split of Thomas was faster than the finishing laps of **Missy Franklin** in her American-record performance, and the best closing effort of the likes of **Katie Ledecky**, **Mallory Comerford** and **Siobhan Haughey**, among others.
- In the 100 freestyle, Thomas' best time prior to her transition was 47.15. At the NCAA Championships, she posted a prelims time in the event of 47.37. That time reflects minimal mitigation of her male-puberty advantage.
- During the last season Thomas competed as a member of the Penn men's team, which was 2018-19, she ranked 554th in the 200 freestyle, 65th in the 500 freestyle and 32nd in the 1650 freestyle. As her career at Penn wrapped, she moved to fifth, first and eighth in those respective events on the women's deck.<sup>102</sup>

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<sup>102</sup> "A Look At the Numbers and Times: No Denying the Advantages of Lia Thomas," *Swimming World Magazine*, April 5, 2022, by John Lohn, Editor-in-Chief, available at: <https://www.swimmingworldmagazine.com/news/a-look-at-the-numbers-and-times-no-denying-the-advantages-of-lia-thomas/>. (accessed Mar. 14, 2024)

522. For nearly two years following the 2022 NCAA Division I Women's Swimming and Diving Championships, Plaintiffs and others similarly situated have dealt with the disappointment, losses of placement, ill treatment, and emotional turmoil, generated by the NCAA's purposeful and illegal actions in 2022 and with the lingering effects of the NCAA's Transgender Eligibility Policies which the NCAA put into place then, the harmful effects of which continue to reverberate.

**THE NCAA'S TRANSGENDER ELIGIBILITY POLICIES CONTINUE TO HARM WOMEN AND RESULT IN LOST AND UNEQUAL OPPORTUNITIES FOR FEMALE STUDENT-ATHLETES**

**Roanoke College Swimmers**

523. In the Fall of 2023, during the current NCAA swimming season, a former member of the NCAA Division III Roanoke College men's swimming team requested to join the Roanoke College women's swim team.

524. Roanoke College granted the request of the former men's swimming team member to join the Roanoke women's swimming team.

525. Thereafter, representatives of Roanoke College met with members of the women's swimming team and encouraged them to welcome the transgender swimmer onto the women's team.

526. Plaintiff Lily Mullens recalled, “[w]e were emotionally blackmailed and asked to carry the responsibility of other people’s mental health and wellbeing at the expense of our own.”

527. In response, Plaintiffs Lily Mullens, Carter Satterfield, Katie Blankinship, Susanna Price, Kate Pearson, and Julianna Morrow (the “Roanoke College Swimmers”) and their teammates refused to be coerced and appealed to Roanoke College for protection from having a male swimmer on the Roanoke women’s team, and in the women’s locker room and showers and at practices, meets and competitions, but in reliance upon the NCAA Transgender Eligibility Policies, Roanoke College rejected their concerns.

528. The Roanoke College Swimmers communicated to the NCAA, protesting the NCAA Transgender Eligibility Policies, and emphasizing concerns about competitive fairness and locker room usage. However, the NCAA did not respond.

529. The Roanoke College Swimmers have been injured due to the NCAA’s promulgation and enforcement of its Transgender Eligibility Policies. They suffered significant stress and emotional and mental anguish and lost time and money protesting application of the NCAA Transgender Eligibility Policies to their team.

530. The Roanoke College Swimmers suffered pushback from other students and from the administration and staff of Roanoke College when they protested the application of the NCAA Transgender Eligibility Policies which would not have happened had the policies not been adopted by the NCAA.

531. Lily Mullens said, “[t]his has been too great a burden to bear for many of our teammates who have lost hours of sleep, many tears, and the will to train to race a swimmer who has an advantage in the water that our bodies may never possess.”

532. Another Roanoke women’s swim team member, Senior Bailey Gallagher, was reported in the media to have said, “I could not eat, could not sleep, and spent a lot of time dealing with anxiety concerned with how this was going to get resolved.”

533. Sophomore and Plaintiff Kate Pearson said, “[o]ur school was prioritizing one individual swimmer over 17 women whose only request was fairness.”

534. Each of the Roanoke College Swimmers experienced mental anguish, and the loss of time and resources expended on the eligibility matter.

535. Upon learning of the plight of the Roanoke College Swimmers Riley Gaines and a former UPenn teammate of Thomas’, Paula Scanlon, joined the Roanoke College Swimmers in a press conference to bring the Roanoke College

Swimmers' plight, and their school's and the NCAA's refusal to comply with their Title IX obligations, to the attention of the public.

536. At the press conference Riley Gaines recalled, "[m]y team, when we were going through this a year-and-a-half ago, we all felt the same, but we were scared to say it."

537. Riley said, "[a]nd so to see all of these girls standing together linking arms, I wanted so badly to be a part of that to support them. To show them that they could do this and show them that it's liberating to speak the truth."

538. In response to the situation, however, the Roanoke College Board of Trustees met and voted to endorse the NCAA Transgender Eligibility Policies.

539. The Roanoke College Board issued a public statement expressing the Board's "strong desire to cement our school's approach to similar requests in the future," and stating that the Board had "voted to formally adopt the NCAA policy."<sup>103</sup>

540. Although the former member of the Roanoke men's swimming team whose application pursuant to the NCAA Transgender Eligibility Policies started the controversy ultimately decided to withdraw from participating on the team, that swimmer's withdrawal did not make the Roanoke College Swimmers whole. It could not, and did not, lessen the anguish they had experienced, and they live with

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<sup>103</sup> [https://www.roanoke.edu/news/transgender\\_sports\\_statement](https://www.roanoke.edu/news/transgender_sports_statement) (accessed Mar. 14, 2024).

the uncomfortable realization that should this male or another male seek to compete on the Roanoke College women's swimming team, due to the NCAA's Transgender Eligibility Policies, Roanoke College and the NCAA will support the male.

### **All-Atlantic Regional Track and Field Championships**

541. On March 3, 2024, Plaintiff Track Athlete A, a Junior, competed in the women's 200-meter dash in the All-Atlantic Regional Championships in track and field, where transgender athlete Sadie Schreiner of Rochester Institute of Technology (RIT), a male, won the women's 200-meter dash and also broke the women's regional collegiate meet record.

542. On information and belief, Schreiner has broken numerous women's school and/or conference records and deprived women on Schreiner's team and on the teams of competitors of placements, points, prizes, awards, and recognition.

543. Schreiner qualified for the Division III national championships in the 200m event.

544. Because Schreiner is an underclassmen Track Athlete A will compete against Schreiner next year.

545. Absent the NCAA Transgender Eligibility Policies which violate Title IX Schreiner would not be eligible to compete in NCAA women's sports competitions or on the RIT women's track and field team.

546. Therefore, the NCAA's Transgender Eligibility Policies have harmed Track Athlete A, causing her to lose placements and points to a male, and the NCAA's Transgender Eligibility Policies will continue to harm her in the future by causing her to lose competitive opportunities, points, and placements to Schreiner in the future.

### **Volleyball**

547. Volleyball Athlete A who plays NCAA Division II women's volleyball played against a male athlete who was competing on a women's team in club tournaments in high school. This male athlete was the best athlete against whom Volleyball Athlete A had ever played and was able to considerably outjump female players and spike harder than females, giving the male a significant advantage.

548. Volleyball Athlete A is aware that this male athlete, who is still in high school, is being recruited to play college volleyball.

549. Volleyball Athlete A is also aware of other male athletes playing volleyball at the high school level and seeking to be recruited to play on women's college or university teams at NCAA Division I, II and/or III institutions.

550. Volleyball Athlete A, who is a freshman, has a reasonable concern that, if the NCAA's Transgender Eligibility Policies are not changed, she will be required to face male volleyball players in future NCAA women's competitions.

### **Track and Field, Soccer, Tennis**

551. Plaintiffs Ainsely Erzen and Ellie Eades are aware that the NCAA's Transgender Eligibility Policies have permitted males to compete in NCAA women's track and field, tennis, and soccer.

552. For instance, biological male CeCé Telfer won the 400-meter hurdles at the NCAA Women's Division II Outdoor Track and Field Championships in 2019. It is reported that biological male Brooklyn Ross will be playing NCAA Division II collegiate tennis at Lewis University this year. Biological male Athena Del Rosario played NCAA Division III college soccer at the University of California Santa Cruz for four years.

553. As a result, Eades who is a junior and Erzen who is a sophomore have reasonable concerns that due to the NCAA's Transgender Eligibility Policies they will be required to compete against biological males during the course of their NCAA careers.

554. Moreover, given that some transgender athletes do not publicly disclose their sex, each Plaintiff in this case who has remaining collegiate eligibility is concerned that she may not know in advance of competing or participating in future NCAA competitions (or practices or scrimmages) that she will be, or is, facing a male athlete. Indeed, it is possible each Plaintiff could have already played against a (transgender) male athlete unwittingly.

555. These facts put Plaintiffs competing in soccer, volleyball, and tennis at increased risk of injury due to the NCAA's Transgender Eligibility Policies.

556. All Plaintiffs who currently have remaining NCAA eligibility are, for the foregoing reasons, also at continuing risk of violation of their right to bodily privacy as a result of the NCAA Transgender Eligibility Policies.

557. Accordingly, the NCAA's Transgender Eligibility Policies put all Plaintiffs with current NCAA eligibility at risk of injury and/or being required to compete against and/or share locker rooms with biological males in violation of Title IX.

558. Therefore, all Plaintiffs with current NCAA eligibility seek an injunction enjoining the NCAA from continuing enforcement of its Transgender Eligibility Policies.

### **CLASS ACTION ALLEGATIONS**

**On behalf of Plaintiffs Swimmer A, Swimmer B, Riley Gaines, Reka Gyorgy, Kylee Alons, Kaitlynn Wheeler, The Roanoke College Swimmers, Track Athlete A, and others similarly situated**

559. Plaintiffs Swimmer A, Swimmer B, Riley Gaines, Reka Gyorgy, Kylee Alons, Kaitlynn Wheeler, the Roanoke College Swimmers, and Track Athlete A are identified as putative class representatives to bring one or more class actions under Rules 23(a) and (b) of the Federal Rules of Civil Procedure.

560. The foregoing individuals are adequate class representatives because they have competed as NCAA athletes and have been subject to the NCAA's eligibility rules, they have been injured or threatened with injury as a result of the violations of law described in this Complaint, they are similarly situated to the other members of the proposed classes, and they are actively interested in the claims of the class and willing to discharge all the responsibilities of class representatives.

561. Through this action, Plaintiffs seek to represent a class of future, current, or past NCAA women's athletes who have competed or may compete against male athletes or who have shared or may share a locker room, shower, or restroom with a male by virtue of the NCAA's Transgender Eligibility Policies.

562. Plaintiffs anticipate that they may ultimately seek multiple classes or subclasses when they move for class certification, including, but not limited to:

- (a) Women who competed in the 2022 NCAA Women's Swimming and Diving Championships;
- (b) Women who are past, current, or future NCAA athletes;
- (c) Women who are current or future NCAA athletes;
- (d) Women who are current NCAA athletes.
- (e) Women who have competed or may compete at NCAA events in the State of Georgia; and
- (f) Female student athletes at Georgia colleges or universities governed by the University System of Georgia which are subject to NCAA rules.

563. The class is so numerous that joinder of all members is impractical.

564. The class size of the class of Women who competed in the 2022 NCAA Women's Swimming and Diving Championships is believed to be approximately 322 individuals.

565. The exact class size of the remaining classes or subclasses is unknown to Plaintiffs at this time, however, it is expected that the precise number and identification of the class members will be ascertainable from the Association's records or the records of Association members during discovery.

566. There are questions of law and fact common to all members of the class.

567. Those common questions include, but are not limited to, the following:

- (a) Does Title IX prohibit competition and participation by males on women's teams in collegiate sport governed by the Association?
- (b) Do the NCAA's eligibility rules, or aspects of them, violate Title IX?
- (c) Do the NCAA's eligibility rules, or aspects of them, violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution?
- (d) Do (or has) the NCAA's policies or practices, or aspects of them, violate[d] the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution?
- (e) Do (or has) the NCAA's policies or practices, or aspects of them, violate[d] the First Amendment to the U.S. Constitution?

- (f) Should the records of the NCAA be changed to remove records set by males competing in the women's category in an NCAA event or in NCAA events because those males should have been ineligible pursuant to law?
- (g) Should the eligibility rules of the NCAA be changed to conform them to law?
- (h) Did the NCAA and/or the Georgia Individual Defendants and/or Georgia Tech or the University System of Georgia, or any combination of them, act under color of law in converting the women's locker room to "unisex" during the 2022 National Championships?

568. The putative class representatives' claims are typical of the claims of the class because they, like the class members, have been injured, been threatened with injury, and/or had their rights deprived or threatened to be deprived due to the Association's practices or policies and/or the policies or practices of the Georgia Individual Defendants and/or Georgia Tech and/or the University System of Georgia acting in concert.

569. The putative class representatives will fairly and adequately protect the interests of the class because: (a) they are willing and able to represent the proposed class and have every incentive to pursue this action to a successful conclusion; (b) their interests are not antagonistic to those of the other class members; and (c) they have engaged counsel experienced in litigating class actions.

570. The questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class

action is superior to other available methods for fairly and efficiently adjudicating Plaintiffs' claims.

571. Joinder of all class members is impracticable.

**Propriety of Maintenance of Class Action Under Fed. R. Civ. P. 23(b)(1)**

572. Class certification is appropriate under Fed. R. Civ. P. 23(b)(1) because prosecuting separate actions by individual class members would create a risk of: (a) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for one or more Defendants and/or (b) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interest of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

**Propriety of Maintenance of Class Action Under Fed. R. Civ. P. 23(b)(2)**

573. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) because Defendants have acted and/or refused to act on grounds generally applicable to the class, thereby making declaratory and final injunctive relief appropriate.

574. Such generally applicable grounds consist of the adoption and/or maintenance by the NCAA of the Gender Eligibility Policies.

575. Such generally applicable grounds may also consist of the adoption and/or maintenance by the NCAA in concert with others, including, but not limited to, the George Individual Defendants or the University System of Georgia or other Defendants, of policies and practices in violation of Title IX and/or the First and/or Fourteenth Amendments to the U.S. Constitution.

576. This relief would predominate over monetary relief.

**Propriety of Maintenance of Class Action Under Fed. R. Civ. P. 23(b)(3)**

577. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3).

578. The common questions of law and fact identified above predominate over questions affecting only individual members.

579. A class action is superior to other available methods for the fair and efficient adjudication of this litigation.

580. Because all members of the class are geographically dispersed throughout the country and allege that they were subjected to the same Association-wide policy or practice of Title IX and/or constitutional violations, requiring each class member to pursue their claims individually would entail needless duplication and would waste the resources of both the parties and the judiciary.

581. The financial burden of proving the NCAA and/or the University System of Georgia or other Defendants engaged in such a pattern or practice (or

patterns and practices) of discrimination would also make the prosecution of individual actions virtually impossible for most, if not all, members of the class.

## COUNT I

### Violations of Title IX

#### **Discrimination Against Women Competing in NCAA Competitions**

#### **Against the NCAA, the University System of Georgia, Georgia Tech, the University of Georgia (for injunctive relief only) and the University of North Georgia (for injunctive relief only)**

582. Plaintiffs restate the foregoing paragraphs numbered 1 through 581 as if set forth fully herein.

583. Title IX is applicable to all public colleges and universities in the State of Georgia directly, through Congress' enforcement power under Section 5 of the Fourteenth Amendment.

584. Title IX is applicable to the NCAA by its own terms as explained *supra* at ¶¶ 28-56 and pursuant to 42 U.S.C. § 1983 when the NCAA was acting under color of law in connection with the 2022 NCAA Championships.

585. The NCAA knew that its actions described above violated federal law and acted in bad faith when implementing its transgender eligibility policies and in authorizing Thomas to use the women's showers, women's locker rooms and associated toilet facilities in or adjacent to the women's locker room at the 2022 NCAA Championships.

586. As noted above, Section 901(a) of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

587. A private right of action for damages and injunctive relief exists to enforce the guarantees of Title IX. *Adams*, 57 F.4th at 811.

588. This private right of action can be pursued to rectify discrimination against women in scholastic sport. *Soule v. Connecticut Ass’n of Sch., Inc.*, 90 F.4th 34, 45-7 (2d Cir. 2023).

589. As the Department of Health, Education & Welfare explained in 1975, the fundamental goal of the original Title IX regulations was to guarantee men and women an equal opportunity “to compete in athletics in a meaningful way.” *Sex Discrimination in Athletic Programs*, 40 Fed. Reg. 52,655, 52,656 (Nov. 11, 1975).

590. The athletics regulations enacted under Title IX provide that, “[a] recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics *shall provide equal athletic opportunity for members of both sexes.*” 34 CFR § 106.41(c) (emphasis added).

591. And as the U.S. Department of Education currently notes on its Office of Civil Rights website, discrimination covered under Title IX “include[s] . . . the failure to provide equal athletic opportunity.”<sup>104</sup>

592. Title IX and its implementing regulations are founded upon the premise that “sex” is an immutable biological characteristic, a concept that is supported by a basic understanding of developmental biology and long understood legal usage.<sup>105</sup>

593. Thus, Title IX defines “sex” “based on biology and reproductive function.” *Adams*, 57 F.4th at 812.

594. For instance, the Title IX regulations regarding scholastic sports authorize “separate teams for members of *each sex* where selection for such teams is based upon competitive skill.” 34 CFR § 106.41 (emphasis added).

595. Both the legislative history of Title IX and its implementing regulations make clear that the reference to “sex” in Title IX is directed solely at binary, biological sex and not at gender identity.

596. The Eleventh Circuit has previously concluded that “[t]here simply is no alternative definition of ‘sex’ for transgender persons as compared to nontransgender persons under Title IX.” *Adams*, 57 F.4th at 814.

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<sup>104</sup> <https://www2.ed.gov/policy/rights/guid/ocr/sexoverview.html> (accessed Mar. 14, 2024).

<sup>105</sup> *See supra* at fn. 1.

597. The focus on biological differences between males and females which require the protection of women to provide equal opportunity for women in sport is clear in relation to the history and regulations pertaining to Title IX's application to college athletic programs.

598. As one scholar summarized the discussions surrounding the adoption of Title IX in 1972 and the adoption of the first regulations thereunder two years later, the "biological differences between males and females that account for the [athletic] performance gap, as well as those sex traits and related customs that raised safety and privacy concerns, were key to the discussions and decisions around inclusion and segregation." Coleman, D.L., *et al.*, *Re-Affirming the Value of the Sports Exception to Title IX's General Non-Discrimination Rule*, 27 *Duke J. of Gender L. & Pol'y* 69, 80 (2020).

599. The regulations' allowance for sex-separated sports served the "goal [of] parity across all categories of opportunity," and "reflect[ed] the general consensus at the time regarding sex segregation in sport." *Id.* at 81.

600. Separate athletic teams for women are how women are provided equal athletic opportunity in sport.

601. Therefore, separate athletic teams for men and women are the "norm." *Cohen v. Brown Univ.*, 101 F.3d 155, 177 (1st Cir. 1996).

602. And Title IX requires sex-separation *from men* where women have less opportunity than males without it.

603. Thus, Title IX authorizes women to pursue a remedy requiring sex separation from males, including separate sports teams, competitions, showers, and locker rooms.

604. Not only must there be such separation from males where necessary to give women equal opportunities but the separate opportunities for women must be comparable in every way to male opportunities.

605. Pursuant to 34 CFR § 106.33 “separate toilet, locker room, and shower facilities . . . provided for students of one sex shall be comparable to such facilities provided for students of the other sex.”

606. Under Title IX women demonstrate unequal opportunity in athletics by demonstrating that females have less opportunity than males<sup>106</sup> in scholastic sport.

607. In determining whether equal athletic opportunities are provided, among other things, the Department of Education considers:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (2) The provision of equipment and supplies;

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<sup>106</sup> Referring, of course, to the meaning of “sex” as used in Title IX, which includes biological males irrespective of claimed gender identity.

- (3) Scheduling of games and practice time;
- (4) Travel and per diem allowance;
- (5) Opportunity to receive coaching and academic tutoring;
- (6) Assignment and compensation of coaches and tutors;
- (7) Provision of locker rooms, practice and competitive facilities;
- (8) Provision of medical and training facilities and services;
- (9) Provision of housing and dining facilities and services;
- (10) Publicity.

34 CFR § 106.41(c)

608. Thus, the Title IX regulations pertaining to athletics specifically convey what is intuitively apparent and follows from the wording of Section 901(a) of Title IX of the Education Amendments of 1972 and its legislative history, that when sports are or must be separated by sex, equal opportunity for women cannot be achieved unless:

- “the interests and abilities” of women are separately and equally accommodated,<sup>107</sup>

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<sup>107</sup> Indeed, it is a general principle under Title IX that where single sex activities are provided to one sex, the other sex must be provided a substantially equal single-sex activity. For example, in another part of the Title IX regulations not applicable to scholastic athletics the regulation states that where a party covered by Title IX “provides a single-sex . . . extracurricular activity. . . [they] may be

- the women’s team and all women’s events are as equally open to women as the men’s team and all men’s events are to men,
- both sexes are provided separate and equal resources, including “locker rooms, practice and competitive facilities,”
- both sexes are provided separate and equal competitions and competitive opportunities, and
- eligibility rules (or other rules) do not burden women more than men.

609. The NCAA’s actions, practices, and/or policies described above deprived Plaintiffs and a class of individuals similarly situated of a meaningful and equal opportunity to compete in scholastic sport and constitutes sex discrimination against women within the meaning of Title IX.

610. Such discrimination includes, but is not limited to, the NCAA’s:

- a. transgender eligibility policies,
- b. authorization of Thomas and other males who identify as transgender to compete in women’s collegiate athletic competitions,
- c. granting or awarding eligibility, points, titles, trophies, results, or records, to Thomas and other males who identify as

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required to provide a substantially equal single-sex . . . extracurricular activity for students of the excluded sex...” 34 CFR § 106.34(b)(2).

transgender for competing in women's collegiate athletic competitions, and

- d. authorization of Thomas and other males who identify as transgender to use women's toilets, showers, and/or locker rooms in connection with women's collegiate sports competitions.

611. A women's loss of records, awards and/or placement in an athletic competition as a result of competing against a transgender individual constitutes a concrete, particularized and redressable injury under Title IX. *Soule*, 90 F.4th at 45-7.

612. In addition to injunctive relief to correct the records of the sports organizations appropriate relief for such injury may include nominal and compensatory damages. *Id.* at 47.

613. The actions, practices, and/or policies of the Georgia Individual Defendants which are described above deprived Plaintiffs and a class of individuals similarly situated of a meaningful and equal opportunity to compete in scholastic sport and constitutes sex discrimination against women within the meaning of Title IX.

614. Such discrimination includes, but is not limited to:
- a. Implementation of the NCAA's Transgender Eligibility Policies,
  - b. authorization of Thomas and other males who identify as transgender to compete in women's collegiate athletic competitions,
  - c. granting or awarding eligibility, points, titles, trophies, results, or records, to Thomas and other males who identify as transgender for competing in women's collegiate athletic competitions, and
  - d. authorization of Thomas and other males who identify as transgender to use women's toilets, showers, and/or locker rooms in connection with women's collegiate sports competitions.

615. The above-described actions, practices, and/or policies of the NCAA and/or the University System of Georgia, Georgia Tech, the University of Georgia, the University of North Georgia which violate Title IX have injured and/or threaten to injure Plaintiffs and one or more classes of similarly situated individuals in the future.

616. Individuals in a position to control and direct the actions of the University System of Georgia, Georgia Tech, the Georgia Individual Defendants, and the NCAA had actual knowledge of the discriminatory actions, practices, and/or policies which violated the Title IX rights of the Plaintiffs and others similarly situated.

617. The University System of Georgia, Georgia Tech, and the NCAA acted with deliberate indifference to the known Title IX violations which injured Plaintiffs and others similarly situated and acted with conscious or reckless disregard of the rights of, and harms to, Plaintiffs and others similarly situated.

618. The discriminatory acts of the University System of Georgia, Georgia Tech, and the NCAA are so substantial, severe, pervasive, objectively offensive, and competitively unfair and/or create such a substantial safety risk that they effectively bar access to equal opportunity in collegiate sport.

619. Unless enjoined the NCAA, the University System of Georgia, Georgia Tech, and/or the University of Georgia, and/or the University of North Georgia are likely to commit similar violations of Title IX in the future.

620. Wherefore, Plaintiffs request that the Court grant them the relief requested in their prayer for relief below.

## COUNT II

### **Title IX and U.S. Constitution, Fourteenth Amendment, Equal Protection Clause, 42 U.S.C. §§ 1983, 1988.**

#### **Violation of Title IX Rights to Equal Opportunity and Equal Facilities**

**Against the University System of Georgia and Georgia Tech (as to Title IX only), the University of Georgia and the University of North Georgia (only for injunctive relief under Title IX), the NCAA (as to Title IX and as to Equal Protection pursuant to § 1983), and the Georgia Individual Defendants (only as to Equal Protection pursuant to § 1983; and in their individual and official capacities as to injunctive relief but only in their individual capacities as to damages)**

621. Plaintiffs restate the foregoing paragraphs numbered 1 through 620 as if set forth fully herein.

622. The University System of Georgia, Georgia Tech, the University of Georgia, and the University of North Georgia are state actors.

623. In the realm of collegiate athletics public colleges and universities, including Georgia Tech and other public colleges and universities in Georgia operated by the members of the Board of Regents of the University System of Georgia, have so far insinuated themselves into a position of interdependence with the NCAA that these governmental entities may be recognized as joint participants in the challenged activities of the NCAA.

624. By adopting, implementing and enforcing in public buildings on a public university campus the NCAA Transgender Eligibility Policies which discriminate against women the University System of Georgia, Georgia Tech, the

University of Georgia, and the University of North Georgia and/or the Georgia Individual Defendants and the NCAA acting in concert and under color of law violated both Title IX as applied to Defendants through 42 U.S.C. § 1983 and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution by depriving women of equal opportunities, facilities and benefits in comparison of those available to men.

625. As a result of the actions of the Defendants, Plaintiffs Gaines, Gyorgy, Alons, Wheeler, Swimmer A, Swimmer B, and a class of similarly situated women swimmers were deprived of their constitutional right to equal protection and suffered injury thereby.

626. The NCAA and the Georgia Individual Defendants are accountable under 42 U.S.C. § 1983 for their actions which violated the constitutional equal protection rights of Plaintiffs and those similarly situated as they collaborated and participated in these constitutional violations.

627. Unless enjoined the NCAA and the Georgia Individual Defendants are likely to commit similar violations of Title IX, the Equal Protection Clause and/or 42 U.S.C. § 1983 in the future.

628. Wherefore, Plaintiffs request that the Court grant them the relief requested in their prayer for relief below.

### COUNT III

**Fourteenth Amendment, U.S. Constitution, 42 U.S.C. §§ 1983, 1988.**

#### **Violation of the Right to Bodily Privacy**

**Against the NCAA and the Georgia Individual Defendants (in their individual and official capacities as to injunctive relief but only in their individual capacities as to damages)**

629. Plaintiffs restate the foregoing paragraphs numbered 1 through 628 as if set forth fully herein.

630. The University System of Georgia, Georgia Tech, the University of Georgia, and the University of North Georgia are state actors.

631. In the realm of collegiate athletics public colleges and universities, including Georgia Tech and other public colleges and universities in Georgia operated by the members of the Board of Regents of the University System of Georgia, have so far insinuated themselves into a position of interdependence with the NCAA that these governmental entities may be recognized as joint participants in the challenged activities of the NCAA.

632. The University System of Georgia, Georgia Tech, and/or the Georgia Individual Defendants and the NCAA acting in concert and under color of law changed the designation of the locker rooms and showers to be used by the women swimmers at the 2022 NCAA Championships to “unisex” locker rooms and showers and authorized Thomas to use the women’s locker rooms and showers

now designated as “unisex”, and directed women swimmers and teams that Thomas, a biological male, was entitled to use these locker rooms and showers.

633. This change was made so that Thomas, a fully grown adult male with full male genitalia, could use the same locker rooms to be used by more than 300 female student-athletes, depriving the female student-athletes of sex-separated women’s locker room facilities and bathroom and restroom facilities where their right to bodily privacy could be protected, and exposing the women to a loss of bodily privacy and shock, humiliation, and embarrassment in violation of their constitutional right to bodily privacy.

634. As a result of the actions of the NCAA and the University System of Georgia, Georgia Tech, and/or the Georgia Individual Defendants, Plaintiffs Gaines, Alons, Wheeler, Swimmer A, and a class of similarly situated women swimmers and divers had their right to bodily privacy violated because their unclad bodies were exposed in the presence of Thomas without their consent and against their wills and/or they were exposed to Thomas’ unclad body without their consent and against their wills causing embarrassment, shame, humiliation and mental anguish.

635. The NCAA and the Georgia Individual Defendants are accountable under 42 U.S.C. § 1983 for their actions which violated the constitutional right to

bodily privacy of Plaintiffs and those similarly situated as they collaborated and participated in these constitutional violations.

636. The NCAA is also accountable under 42 U.S.C. § 1983 for its actions which violated the constitutional right to bodily privacy of Plaintiffs and those similarly situated because the University System of Georgia, Georgia Tech, and/or one or more of the Georgia Individual Defendants transformed the NCAA's rules and procedures into state rules and the NCAA into a state actor.

637. Wherefore, Plaintiffs request that the Court grant them the relief requested in their prayer for relief below.

### **PRAYER FOR RELIEF**

For the foregoing reasons, Plaintiffs respectfully pray that the Court grant the following relief against Defendants, jointly and severally:

1. Declare that the NCAA violated Title IX and the Fourteenth Amendment to the U.S. Constitution.
2. Declare that the University System of Georgia and Georgia Tech violated Title IX.
3. Declare that the NCAA and the University System of Georgia (or one or more of the System's constituent parts) threaten to or are reasonably likely to violate Title IX.
4. Declare that the NCAA and the Georgia Individual Defendants threaten to or are reasonably likely to violate the Fourteenth Amendment to the U.S. Constitution in the future unless they are enjoined from doing so.
5. Declare the extent of the violations or threat of violations so found.
6. Enter injunctive relief providing for one or more of the following:

- (a) Enjoining the NCAA, the University System of Georgia, including all institutions it governs, and/or the Georgia Individual Defendants (in both their individual and official capacities) from enforcing or implementing the NCAA's eligibility rules that are in conflict with Title IX and/or the U.S. Constitution;
- (b) Requiring the NCAA to render ineligible any male who competed in women's events or on a women's team pursuant to rules of the Association which the Court finds are unlawful;
- (c) Requiring the NCAA to render invalid and reassign and revise all awards, records, points, prizes, titles, trophies, announcements or other recognition assigned, given, announced, communicated or recognized by the NCAA which were based in any way upon the competitive results or participation of any male who competed in women's events or on a women's team pursuant to the policies, practices, or rules of the NCAA which the Court finds are unlawful;
- (d) Pursuant to Title IX enjoin the University System of Georgia, including all institutions it governs, from implementing, applying, using, enforcing, or giving effect to the policies, practices, or rules of the Association which the Court finds are unlawful;
- (e) Pursuant to Title IX enjoin the University System of Georgia, including all institutions it governs, from permitting collegiate sports competition(s) to take place in premises controlled by the System or the institutions it governs for which competition(s) the eligibility rules of the NCAA enjoined by the Court are used to select participants or permit participants to qualify;
- (f) Pursuant to Title IX enjoin the University System of Georgia, including all institutions it governs, from operating or permitting the operation of any locker room, shower, or restroom in a manner which the Court has found unlawful or in a manner which permits a male athlete to use such women's facilities or facilities designated for women because the male athlete has been authorized or permitted to compete in a women's competition or on a women's team; and

- (g) Any other injunctive relief necessary to afford any Plaintiff, class member, or class full relief.
- 7. Pursuant to Title IX, award Plaintiffs, and those class members similarly situated, all such damages as are available under their various claims, including, actual damages, nominal damages, punitive damages, and compensatory damages, including, but not limited to, damages for pain and suffering, mental and emotional distress, suffering and anxiety, expenses costs and other damages against the NCAA, the University System of Georgia, the Board of Regents, and Georgia Tech due to their wrongful conduct.
- 8. Pursuant to Section 1983, award Plaintiffs, and those class members similarly situated, all such damages as are available under their various claims, including, actual damages, nominal damages, punitive damages, and compensatory damages, including, but not limited to, damages for pain and suffering, mental and emotional distress, suffering and anxiety, expenses costs and other damages against the NCAA and the Georgia Individual Defendants in their individual capacities due to their wrongful conduct.
- 9. Award Plaintiffs reasonable attorneys' fees, and costs; and
- 10. Grant any other relief that the Court deems necessary, just, proper, and equitable.
- 11. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial on all issues upon which there is a federal right to a jury trial.

Dated: March 14, 2024

Respectfully submitted,

/s/ William Bock III

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*ATTORNEYS FOR PLAINTIFFS*

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<sup>108</sup> Application for admission pro hac vice pending.

<sup>109</sup> Application for admission pro hac vice pending.

# APPENDIX A

NCAA.org

Transgender Student-Athlete Participation Policy

# Transgender Student-Athlete Participation Policy

**UPDATED 4/17/2023 TO PROVIDE INCREASED CLARITY**

At its January 19, 2022 meeting, the NCAA Board of Governors updated the transgender student-athlete participation policy governing college sports.

The new policy aligns transgender student-athlete participation with the Olympic Movement. The resulting sport-by-sport approach preserves opportunity for transgender student-athletes while balancing fairness, inclusion and safety for all who compete.

Like the U.S. Olympic and Paralympic Committee, the updated NCAA policy calls for transgender student-athlete participation for each sport to be determined by the policy for the national governing body of that sport. If there is no NGB policy for a sport, it would then be determined by the policy for that sport's international federation. If there is no international federation policy, it would be determined by policy criteria previously established by the International Olympic Committee. Sport-specific policies are subject to ongoing review and recommendation by the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports to the Board of Governors.

The policy is effective immediately, with three phases of implementation.

## Phase One – 2022 winter and spring championships

For participation in 2022 winter and spring championships, transgender student-athletes were required to provide documentation to the CSMAS within four weeks before the selections date for their championship.

The documentation had to demonstrate compliance with the 2010 NCAA policy, which calls for one year of testosterone suppression treatment. It also had to document a one-time serum testosterone level that fell below the maximum allowable level for the sport in which the student-athlete was competing within four weeks of championship selections for that sport. That means that student-athletes who already fulfilled the 2010 NCAA policy only needed provide one validated serum testosterone level.

Transgender student-athletes who participated in regular season competition (including conference championships) remained subject to the 2010 NCAA policy only.

## Phase Two – 2022-23 and 2023-24 regular season and championships

Beginning Aug. 1, 2022, participation in NCAA sports requires transgender student-athletes to provide documentation that meets the above criteria for the 2010 NCAA policy, plus meet the sport standard for documented testosterone levels at three points in time: 1. Prior to any competition during the regular season; 2. Prior to the first competition in an NCAA championship event; and 3. Prior to any competition in the non-championship segment. See the transgender student-athlete eligibility review procedures for more information.

## Phase Three – 2024-25 full implementation

Beginning Aug. 1, 2024, participation in NCAA sports requires transgender student-athletes to provide documentation no less than twice annually (and at least once within four weeks of competition in NCAA championships) that meets the sport-specific standard (which may include testosterone levels, mitigation timelines and other aspects of sport-governing body policies) as reviewed and approved by CSMAS. More information about the specific application of Phase Three will be provided prior to implementation.

## Additional flexibility

The Board of Governors urged the divisions to allow for additional, future eligibility if a transgender student-athlete loses eligibility based on the policy change, provided they meet the newly adopted standards.

The NCAA's Office of Inclusion and Sport Science Institute also released the [Gender Identity and Student-Athlete Participation Summit Final Report](#). The report assists ongoing membership efforts to support an inclusive environment that promotes and develops the mental and physical health of transgender and non-binary student-athletes in collegiate sport. The foundational principles in this report will be developed further in conjunction with the Committee to Promote Cultural Diversity and Equity, CSMAS and other core membership committees that address gender identity.

## Transgender Student-Athlete Resources

- [Transgender Student-Athlete Eligibility Review Procedures](#)
- [2022-23 Spring Sport Testosterone Thresholds and Championship Submission Deadlines](#)
- [2023-24 Fall Sport Testosterone Thresholds and Championship Submission Deadlines](#)
- [2023-24 Winter Sport Testosterone Thresholds and Championship Submission Deadlines](#)
- [2023-24 Spring Sport Testosterone Thresholds and Championship Submission Deadlines](#)
- [Clarifying Application and Next Steps](#)
- [2010 NCAA Transgender Participation Policy](#)
- [NCAA Inclusion of Transgender Student-Athletes Handbook](#)
- [Gender Identity and Student-Athlete Participation Summit Final Report](#)
- [Medical Exceptions Procedures and Form](#)

NCAA.org

Transgender Student-Athlete Eligibility Review Procedures

# Transgender Student-Athlete Eligibility Review Procedures

*Approved: Jan. 27, 2022 / Distributed: Jan. 28, 2022 / Updated: Jan. 19, 2023*

At its Jan 2022 meeting, the NCAA Board of Governors updated the transgender student-athlete participation policy to incorporate sport-by-sport eligibility requirements that align with the Olympic movement.

With these national and international sport-specific policy considerations in mind, the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports developed corresponding sport-specific NCAA transgender student-athlete eligibility criteria. A summary of these corresponding NCAA sport-by-sport testosterone level requirements can be found here: [fall sports](#), [winter sports](#) and [spring sports](#).

At the 2023 NCAA Convention, the Board of Governors approved a CSMAS recommendation to extend Phase Two of the [NCAA transgender student-athlete participation policy](#) through the 2023-24 academic year. Phase Three will begin in the 2024-25 academic year. CSMAS recommended the change to allow additional time to address operational considerations in Phase Three of the policy.

**Phase Two: 2022-23 and 2023-24 Academic Years -- Eligibility Documentation and Review Procedure for Transgender Student-Athlete Participation.** The policy updates do not change eligibility requirements for a trans man to compete during the 2022-23 and 2023-24 academic years. However, gender affirming medical care for any student-athlete could involve the use of NCAA banned substances (e.g., testosterone). In which case, the school would be required to submit a medical exception request on behalf of the student-athlete. Please see [NCAA medical exception procedures](#) for additional details related to these requirements.

For a trans woman student-athlete to be eligible to compete in an NCAA women's sport, the student-athlete's school must submit the following:

1. **[NCAA Transgender Student-Athlete Eligibility Review Form](#)**; and
2. **Evidence of Serum Testosterone Level.** Laboratory results demonstrating a one-time total serum testosterone level that is within the allowable levels for the sport in which the student-athlete plans to compete. Additionally, submitted laboratory results must be within four weeks (28 days) prior to the applicable competition date (e.g., student-athlete's first contest of each playing season segment or championship selection date).

## How and When to Send Documentation.

**Annual submission requirements.** The NCAA must receive all required documentation at least one week prior to the student-athlete's first competition in the applicable playing season segment (traditional and nontraditional) for the applicable sport.

- **Multi-sport student-athletes.** Where a student-athlete intends to compete in more than one sport, submission of annual eligibility documentation will occur at least twice per academic year. Typically, this will occur (1) Prior to the student-athlete's initial competition in the fall term; and (2) Prior to the student-athlete's initial competition in a different sport in the following academic term.
- **Example. Cross country, indoor and outdoor track and field student-athlete:** Eligibility documentation must be submitted for review in the fall prior to the student-athlete's first cross country competition. This submission and review establishes eligibility for traditional segment competition in both cross country and indoor track and field. Eligibility documentation would again be submitted at the start of the spring semester or winter quarter prior to the student-athlete's first competition in outdoor track and field.

**NCAA championship submission requirements.** For competition in championships, the NCAA must receive all required documentation from the school at least one week prior to the first championship selection date in the applicable sport.

- A multi-sport student-athlete must submit championship eligibility documentation prior to each NCAA championship in which they intend to compete.

***To receive a timely eligibility determination, all the above documentation must be completed and faxed by the student-athlete's school to the NCAA at (317)-917-6989.***

**Review of Documentation, Eligibility Determinations.** Documentation submitted pursuant to these transgender student-athlete eligibility review procedures will be reviewed by, and corresponding eligibility determinations will be made by, the CSMAS Medical Review Panel.

**Medical Exceptions Reminder.** These procedures do not replace or change the requirements related to the [NCAA Medical Exception Documentation Reporting Form](#) which must be separately submitted by the school and approved by the NCAA before any student-athlete using any anabolic agent, hormone and metabolic modulator, or peptide hormone, growth factor, related substances and mimetics is allowed to participate in competition. See [NCAA Medical Exception Procedures](#) for additional information and requirements.

**Communications, School Contact.** As part of its completion of an [NCAA Transgender Student-Athlete Eligibility Review Form](#), a school will have the opportunity to designate a school contact. All communications related to the transgender student-athlete eligibility review will be directed to the identified school contact. In recognition of the sensitive nature of the information to be exchanged, we encourage each school to consider the needs and expectations of the school and the student-athlete when identifying an appropriate school contact.

**Reconsideration.** The NCAA will deliver eligibility determinations to the school contact identified in the NCAA Transgender Student-Athlete Eligibility Review Form. If the student-athlete is determined to be ineligible for competition, additional documentation (e.g., updated total serum testosterone lab results) may be submitted for reconsideration provided it occurs in a timeframe consistent with applicable policy requirements.

**Privacy Considerations.** Certain information shared as part of these eligibility review procedures may constitute protected information as the same is described in applicable state, federal and international privacy regulations. We encourage schools to consult with legal, risk management and other applicable campus personnel as necessary before submitting eligibility information to evaluate and confirm, as necessary, the applicability of any such laws and related requirements.

If you have questions about the transgender student-athlete eligibility review procedures, please contact [ssi@ncaa.org](mailto:ssi@ncaa.org).

**NCAA Transgender Student-Athlete Eligibility Review Fax: (317)-917-6989.**

## Resources

- [NCAA Transgender Student-Athlete Eligibility Review Form](#)
- [Transgender Student-Athlete Participation Policy](#)

**NCAA Transgender Student-Athlete Participation Policy**  
**Phase Two: 2022-23 and 2023-24 Academic Years**  
**Eligibility Review Form - Instructions**

In accordance with the [NCAA Board of Governors January 2022 update to the NCAA Transgender Student-Athlete Participation Policy](#), a school must, on behalf of a trans woman student-athlete intending to compete in an NCAA women's sport during the 2022-23 and 2023-24 academic years, establish eligibility of the student-athlete by completing and faxing this form along with all required supporting documentation identified below to the NCAA at **317-917-6989**.

**Applicability.** This form is only valid for purposes of determining eligibility for competition during the 2022-23 and 2023-24 academic years and 2022-23 and 2023-24 NCAA championships. For the 2022-23 and 2023-24 academic years, established eligibility requirements apply to all NCAA competition, including competition in both the traditional and nontraditional segments and NCAA championships. This may require the submission of eligibility documentation on multiple occasions. Please see the [eligibility documentation review process](#) for additional information.

**Medical Exception Reminder.** This form is distinct from and not a substitute for the [NCAA Medical Exception Documentation Reporting Form](#) which must be separately submitted by the institution and approved by the NCAA before any student-athlete using any anabolic agent, hormone and metabolic modulator, or peptide hormone, growth factor, related substances and mimetics is allowed to participate in competition.

**Submission Requirements.** In order to receive a timely eligibility review, a school must submit the following:

1. **Completed Eligibility Review Form.** A school must include a fully completed and executed eligibility review form, including sections one and two.
2. **Serum Testosterone Level.** A school must include a copy of lab results confirming that, as of a date that is no more than four weeks (28 days) prior to the first applicable date of competition (e.g., student-athlete's first competition in the applicable playing season segment or the first championship selection date in the applicable sport), the student-athlete's total serum testosterone level was within the allowable level for the sport in which the student-athlete intends to compete. A summary of current sport-by-sport testosterone level requirements and a schedule of NCAA championship selection dates can be found here: [fall sports](#), [winter sports](#) and [spring sports](#).

**Submitting the Form.** The completed form (Sections 1 and 2) and serum testosterone level lab results must be faxed to NCAA at 317-917-6989.

**NCAA Transgender Student-Athlete Participation Policy  
Eligibility Review Form: Section One**

*\*See instructions for additional information about submission.*

**SECTION ONE.** Student-athlete information and school contact for eligibility communication. To be completed by student-athlete’s school.

**School Name:**

Student-Athlete Information.			
<b>Name:</b>		<b>Date of Birth:</b>	
<b>Sport:</b>			

Applicable Season for Reporting Purposes. (Select One and Complete Applicable Date)		
<b>Traditional Segment.</b>	<b>Date of SA’s First Competition:</b>	
<b>Nontraditional Segment.</b>	<b>Date of SA’s First Competition:</b>	
<b>NCAA Championship.</b>	<b>Championship Selection Date:</b>	

School Contact Information for Eligibility Communication*.			
<b>Contact Name:</b>		<b>Contact Title:</b>	
<b>Contact Email:</b>		<b>Contact Phone:</b>	

\* All questions, communications and eligibility determinations pertaining to this form and the related eligibility of the student-athlete identified above will be directed to the identified school contact. In recognition of the sensitive nature of the content provided in and with this form, and the material variations in how member institutions may elect to manage and retain such information, we encourage you to consider the needs and expectations of the school and the student-athlete when identifying an appropriate school contact.

*\* NOTE: This form and the information provided herein is intended to be used by the NCAA solely for the purpose of evaluating and determining eligibility to participate in NCAA competition. Some of the information required to be provided in this form may constitute protected information as the same is described in applicable state, federal and international privacy regulations. We encourage you to consult with legal, risk management and other applicable personnel as necessary to evaluate the applicability of any such laws and related requirements.*

**NCAA Transgender Student-Athlete Participation Policy  
Eligibility Review Form: Section Two**

*\*See instructions for additional information about submission.*

**SECTION TWO.** Medical professional confirmation of hormone suppression treatment. To be completed by the attesting medical professional.

Student-Athlete Information.			
<b>Name:</b>		<b>Date of Birth:</b>	
<b>School Name:</b>			

Treating Medical Professional Information.			
<b>Name:</b>		<b>Medical Specialty:</b>	
<b>Business Address:</b>			

**Medical Professional Attestation.** By completing this form and as evidenced by my signature below, I confirm the accuracy of all of the following statements:

1. I am the licensed medical professional identified above;
2. I have participated as a medical professional in the gender affirming treatment plan of the student-athlete identified above *or* I am the submitting school's athletics health care provider and I am familiar with the student-athlete's gender affirming treatment plan;  
*and*
3. The identified student-athlete has, as of the date identified below, received hormone suppression treatment for at least one calendar year.

<b>Medical Professional Signature:</b>		<b>Date:</b>	
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\* Please complete and return this form to the institution identified above in accordance with any instructions provided by the school.

\* *NOTE: This form and the information provided herein is intended to be used by the NCAA solely for the purpose of evaluating and determining eligibility to participate in NCAA competition. Some of the information required to be provided in this form may constitute protected information as the same is described in applicable state, federal and international privacy regulations. We encourage you to consult with legal, risk management and other applicable personnel as necessary to evaluate the applicability of any such laws and related requirements.*



**NCAA TRANSGENDER STUDENT-ATHLETE PARTICIPATION POLICY  
SPORT-SPECIFIC TESTOSTERONE THRESHOLDS AND CHAMPIONSHIP ELIGIBILITY DEADLINES  
2023 FALL SPORTS**

This document provides Phase Two fall sport testosterone thresholds and championship submission deadlines applicable to the 2023-24 academic year. Total serum testosterone thresholds apply to any transgender woman competing on an NCAA women's team.

**Note:** For academic year 2023-24, established eligibility requirements apply to all NCAA competition, including competition in both the traditional and nontraditional segments and NCAA championships. It is important to understand that this may require the submission of eligibility documentation on multiple occasions. Please see the [eligibility documentation review process](#) for additional information.

**Note Also:** In addition to meeting applicable threshold eligibility requirements, a transgender student-athlete receiving gender-affirming care that includes an NCAA banned substance is required to comply with the [NCAA Medical Exception Policy](#).

Sport	Approved Testosterone Threshold	Policy Benchmark	Submission Deadline for Championship Eligibility	
Women's Cross Country	<10 nmol/L (<288.18 ng/dL)	<a href="#">USATF</a>	Division I	11/04/2023
			Division II	10/30/2023
			Division III	11/05/2023

Sport	Approved Testosterone Threshold	Policy Benchmark	Submission Deadline for Championship Eligibility	
Field Hockey	<10 nmol/L (<288.18 ng/dL)	<a href="#">2015 IOC</a> (NGB/IF policy not available)	Division I	10/29/2023
			Division II	10/30/2023
			Division III	10/29/2023

Sport	Approved Testosterone Threshold	Policy Benchmark	Submission Deadline for Championship Eligibility
Rugby	<10 nmol/L (<288.18 ng/dL)	<a href="#">USA Rugby</a>	NCAA emerging sport for women. No NCAA championship.

Sport	Approved Testosterone Threshold	Policy Benchmark	Submission Deadline for Championship Eligibility	
Women's Soccer	<10 nmol/L (<288.18 ng/dL)	<a href="#">2015 IOC</a> (NGB/IF policy not available)	Division I	10/30/2023
			Division II	11/06/2023
			Division III	10/30/2023

Sport	Approved Testosterone Threshold	Policy Benchmark	Submission Deadline for Championship Eligibility	
Triathlon	<2.5 nmol/L (<288.18 ng/dL)	<a href="#">World Triathlon</a>	NCAA emerging sport for women. No NCAA championship.	

Sport	Approved Testosterone Threshold	Policy Benchmark	Submission Deadline for Championship Eligibility	
Women's Volleyball	<10 nmol/L (<288.18 ng/dL)	<a href="#">USA Volleyball</a>	Division I	11/19/2023
			Division II	11/13/2023
			Division III	11/05/2023

**DOCUMENT KEY:**

**Approved Total Serum Testosterone Threshold:** This is the threshold, approved by the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports, that will be used by its CSMAS Medical Review Panel to evaluate the eligibility of a transgender student-athlete intending to compete in a fall sport.

**Policy Benchmark:** This is the applicable sport-specific policy benchmark considered by CSMAS in the development of corresponding NCAA sport-by-sport total serum testosterone threshold levels. Consistent with NCAA Board of Governors' direction, transgender student-athlete eligibility is to be determined in accordance with the policy established by the national governing body of the applicable sport in which the student-athlete intends to compete. If there is no NGB policy for that sport, eligibility requirements consider the policy established by that sport's international federation. If there is no international federation policy, eligibility requirements will consider the guidelines developed as part of the [November 2015 International Olympic Committee Consensus Meeting on Sex Reassignment and Hyperandrogenism](#).

**Deadline for Championship Eligibility:** This is the last date (one week prior to the championship selection date) by which the NCAA must receive all required championship eligibility documentation for review by the Medical Review Panel. Please note that annual eligibility documentation must be received not later than one week prior to the student-athlete's initial competition in the traditional or nontraditional segment. This allows the Medical Review Panel sufficient time for review.



**NCAA TRANSGENDER STUDENT-ATHLETE PARTICIPATION POLICY  
SPORT-SPECIFIC TESTOSTERONE THRESHOLDS AND CHAMPIONSHIP ELIGIBILITY DEADLINES  
2023-24 WINTER SPORTS**

This document provides Phase Two winter sport testosterone thresholds and championship submission deadlines applicable to the 2023-24 academic year. Total serum testosterone thresholds apply to any transgender woman competing on an NCAA women's team.

**Note:** For academic year 2023-24, established eligibility requirements apply to all NCAA competition, including competition in both the traditional and nontraditional segments and NCAA championships. It is important to understand that this may require the submission of eligibility documentation on multiple occasions. Please see the [eligibility documentation review process](#) for additional information.

**Note Also:** In addition to meeting applicable threshold eligibility requirements, a transgender student-athlete receiving gender-affirming care that includes an NCAA banned substance is required to comply with the [NCAA Medical Exception Policy](#).

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Women's Basketball	<10 nmol/L (<288.18 ng/dL)	<a href="#">2015 IOC</a> (NGB/IF policy not available)	Division I	03/10/2024
			Division II	03/03/2024
			Division III	02/19/2024

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Women's Bowling	<10 nmol/L (<288.18 ng/dL)	<a href="#">2015 IOC</a> (NGB/IF policy not available)	NC	03/20/2024

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Equestrian	<10 nmol/L (<288.18 ng/dL)	<a href="#">2015 IOC</a> (NGB/IF policy not available)	NCAA emerging sport for women. No NCAA championship.	

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Fencing	<10 nmol/L (<288.18 ng/dL)	<a href="#">USA Fencing</a>	NC	03/05/2024

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Women's Gymnastics	<10 nmol/L (<288.18 ng/dL)	<a href="#">USA Gymnastics</a>	NC	03/18/2024

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Women's Ice Hockey	<5 nmol/L (<144.09 ng/dL)	<a href="#">International Ice Hockey Federation</a>	NC	03/03/2024
			Division III	02/26/2024

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Women's Indoor Track & Field	<10 nmol/L (<288.18 ng/dL)	<a href="#">USATF</a>	Division I	02/20/2024
			Division II	02/20/2024
			Division III	02/25/2024

Sport	Approved Testosterone Threshold	Policy Benchmark	
Rifle (Mixed Teams)	No threshold established.	Mixed Team Status negates the need for level.	

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Women's Skiing	<10 nmol/L (<288.18 ng/dL)	<a href="#">2015 IOC</a> (NGB/IF policy not available)	NC	02/18/2024

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Women's Swimming & Diving	<5 nmol/L (<144.09 ng/dL)	<a href="#">USA Swimming</a>	Division I	02/28/2024
			Division II	02/21/2024
			Division III	02/21/2024

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Women's Wrestling	<10 nmol/L (<288.18 ng/dL)	<a href="#">USA Wrestling</a>	NCAA emerging sport for women. No NCAA championship.	

**DOCUMENT KEY:**

**Approved Total Serum Testosterone Threshold:** This is the threshold, approved by the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports, that will be used by its CSMAS Medical Review Panel to evaluate the eligibility of a transgender student-athlete intending to compete in a winter sport.

**Policy Benchmark:** This is the applicable sport-specific policy benchmark considered by CSMAS in the development of corresponding NCAA sport-by-sport total serum testosterone threshold levels. Consistent with NCAA Board of Governors' direction, transgender student-athlete eligibility is to be determined in accordance with the policy established by the national governing body of the applicable sport in which the student-athlete intends to compete. If there is no NGB policy for that sport, eligibility requirements consider the policy established by that sport's international federation. If there is no international federation policy, eligibility requirements will consider the guidelines developed as part of the [November 2015 International Olympic Committee Consensus Meeting on Sex Reassignment and Hyperandrogenism](#).

**Deadline for Championship Eligibility:** This is the last date (one week prior to the championship selection date) by which the NCAA must receive all required championship eligibility documentation for review by the Medical Review Panel. Please note that annual eligibility documentation must be received not later than one week prior to the student-athlete's initial competition in the traditional or nontraditional segment. This allows the Medical Review Panel sufficient time for review.



**NCAA TRANSGENDER STUDENT-ATHLETE PARTICIPATION POLICY  
SPORT-SPECIFIC TESTOSTERONE THRESHOLDS AND CHAMPIONSHIP ELIGIBILITY DEADLINES  
2023-24 SPRING SPORTS**

This document provides Phase Two spring sport testosterone thresholds and championship submission deadlines applicable to the 2023-24 academic year. Total serum testosterone thresholds apply to any transgender woman competing on an NCAA women's team.

**Note:** For academic year 2023-24, established eligibility requirements apply to all NCAA competition, including competition in both the traditional and nontraditional segments and NCAA championships. It is important to understand that this may require the submission of eligibility documentation on multiple occasions. Please see the [eligibility documentation review process](#) for additional information.

**Note Also:** In addition to meeting applicable threshold eligibility requirements, a transgender student-athlete receiving gender-affirming care that includes an NCAA banned substance is required to comply with the [NCAA Medical Exception Policy](#).

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility
Acrobatics and Tumbling	<10 nmol/L (<288.18 ng/dL)	<a href="#">USA Gymnastics</a>	NCAA emerging sport for women.

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Women's Beach Volleyball	<10 nmol/L (<288.18 ng/dL)	<a href="#">USA Volleyball</a>	NC	04/21/2024

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Women's Golf	<10 nmol/L (<288.18 ng/dL)	<a href="#">2015 IOC</a> (NGB/IF policy not available)	Division I	04/17/2024
			Division II	04/22/2024
			Division III	05/06/2024

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Women's Lacrosse	<10 nmol/L (<288.18 ng/dL)	<a href="#">USA Lacrosse</a>	Division I	04/28/2024
			Division II	04/28/2024
			Division III	04/29/2024

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Rowing	<5 nmol/L (<144.09 ng/dL)	<a href="#">US Rowing</a>	Division I	05/07/2024
			Division II	05/13/2024
			Division III	05/06/2024

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Softball	<10 nmol/L (<288.18 ng/dL)	<a href="#">WBSC</a>	Division I	05/05/2024
			Division II	04/29/2024
			Division III	05/06/2024

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Women's Tennis	<5 nmol/L (<144.09 ng/dL)	<a href="#">ITF</a>	Division I	04/22/2024
			Division II	04/29/2024
			Division III	04/29/2024

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Women's Outdoor Track & Field	<10 nmol/L (<288.18 ng/dL)	<a href="#">USATF</a>	Division I	05/09/2024
			Division II	05/07/2024
			Division III	05/12/2024

Sport	Approved Testosterone Threshold	Policy Benchmark	Deadline for Championship Eligibility	
Women's Water Polo	<2.5 nmol/L (<72.05 ng/dL)	<a href="#">FINA</a>	NC	04/22/2024

**DOCUMENT KEY:**

**Approved Total Serum Testosterone Threshold:** This is the threshold, approved by the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports, that will be used by its CSMAS Medical Review Panel to evaluate the eligibility of a transgender student-athlete intending to compete in a spring sport.

**Policy Benchmark:** This is the applicable sport-specific policy benchmark considered by CSMAS in the development of corresponding NCAA sport-by-sport total serum testosterone threshold levels. Consistent with NCAA Board of Governors' direction, transgender student-athlete eligibility is to be determined in accordance with the policy established by the national governing body of the applicable sport in which the student-athlete intends to compete. If there is no NGB policy for that sport, eligibility requirements consider the policy established by that sport's international federation. If there is no international federation policy, eligibility requirements will consider the guidelines developed as part of the [November 2015 International Olympic Committee Consensus Meeting on Sex Reassignment and Hyperandrogenism](#).

**Deadline for Championship Eligibility:** This is the last date (one week prior to the championship selection date) by which the NCAA must receive all required championship eligibility documentation for review by the Medical Review Panel. Please note that annual eligibility documentation must be received not later than one week prior to the student-athlete's initial competition in the traditional or nontraditional segment. This allows the Medical Review Panel sufficient time for review.

# NCAA Inclusion of Transgender Student-Athletes



Office of Inclusion

AUGUST 2011



## Office of Inclusion

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*

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# 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](http://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](http://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.<sup>1</sup>

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.<sup>2</sup>

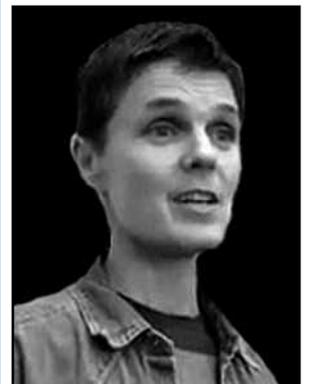
An increasing number of high school- and college-aged young people are identifying as transgender (or trans), meaning that their internal sense of their gender identity is different from the gender they were assigned at birth. These students challenge educators to rethink an understanding of gender as 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.<sup>3</sup> 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.<sup>4</sup>

### **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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> *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](http://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.<sup>8</sup>

### **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.

## PART 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)*.

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Washington Interscholastic Activities Association Gender Identity Policy

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## ***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/hundredtwentywob.doc](http://www.abanet.org/leadership/2006/annual/dailyjournal/hundredtwentywob.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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://www.transequality.org)

**NCAA Office of Inclusion** — [www.ncaa.org/lgbt](http://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](http://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](http://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](http://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](http://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](http://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](http://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](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.<sup>9</sup> 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.<sup>10</sup> 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.”<sup>11</sup> 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.<sup>12</sup>

**The Employment Non-Discrimination Act (ENDA)** — ENDA is a bill that was introduced in the 111th U.S. Congress in 2009.<sup>13</sup> 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.<sup>14</sup> Furthermore, the HCPA requires the Federal Bureau of Investigation to track statistics on hate crimes.<sup>15</sup>

### State of Non-Discrimination Law

As of July 2010, 13 states and the District of Columbia<sup>16</sup> have enacted non-discrimination laws prohibiting discrimination on the basis of sexual orientation and gender identity or expression: California,<sup>17</sup> Colorado,<sup>18</sup> Hawaii,<sup>19</sup> Illinois,<sup>20</sup> Iowa,<sup>21</sup> Maine<sup>22</sup>, Minnesota,<sup>23</sup> New Jersey,<sup>24</sup> New Mexico,<sup>25</sup> Oregon,<sup>26</sup> Rhode Island,<sup>27</sup> Vermont,<sup>28</sup> and Washington.<sup>29</sup>

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

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.<sup>31</sup>

### **State Student Rights Laws**

In addition to these federal protections, as of July 2010, twelve states and the District of Columbia<sup>32</sup> 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.<sup>33</sup> Four additional states offer protections on the basis of sexual orientation only: Connecticut, Massachusetts, New York, and Wisconsin.<sup>34</sup>

### **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](http://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](http://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.<sup>35</sup>

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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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## FOOTNOTES

<sup>1</sup> Gender Spectrum, “A Word About Words,” available online

at [http://www.genderspectrum.org/images/stories/Resources/Family/A\\_Word\\_About\\_Words.pdf](http://www.genderspectrum.org/images/stories/Resources/Family/A_Word_About_Words.pdf).

<sup>2</sup> 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>.

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

<sup>4</sup> 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.

<sup>5</sup> 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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1521674).

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

<sup>7</sup> 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>.

<sup>8</sup> 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>.

<sup>9</sup> 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).

<sup>10</sup> 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[.]”).

<sup>11</sup> U.S. Const. amend. XIV, § 1.

<sup>12</sup> 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”).

<sup>13</sup> H.R. 3017, 110th Cong. (2010).

<sup>14</sup> 18 U.S.C.A. § 249.

<sup>15</sup> 28 U.S.C.A. § 534.

- <sup>16</sup> 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).
- <sup>17</sup> Cal. Penal Code § 422.56, Cal. Gov't Code § 12926 et seq. (non-discrimination in employment and housing), Cal. Civ. Code § 51 (public accommodations).
- <sup>18</sup> Colo. Rev. Stat. Ann. §§ 24-34-401 et seq. (non-discrimination in public accommodation, housing and employment), 22-32-109 (non-discrimination in education).
- <sup>19</sup> Haw. Rev. Stat. §§ 489-2 (non-discrimination in public accommodations), 515-3 (real property transactions).
- <sup>20</sup> 775 Ill. Comp. Stat. 5/2-102 (non-discrimination in employment, public accommodations, real estate transactions, and access to financial credit).
- <sup>21</sup> Iowa Code Ann. § 216.1 et seq. (non-discrimination in public accommodation, employment, housing, credit, and education).
- <sup>22</sup> Me. Rev. Stat. Ann. tit. 5, § 4552 et seq. (non-discrimination in employment, housing, public accommodation, credit and education).
- <sup>23</sup> Minn. Stat. Ann. § 363A.03 et seq. (non-discrimination in public accommodation, housing, employment, credit, and education).
- <sup>24</sup> N.J. Stat. Ann. §§ 10:5-4 (non-discrimination in employment, housing, and public accommodation), 18A:37-14 (education).
- <sup>25</sup> N.M. Stat. Ann. § 28-1-2 et seq., (non-discrimination in public accommodation, employment, housing and credit).
- <sup>26</sup> 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).
- <sup>27</sup> 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).
- <sup>28</sup> 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).
- <sup>29</sup> 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).
- <sup>30</sup> 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).

<sup>31</sup> For a comprehensive discussion of state court and administrative decisions applying sex and disability discrimination to transgender plaintiffs, see [www.ncrights.org/site/DocServer/state\\_cases091004.pdf?docID=1203](http://www.ncrights.org/site/DocServer/state_cases091004.pdf?docID=1203).

<sup>32</sup> D.C. Code 1981 §§ 2-1401.02 & 2-1402.41.

<sup>33</sup> 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).

<sup>34</sup> 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.

<sup>35</sup> See A.B.A. Recommendation 122B (adopted August 7-8, 2006) available online at <http://www.abanet.org/leadership/2006/annual/dailyjournal/hundredtwentytwob.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.”).





# ON THE TEAM:

## EQUAL OPPORTUNITY FOR TRANSGENDER STUDENT ATHLETES

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NATIONAL CENTER FOR LESBIAN RIGHTS



**It Takes A Team!**

**OCTOBER 4, 2010**

# ON THE TEAM:

## EQUAL OPPORTUNITY FOR TRANSGENDER STUDENT ATHLETES

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## ABOUT THE REPORT

The purpose of this report is to provide guidance to high school and collegiate athletic programs about how to ensure transgender student athletes fair, respectful, and legal access to school sports teams. 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 National Collegiate Athletic Association and the National High School Federation, transgender student athletes, and an impressive array of experts on transgender issues from a range of disciplines—law, medicine, advocacy, and athletics. The think tank goals were to develop model policies and identify best practices for high school and collegiate athletic programs to ensure the full inclusion of transgender student athletes.

This think tank report includes best practice and policy recommendations for high school and collegiate athletic programs about providing transgender student athletes with equal opportunities to participate in school-based sports programs. In addition to specific policy recommendations for both high school and college athletics, the report 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, parents, and the media.



### LEA ROBINSON

ASSISTANT DIRECTOR OF MULTICULTURAL AFFAIRS,  
LGBTQ OUTREACH, COLUMBIA UNIVERSITY  
(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. ”**

## ABOUT THE AUTHORS



### DR. PAT GRIFFIN

Dr. Pat Griffin is the former Director of It Takes A Team! Education Campaign for Lesbian, Gay, Bisexual and Transgender Issues in Sport, an initiative of the Women's Sports Foundation. Dr. Griffin is a Professor Emerita in the Social Justice Education Program at the University of Massachusetts Amherst. She is author of *Strong Women, Deep Closets: Lesbians and Homophobia*

in *Sports* and co-editor of *Teaching for Diversity and Social Justice: A Sourcebook for Teachers and Trainers*. For the past 25 years, Dr. Griffin has led seminars on diversity issues including lesbian, gay, bisexual, and transgender issues in athletics at numerous colleges and universities, as well as at coaches and athletic administrators' association meetings throughout the United States and Canada. Dr. Griffin has discussed homophobia in sports on ESPN's *Outside the Lines*, HBO's *Real Sports* and ABC Sports. In 2007 she was selected as one of the Top 100 Sport Educators by the International Sport Institute. She played basketball and field hockey and swam at the University of Maryland. She coached high school basketball and field hockey in Silver Spring, Maryland and

coached swimming and diving at the University of Massachusetts Amherst.

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. It Takes A Team! provides practical educational information and resources to athletic administrators, coaches, parents, and athletes at the high school and college levels to make sport safe and welcoming for all. These resources are available at [www.ittakesateam.org](http://www.ittakesateam.org).



### HELEN J. CARROLL

Helen J. Carroll is the Director of the National Center for Lesbian Rights' Sports Project, which aims to ensure that lesbian, gay, bisexual, and transgender players, coaches, and administrators receive fair and equal treatment—free of discrimination. She joined NCLR in 2001 after spending 30 years as an athlete, coach, and collegiate athletic director. Carroll is well-known in the sports world as an acclaimed National Championship Basketball Coach from the University of North Carolina-Asheville. She was a National Collegiate Athletic

Association (NCAA) and National Association of Intercollegiate Athletics (NAIA) Athletic Director at Mills College for twelve years, and now devotes all her efforts to helping the sports world recognize that the inclusion of people who are lesbian, gay, bisexual, and/or transgender diversifies and strengthens the sport experience. Carroll works closely with major national sport organizations including the Women's Sports Foundation and the NCAA. She has been a featured speaker on panels with Nike, ESPN's *Outside the Lines*, *The New York Times*, and many others. Her work appears in Dr. Dee Mosbacher's and Fawn Yacker's award-winning film, *Training Rules*, Dr. Pat Griffin's book, *Strong Women, Deep Closets* and *The Outsports Revolution* by authors Jim Buzinski and Cyd Ziegler Jr. Carroll was recently named to the of list of Most Powerful Lesbians in Sport by *Curve Magazine*.

The National Center for Lesbian Rights 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. The mission of the Sports Project is to create and ensure a sports culture where individuals may fully participate, free from sexual orientation and gender identity discrimination.

Other NCLR staff who provided assistance in the writing of this report include Shannon Minter, Legal Director; Liz Seaton, former Director of Projects and Managing Attorney; Ilona Turner, Staff Attorney; Cara Sherman, Public Interest Associate; and Jody Marksamer, Staff Attorney and Youth Project Director.

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For providing a voice and sharing the experience of being a transgender student: Keelin Godsey, Track and Field, Rugby, Bates College, 2006, Northeastern College, 2010; Morgan Dickens, Basketball and Rugby, Cornell University, 2008, Ithaca College, 2009; a high school transgender student athlete.

# INTRODUCTION

## INTRODUCTION

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.<sup>1</sup> These students challenge many parents and educators to rethink our understanding of gender as universally fixed at birth. Educators and parents must be open to this challenge if we are 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.



**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. ”**

Some transgender students, like their non-transgender peers, enjoy athletic competition and want to be part of a school sports team. Transgender young people have the same right to participate and benefit from the positive aspects of athletics as other students do. School athletic leaders, in response to this interest, must identify effective and fair policies to ensure that transgender students have an equal opportunity to participate on school sports teams.

School athletic programs are widely accepted as integral parts of the high school and college experience. The benefits of school athletic 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.

Additionally, participation in high school athletics shows that a student is well-rounded and can improve a student’s chances of acceptance into college. For some students, playing on high school 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 students in high school and college have received some attention in recent years, this issue has not been adequately addressed in the context of athletics. Few high school or collegiate athletic programs, administrators, or coaches are prepared to fairly, systematically,

<sup>1</sup> For a more complete list of definitions and terms related to transgender people, refer to Appendix A.

and effectively address a transgender student's interest in participating in athletics. The majority of school athletic programs have no policy governing the inclusion of transgender student athletes, and most coaches are unprepared to accommodate a transgender student who wants to play on a sports team. In fact, most school athletic programs are unprepared 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.

In response to this need, the National Center for Lesbian Rights Sports Project and the Women's Sports Foundation initiative It Takes A Team! convened a national think tank in October 2009 entitled "Equal Opportunities for Transgender student athletes." Think tank participants included leaders from the National Collegiate Athletic Association (NCAA) and the National High School Federation, transgender student athletes, and an impressive array of experts on transgender issues from a range of disciplines—law, medicine, advocacy, and athletics.

Think tank participants were committed to a set of guiding principles based on the core values of inclusion, fairness, and equal opportunity in sport. The think tank goals were to develop model policies and identify best practices for high school and collegiate athletic programs to ensure the full inclusion of transgender student athletes.

Think tank participants were also keenly aware of the advantages of adopting uniform national policies for the participation of high school and college transgender athletes. By adopting a single national policy for all high schools and a single national policy for intercollegiate athletics, educators can ensure that student athletes and teams will not run into problems due to inconsistent rules for state eligibility, conference and tournament eligibility, and national competitive tournaments. The adoption of a single national standard for high schools and a single national standard for colleges would also enable an easier transition for high school transgender student athletes moving to another state, or for transgender student athletes in college to transfer to a program in another state.

This report reflects the best thinking of the think tank participants, based on current medical knowledge and legal protections for transgender people, about how to ensure equal opportunities for transgender student athletes. The purpose of this report is to provide leaders in education and athletics with the information they need to make effective policy decisions about the participation of transgender student athletes in high school and college athletic programs. This report is intended for everyone involved with high school or collegiate athletics including college presidents, school board members, high school state athletic association leaders, school principals and district superintendents, intercollegiate athletic conference commissioners, and sport governing organization leaders. It is also intended for individual athletic directors, coaches, student athletes, and parents.

Part One of the report provides an overview of issues related to providing equal opportunities for transgender student athletes. Part Two describes model policies for the inclusion of high school and college transgender student athletes. Part Three recommends best practices for the inclusion of transgender student athletes. Part Four lists additional resources for addressing transgender issues in athletics. Part Five includes an appendix of definitions of key terms, information about the legal rights of transgender people in the United States, and a list of the think tank participants.

# **PART ONE:**

## **OVERVIEW**

## PART ONE: OVERVIEW

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

- **What Does Transgender Mean?**
- **Why Must We Address Transgender Issues in Athletics? Why Focus on High School and College Athletics?**
- **Should the Participation of Transgender Student Athletes Raise Concerns About Competitive Equity?**
- **What Are the Benefits of Adopting Fair and Inclusive Policies?**
- **What Are Harmful Effects of Failing to Adopt Fair and Inclusive Policies?**

### 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.<sup>2</sup>

Some transgender people choose to share the fact that they are transgender with others. Other transgender people prefer to keep the fact that they transgender private.

It is important that other 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 to other people, 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 “Differences of Sex Development”), are born with physically mixed or atypical bodies

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<sup>2</sup> Gender Spectrum, “A Word About Words,” available online at [http://www.genderspectrum.org/images/stories/Resources/Family/A\\_Word\\_About\\_Words.pdf](http://www.genderspectrum.org/images/stories/Resources/Family/A_Word_About_Words.pdf).

with respect to sexual characteristics such as chromosomes, internal reproductive organs and genitalia, and external genitalia.<sup>3</sup> An estimated one in 2,000 people are born with an anatomy or chromosome pattern that doesn't seem to fit typical definitions of male or female. The conditions that cause these variations are sometimes grouped under the terms "intersex" or "DSD" (Differences of Sex Development).<sup>4</sup>

Most people with intersex conditions clearly identify as male or female and do not have any confusion or ambiguity about their gender identities. In fact, most intersex conditions are not visible, and many intersex people are unaware of having an intersex condition unless it is discovered during medical procedures. Though there may be some similar issues related to sports participation between transgender and intersex individuals, there are also significant differences. This report will focus on the participation of transgender people in sports.

### Why Must We Address Transgender Issues in School Athletic 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 school athletic 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, girls and 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-

#### PARENT OF HIGH SCHOOL STUDENT ATHLETE

**“ When my daughter transitioned at the age of 14, at the beginning of her eighth-grade year, we were told that a school administrator had contacted the state association for us. The answer I got then was that she could only compete in girls intramural sports. By the time she was ready to enter high school as a freshmen, she was no longer willing to settle. She wanted the right to compete at any level in the gender role she identified with. ”**

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 athletic programs accommodate transgender students (see Part Five: Appendix B for a compilation of

<sup>3</sup> 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>.

<sup>4</sup> Advocates for Informed Choice, General Brochure, available online at <http://aiclegal.files.wordpress.com/2010/02/aic-brochure.pdf>.

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.<sup>5</sup> 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 schools. In response to these demands, K-12 school and college leaders must be prepared to accommodate the educational needs and protect the rights of trans-identified students.

To respond to these realities, sport governing organizations and individual schools are well advised to proactively adopt policies that provide equal opportunities for transgender students to participate on school 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.



**STEPHANIE BRILL**  
EXECUTIVE DIRECTOR, GENDER SPECTRUM

**“ Parents call Gender Spectrum weekly to see if their children will be allowed to play sports in high school. ”**

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 will guide policy decisions rather than accurate and up-to-date information. Athletic leaders who are charged with policy development need guidance to avoid inscribing misconceptions and misinformation in policies that, ultimately, create more problems than they solve.

<sup>5</sup> See, e.g., Emily A. Greytak, 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). Available online at [http://www.glsen.org/binary-data/GLSEN\\_ATTACHMENTS/file/000/001/1375-1.pdf](http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1375-1.pdf). Despite this evidence of growing numbers, the decision to provide equal opportunity should not be based on the number of transgender students who want to play sports. Even the smallest minority of students deserves the opportunity to participate in all school-sponsored programs.

## Why Focus on High School and College Athletics?

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

Athletic programs affiliated with educational institutions have a responsibility, beyond those of adult amateur or professional sports programs, to look beyond the value of competition to promote broader educational goals of participation, inclusion, and equal opportunity. Because high schools and colleges must be committed to those broader educational goals, they should not unthinkingly adopt policies developed for adult Olympic and professional athletes. Recognizing the need to address the participation of transgender athletes, a few leading international and professional sport governing organizations have developed policies based on overly stringent, invasive, and rigid medical requirements. These policies are not workable or advisable for high school and college athletes for a number of reasons.

For example, in 2004 the International Olympic Committee (IOC) developed a policy addressing the eligibility of transgender athletes to compete in IOC sanctioned events.<sup>6</sup> While the IOC deserves credit for its pioneering effort to address the inclusion of transgender athletes, medical experts have identified serious flaws in the IOC policy, especially its requirement of genital reconstructive surgery, which lacks a well-founded medical or policy basis. Most transgender people—even as adults—do not have genital reconstructive surgery.<sup>7</sup> In addition, whether a transgender person has genital reconstructive surgery has no bearing on their athletic ability. The IOC policy also fails to provide sufficient protections for the privacy and dignity of transgender athletes. Because of these serious flaws, high schools and colleges should not adopt or look to the IOC policy as a model.<sup>8</sup>

### ERIC VILAIN

M.D., PH.D., PROFESSOR, DIRECTOR OF THE CENTER FOR GENDER-BASED BIOLOGY AND CHIEF MEDICAL GENETICS DEPARTMENT OF PEDIATRICS, UCLA



**“ Requiring sex reassignment surgery before allowing participation for the high school or collegiate student athlete is medically unnecessary and not linked to competitive equity. IOC regulations requiring surgery for Olympic transgender athletes have been controversial and it would be unreasonable to make this a requirement for high school and college students. ”**

<sup>6</sup> International Olympic Committee, *Statement of the Stockholm Consensus on Sex Reassignment in Sport* (2003), [http://www.olympic.org/Documents/Reports/EN/en\\_report\\_905.pdf](http://www.olympic.org/Documents/Reports/EN/en_report_905.pdf).

<sup>7</sup> Lisa Mottet, National Gay and Lesbian Task Force Policy Institute and National Center for Transgender Equality, “Preliminary Findings of the National Transgender Discrimination Survey” (2010).

<sup>8</sup> Alice Dreger, “Sex Typing for Sport,” *Hastings Center Report* (March-April 2010).

There are additional reasons for high schools and colleges to create their own policies rather than adopt policies developed for adults. High school- and college-aged student athletes have developmental needs that differ from those of adults. For example, a core purpose of high school and 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, high school and college athletic 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.

It is also advisable that high school athletic programs adopt a different policy for including transgender student athletes than college athletic programs. Specifically, this report recommends that high schools permit transgender athletes to play on teams consistent with the student's gender identity, without regard to whether the student has undertaken any medical treatment. In contrast, the report recommends a more nuanced policy for collegiate athletics that is based, in part, upon whether a student athlete is undergoing hormone therapy.

The need for distinct high school and collegiate policies is based on several considerations. First, in high school settings, students are guaranteed the availability of a high school education and a corresponding opportunity to participate equally in all high school programs and activities. At the high school level, the focus should be on full participation in athletics for all students, within the limits of school resources to provide participation opportunities.

Second, intercollegiate sports are governed differently than high school sports. Intercollegiate athletics are regulated nationally by governing bodies that sponsor national competitions and oversee such functions as the random testing of student athletes for the use of banned substances thought to enhance athletic performance. Because testosterone is a banned substance under the current rules for intercollegiate competition, the inclusion of transgender student athletes in college sports must be consistent with those rules.

Third, high school student athletes are still growing and developing physically, cognitively, and emotionally. Because high school-aged students are still growing and maturing, they present a broader range of physical characteristics than collegiate student athletes do, and these differences should be taken into account in developing a policy for high school students.

Finally, high school-aged and younger transgender students are subject to different medical protocols than adults because of their age and physical and psychological development.<sup>9</sup> The World Professional Association for Transgender Health (WPATH) has established guiding medical protocols for transitioning—the process by which a transgender person lives consistently with their gender identity—which may include treatments to have the person's physical presentation more closely align with their identity. Those protocols vary based on the age and psychological readiness of the young person.<sup>10</sup> For children and youth, transition typically consists entirely of

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<sup>9</sup> Stephanie Brill and Rachel Pepper, *The Transgender Child: A Handbook for Families and Professionals* (San Francisco: Cleis Press, 2008).

<sup>10</sup> World Professional Association for Transgender Health, *The Harry Benjamin International Gender Dysphoria Association's Standards Of Care For Gender Identity Disorders, Sixth Version* (2001). Available online at <http://www.wpath.org/documents2/socv6.pdf>.

permitting the child to dress, live, and function socially consistently with the child's gender identity. For youth who are approaching puberty, hormone blockers may be prescribed to delay puberty in order to prevent the youth from going through the traumatic experience of acquiring secondary sex characteristics that conflict with his or her core gender identity. For older youth, cross-gender hormones or even some sex-reassignment surgeries may be prescribed.



#### JAMISON GREEN

CENTER OF EXCELLENCE FOR TRANSGENDER HEALTH, UCSF, WPATH BOARD OF DIRECTORS

**“ The World Professional Association for Transgender Health Board of Directors has stated that policies requiring surgery as a condition of identity recognition are not advisable as a matter of ethical healthcare. High schools and colleges should not require surgery for a student to compete in their affirmed gender. ”**

All of these factors point to the need to develop policies for the inclusion of transgender student athletes in high school and college programs that take the relevant differences between the two settings into account. In the high school and college policies recommended below, we have attempted to take account of these differences.

### Should the Participation of Transgender Student Athletes on School Teams 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 or girls competing on a women's or girls' team. Some advocates for gender equality in high school and college sports are concerned that allowing transgender girls or 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 other girls and women, or that transgender girls or women will have a competitive advantage over other non-transgender competitors.

These concerns are based on three assumptions: one, that transgender girls and women are not “real” girls or women and therefore not deserving of an equal competitive opportunity; two, that being born with a male body automatically gives a transgender girl or woman an unfair advantage when competing against non-transgender girls and women; and three, that boys or men might be tempted to pretend to be transgender in order to compete in competition with girls or 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. For many transgender people, gender transition is a psychological and social necessity. It is essential that educators in and out of athletics understand this.

Second, while some people fear that transgender women will have an unfair advantage over non-transgender women, it is important to place that fear in context. When examined carefully, the realities underlying this issue are more complex than they may seem at first blush. The basis of this concern is that transgender girls or women who have gone through male puberty may have an unfair advantage due to the growth in long bones, muscle mass, and strength that is triggered by testosterone. However, a growing number of transgender youth are undergoing medically guided hormonal treatment prior to puberty, thus effectively neutralizing this concern. Increasingly, doctors who specialize in treating transgender people are prescribing hormone blockers to protect children who clearly identify as the other gender from the trauma of undergoing puberty in the wrong gender and acquiring unwanted secondary sex characteristics. When the youth is old enough to make an informed decision, he or she can make the choice of whether to begin cross-gender hormones. Transgender girls who transition in this way do not go through a male puberty, and therefore their participation in athletics as girls does not raise the same equity concerns that might otherwise be present.

**DR. WALTER BOCKTING, PH.D.**  
PRESIDENT OF WPATH, ASSOCIATE PROFESSOR,  
UNIVERSITY OF MINNESOTA MEDICAL SCHOOL

**“Differences within the sexes are considerable and often times larger than differences between the sexes.”**



In addition, even transgender girls who do not access hormone blockers or cross-gender hormones 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 girls and boys. Many people may have a stereotype that all transgender girls and women are unusually tall and have large bones and muscles. But that is not true. A male-to-female transgender girl may be small and slight, even if she is not on hormone blockers or taking estrogen. It is important not to over generalize. 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.<sup>11</sup> This assumption is especially inaccurate when applied to youth who are still developing physically and who therefore display a significantly broader range of variation in size, strength, and skill than older youth and adults.<sup>12</sup>



**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 athletic advantages a transgender girl or woman arguably may have as a result of her prior testosterone levels dissipate after about one year of estrogen therapy. According to medical experts on this issue, the assumption that a transgender girl or 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.<sup>13</sup> As one survey of the existing research concludes, “the data available does not appear to suggest that transitioned athletes would compete at an advantage or disadvantage as compared with physically born men and women.”<sup>14</sup>

Finally, fears that boys or men will pretend to be female to compete on a girls’ or women’s team are unwarranted given that in the entire 40 year history of “sex verification” procedures in international

<sup>11</sup> 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.

<sup>12</sup> Assuming that boys have an automatic advantage over girls is particularly false with respect to prepubescent children, where gender plays virtually no role in determining relative athletic ability. For that reason, we strongly recommend that school and recreational sports adopt the policy recommended by the Transgender Law and Policy Institute and endorsed by Gender Spectrum. Transgender Law and Policy Institute, *Guidelines for Creating Policies for Transgender Children in Recreational Sports* (2009).

<sup>13</sup> Brenda Wagman, Promising Practices: Working with Transitioning/Transitioned Athletes in Sport Project, AthletesCAN, Canadian Association for the Advancement of Women in Sport, and the Canadian Centre for Ethics in Sport, *Including Transitioning and Transitioned Athletes in Sport: Issues, Facts and Perspectives* (2009). Available online at [http://www.caaws.ca/e/resources/pdfs/Wagman\\_discussion\\_paper\\_THE\\_FINAL.pdf](http://www.caaws.ca/e/resources/pdfs/Wagman_discussion_paper_THE_FINAL.pdf).

<sup>14</sup> Michaela C. Devries, “Do Transitioned Athletes Compete at an Advantage or Disadvantage as compared with Physically Born Men and Women: A review of the Scientific Literature” (May 18, 2008). Including Transitioning and Transitioned Athletes, *supra* note 13. Available online at [http://www.caaws.ca/e/resources/pdfs/Wagman\\_discussion\\_paper\\_THE\\_FINAL.pdf](http://www.caaws.ca/e/resources/pdfs/Wagman_discussion_paper_THE_FINAL.pdf).

sport competitions, no instances of such “fraud” have been revealed.<sup>15</sup> 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.<sup>16</sup> 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.

Rather than repeating the mistakes of the past, educators in high school and collegiate athletics programs must develop thoughtful and informed policies that provide opportunities for all students, including transgender students, to participate in sports. These policies must be based on sound medical science, which shows that male-to-female transgender athletes do not have any automatic advantage over other women and girls. These policies 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 equality, participation, inclusion, teamwork, discipline, and respect for diversity.

### What Are the Benefits of Adopting Inclusive Policies and Practices Regarding Transgender Student Athletes?

All stakeholders in high school and collegiate athletics will benefit from adopting fair and inclusive policies 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 policies will allow school and athletic 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.

**DONNA ROSE**  
TRANSGENDER ACTIVIST, WRESTLER

**“ To deny us the opportunity to participate and to compete and to potentially excel is to take away part of ourselves that we cherish. ”**



<sup>15</sup> 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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1521674).

<sup>16</sup> Joe Leigh Simpson et al, “Gender Verification in the Olympics,” *JAMA* (2000); 284: 1568-1569; see also Sex Typing for Sport, *supra* note 8.

Many schools and athletic departments identify diversity as a strength and have included sexual orientation and gender identity/expression in their non-discrimination policies. Athletic departments and personnel are responsible for creating and maintaining an inclusive and non-discriminatory climate in the areas they oversee. Adopting inclusive participation policies provides school athletic leaders 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.

### What Are Harmful Potential Consequences of Failure to Adopt Transgender-Inclusive Policies and Practices?

When schools fail to adopt inclusive participation policies, they are not living up to the educational ideals of equality and inclusion, and may reinforce the image of athletics as a privileged activity not accountable to broad institutional and societal ideals of inclusion and respect for difference. Moreover, this failure puts schools, athletic conferences, and sport governing organizations at risk of costly discrimination lawsuits and negative media attention.



**KEELIN GODSEY**  
TRANSGENDER STUDENT ATHLETE,  
BATES COLLEGE, 2006

**“ I have found it is nearly impossible to be both trans and an athlete. Being an athlete and being trans are both a part of my identity. I wish I didn’t feel like I have to choose one or the other. ”**

Failing to adopt transgender-inclusive participation policies is hurtful to and discriminates against transgender students because they may be denied the opportunity to participate in school sports. School sports programs are integral parts of a well-rounded education experience. 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.<sup>17</sup>

<sup>17</sup> 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>.

Failure to adopt inclusive participation policies also hurt non-transgender students by conveying a message that the values of non-discrimination and inclusion are less important than values based on competition and winning. Schools must model and educate about non-discrimination values in all aspects of school programming, not only for students, but for parents and community members as well.

Last but not least, failure to adopt policies that ensure equal opportunities for transgender student athletes may also result in costly and divisive litigation. As described in Appendix B, a growing number of states and localities are adopting specific legal protections for transgender students. In addition, state and federal courts are increasingly applying sex discrimination laws to prohibit discrimination against transgender people.

#### JILL PILGRIM

FORMER GENERAL COUNSEL & DRUG TESTING  
PROGRAM ADMINISTRATOR LADIES PROFESSIONAL  
GOLF ASSOCIATION



**“ High Schools and 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. ”**

Several studies show that schools are often hostile places for transgender students and other students who do not conform to stereotypical gender expectations.<sup>18</sup> These students are frequently subjected to peer harassment and bullying which stigmatizes and isolates them. This mistreatment can lead to feelings of hopelessness, depression, and low self-esteem. When a school or athletic organization denies transgender students the ability to participate in sports because of their gender identity or expression, that condones, reinforces and affirms their social status as outsiders or misfits who deserve the hostility they experience from peers.

Finally, the absence of transgender-inclusive policies and practices reinforces stereotypes and fears about gender diversity. When transgender students are stigmatized and excluded, even non-transgender students may experience pressure to conform to gender-role stereotypes as a way to avoid being bullied or harassed themselves.

<sup>18</sup> Harsh Realities, *supra* note 3.

# **PART TWO:**

## **POLICY RECOMMENDATIONS FOR INCLUDING TRANSGENDER STUDENT ATHLETES**

## **PART TWO: POLICY RECOMMENDATIONS FOR INCLUDING TRANSGENDER STUDENT ATHLETES**

This section of the report includes:

- **Guiding Principles**
- **General Recommendations**
- **Recommended Policy for High School Athletics**
- **Recommended Policy for College Athletics**
- **Additional Guidelines for Transgender Student Athlete Inclusion**

### **Guiding Principles**

We recommend that policies governing the participation of transgender student athletes be informed by the following principles, which provided a philosophical foundation for the think tank participants.

Think Tank participants were committed to these guiding principles based on the belief that athletic participation is an integral part of the educational experience. This report recommends that, in addition to an organization's stated values, the following principles be included in the transgender student athlete policy statement:

1. Participation in interscholastic and 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. Athletic 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.

### General Recommendations

1. Schools should adopt transgender student athlete inclusive policies proactively, rather than waiting for a transgender student to express an interest in sports participation. Proactive adoption of such a policy enables school and athletic administrators to educate staff, students and parents about the policy and increases the likelihood that inclusion of transgender students on school teams will occur in a timely, fair and effective manner. The adoption of comprehensive, consistent policies, and the institution of training concerning participation of transgender student athletes before the instance of a transgender student asking to participate also prevent situations in which a student may be subject to harassment or other unwanted or undue attention.
2. Policies governing the participation of transgender student athletes should be adopted by national and state athletic associations and implemented within individual school districts at the individual school level. The advantage of adopting a single national policy for all high schools and a single national policy for intercollegiate athletics is that it provides consistency for state eligibility rules, conference and tournament eligibility, and national competitive tournaments. This consistency reduces the likelihood of student athletes being held to different eligibility requirements in different states.
3. The adoption of a single national standard for high schools and a single national standard for colleges would also enable an easier transition for high school transgender student athletes moving to another state, or for transgender student athletes in college to transfer to a program in another state. Policy consistency eliminates confusion and ensures that transgender student athletes will be afforded an opportunity to compete in every state at both the high school and collegiate levels. Add or amend school non-discrimination policies to include “gender identity and expression.”
4. Policies should focus on maximizing inclusiveness, rather than restricting students’ opportunities to participate based on their gender identity or expression.
5. Policies should reflect the educational values of the organization adopting them and include procedures for implementation, protection of student confidentiality, and appeal.
6. Policies should enable all student athletes, regardless of their gender identity or expression, to compete in a safe, competitive, and respectful environment free of discrimination.

7. Policies should use clear and consistent language that reflects understanding of the concepts of transgender, gender identity, and gender expression.
8. Policies should be in written form and included in all school organizational rulebooks, eligibility guidelines, and student athlete handbooks and should be made readily available to all stakeholders including administrators, coaches, students, and parents.
9. Educational resources should be made available to all national, state and local athletic associations and conferences, school athletic staff, parents, and student athletes, including:
  - Information about gender identity and expression
  - State and federal non-discrimination and anti-harassment laws pertaining to transgender students
  - Best practices for including transgender student athletes on teams, and
  - Information about the transgender student athlete participation policy in the student athlete handbook.

## A HIGH SCHOOL STUDENT ATHLETE

### A PERSONAL STORY

**“ I am blessed to have a mom who has always accepted me, even though I know that it was hard for her at first. Knowing that my mom was always there to fight for my rights, and that she is not ashamed of me helped me to have the confidence to participate in sports. ”**

I've been on the cross country and track teams since before I started to transition. At first, I had to be on the boys' team. I always felt terrible, out of place, and like I was living a lie.

When I first started to transition, I was able to be on the girls' team. I was so excited to be with the girls, but I was not allowed to “officially” compete and that was hard.

I'll be a senior this fall. Looking back at these last three years competing on the girls' cross country and track team, I feel really good about my experience as a transgender student athlete in my high school. I know I couldn't have done it without the help of

people who have loved and supported me, and fought for my right to be myself no matter what.

My mom was always with me, and she talked to the coaches about what I needed so I could participate fully on the team. My coaches are great. They do not treat me like I am different. To them, I am just another girl on the team.

Before I had surgery, I was able to talk to my female coach about how uncomfortable I would be wearing the speed suits that are required when running, and she was able to figure out a solution that did not single me out. My coaches also made sure that I

was accepted and safe when I started to use the girls' restroom and locker room. And I have teammates that are genuinely accepting, and defend me if others on the team are teasing me, or saying things about me behind my back.

Overall, I believe that taking the time to educate my teammates, being honest, and holding my head high has helped me to be a successful student athlete. I know that there are still people who don't accept or understand what it means to be transgender, but I don't let them get in my life, or in the way of my success on the track or off.

## POLICY RECOMMENDATIONS FOR HIGH SCHOOL AND COLLEGIATE ATHLETICS

The following policy recommendations are for high school and collegiate athletic programs and should not be assumed appropriate for younger age groups. We recommend that policies for younger athletes should be adopted specifically for that age group and should follow the general guidelines developed by the Transgender Law and Policy Institute and endorsed by Gender Spectrum which states that prepubescent young people should be able to commit in recreational and school sports according to their gender identity.<sup>19</sup>

We urge readers to keep in mind that 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 reevaluated to ensure that they reflect the most current research-based information.

### Recommended Policy for High School Athletics

A transgender student athlete at the high school level shall be allowed to participate in a sports activity in accordance with his or her gender identity irrespective of the gender listed on the student's birth certificate or other student records, and regardless of whether the student has undergone any medical treatment. This policy shall not prevent a transgender student athlete from electing to participate in a sports activity according to his or her assigned birth gender.

### RECOMMENDED IMPLEMENTATION PROCEDURES

1. Notice to the School: The student and/or parents shall contact the school administrator or athletic director indicating that the student has a consistent gender identity different than the gender listed on the student's school registration records or state birth record, and that the student desires to participate in activities in a manner consistent with his/her gender identity.
2. Notice to the State Interscholastic Athletic Association (SIAA): The athletic director shall notify the SIAA of the student's interest in participating.
3. Once the athletic director grants the student eligibility to participate in the sport consistent with his/her gender identity, the eligibility is granted for the duration of the student's participation and does not need to be renewed every sports season or school year. All discussion and documentation will be kept confidential, and the proceedings will be sealed unless the student and family make these records available.
4. All communications among involved parties and required supporting documentation shall be kept confidential and all records of proceedings sealed unless the student and family

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<sup>19</sup> Transgender Law and Policy Institute, *Guidelines for Creating Policies for Transgender Children in Recreational Sports* (2009). Online at [http://www.transgenderlaw.org/resources/TLPI\\_GuidelinesforCreatingPoliciesforTransChildreninRecSports.pdf](http://www.transgenderlaw.org/resources/TLPI_GuidelinesforCreatingPoliciesforTransChildreninRecSports.pdf); Gender Spectrum, "School Policies and the Law: School Sports," available online at [http://www.genderspectrum.org/index.php?option=com\\_content&view=article&id=24&Itemid=38](http://www.genderspectrum.org/index.php?option=com_content&view=article&id=24&Itemid=38).

**ON THE TEAM: EQUAL OPPORTUNITY FOR TRANSGENDER STUDENT ATHLETES**

make a specific request otherwise. All medical information provided pursuant to this policy shall be kept strictly confidential as is consistent with medical privacy law.

5. Should any questions arise about whether a student's request to participate in a sports activity consistent with his or her gender identity is bona fide, a student may seek review of his or her eligibility for participation through the procedure set forth below:

A. First Level of Appeal: The student will be scheduled for an appeal hearing before an SIAA eligibility committee specifically established to hear gender identity appeals. The SIAA shall schedule a hearing as expeditiously as possible, but in no case later than five (5) school business days of the student's school prior to the first full interscholastic contest that is the subject of the petition, or within a reasonable time thereafter in cases of emergency, including, but not limited to, any unforeseeable late student enrollment. The Gender Identity Eligibility Committee will be comprised of a minimum of three of the following persons, at least one of whom must be from the physician or mental health professional categories:

- Physician with experience in transgender health care and the World Professional Association for Transgender Health (WPATH) Standards of Care
- Psychiatrist, psychologist, or licensed mental health professional familiar with the WPATH Standards of Care
- School administrator from a non-appealing school
- SIAA staff member
- Advocate familiar with issues of gender identity and expression

B. Documentation: The appealing student should provide the Eligibility Committee with the following documentation and information:

- Current transcript and school registration information
- Documentation of the student's consistent gender identification (e.g., written statements from the student and/or parent/guardian and/or health care provider)
- Any other pertinent documentation or information

C. Committee Decision Process: The student's appeal should be granted upon the committee's receipt of the documentation noted above.

D. Second Level of Appeal: If the Gender Identity Eligibility Committee denies the student's request to participate, the student can file a notice of appeal with the Executive Director of the SIAA on or before the tenth (10th) school business day following the date of receipt of the written decision of the Gender Identity Eligibility Committee denying the petition. An appeal to the SIAA Executive

**ON THE TEAM:** EQUAL OPPORTUNITY FOR TRANSGENDER STUDENT ATHLETES

Director shall require the Executive Director to schedule a hearing to commence on or before the tenth (10th) school business day following the date of receipt of the written notice of appeal. Written notice of the time and place of the hearing shall be delivered to the appealing student in person or by certified mail, with return receipt requested, no later than five (5) school business days of the student's school prior to the date of the hearing.

- E. When there is confirmation of a student's consistent gender identity, the Eligibility Committee/SIAA Executive Director will affirm the student's eligibility to participate in SIAA activities consistent with the student's gender identification.

**MIKE COLBRESE**

EXECUTIVE DIRECTOR, WASHINGTON  
INTERSCHOLASTIC ACTIVITIES ASSOCIATION

**“ The WIAA's gender identity/expression policy, which was adopted two years ago, has been successful in its implementation in the eyes of student athletes, teammates, coaches, athletic directors, parents, and the state association. ”**

Our think tank report recommendation for interscholastic athletics is based on the Washington Interscholastic Activities Association (WIAA) Gender Identity/Expression policy adopted in 2008. The WIAA adopted this non-discrimination policy permitting transgender student athletes to participate according to their gender identity. This policy and specific procedural steps that students and schools are required to follow are described in the WIAA Official Handbook. WIAA officials report that this policy is working as planned in providing equal opportunity for currently participating transgender student athletes. The WIAA policy is, as of 2010, the best working policy governing the participation of transgender student athletes in high school sports and is consistent with contemporary medical knowledge and practice and with the principles of inclusion and non-discrimination, as well as with laws prohibiting discrimination against transgender persons. (See Part Five: Appendix B)

As a final note, it is important to recognize that some high school transgender athletes will have undergone hormonal treatments or even surgeries, and others will not. This recommended policy—which requires inclusion regardless of whether a transgender student has undergone any medical treatment—recognizes that regulating access to high school sports based on medical treatment would be unfair and too complicated for this level of competition. However, high schools should ensure that transgender student athletes are aware of any policies that may affect their ability to compete at the collegiate level so that they can make informed choices about how medical transition may affect their eligibility to participate in collegiate athletics.

**KEELIN GODSEY**

FORMER STUDENT ATHLETE, BATES COLLEGE, 2006,  
NORTHEASTERN COLLEGE, 2010



Photo courtesy of Jeff Sheng

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 effect 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.

## Recommended Policy for College Athletics

A transgender student athlete at the college level should be allowed to participate in any sports activity so long as that athlete's use of hormone therapy, if any, is consistent with the National Governing Body's (NGB) existing policies on banned medications. Specifically, a transgender student athlete should be allowed to participate in sex-separated sports activities under the following conditions:

### I. Participation in Sex-Separated Sport Teams

#### A. Transgender student athletes who are undergoing hormone treatment

1. A male-to-female (MTF) transgender student athlete who is taking medically prescribed hormone treatment related to gender transition may participate on a men's team at any time, but must complete one year of hormone treatment related to gender transition before competing on a women's team.<sup>20</sup>
2. A female-to-male (FTM) transgender student athlete who is taking medically prescribed testosterone related to gender transition may not participate on a women's team after beginning hormone treatment, and must request a medical exception from the National Governing Body (NGB) prior to competing on a men's team because testosterone is a banned substance.
3. A female-to-male (FTM) transgender student athlete who is taking medically prescribed testosterone for the purposes of gender transition may compete on a men's team.
4. In any case where a student athlete is taking hormone treatment related to gender transition, that treatment must be monitored by a physician, and the NGB must receive regular reports about the athlete's eligibility according to these guidelines.

#### B. Transgender student athletes who are NOT undergoing hormone treatment

1. 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.
2. A female-to-male transgender student athlete who is not taking testosterone related to gender transition may participate on a men's or women's team.
3. A male-to-female transgender student athlete who is not taking hormone treatments related to gender transition may not compete on a women's team.

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<sup>20</sup> 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>

**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. ”**

## II. Participation in Mixed Gender Sport Activities

A mixed team has both female and male participants and may be restricted in championship play according to specific national governing body rules.

### A. Transgender student athletes who are undergoing hormone treatment

1. For purposes of mixed gender team classification, a male-to-female (MTF) transgender student athlete who is taking medically prescribed hormone treatment related to gender transition shall be counted as a male participant until the athlete has completed one year of hormone treatment at which time the athlete shall be counted as a female participant.
2. For purposes of mixed gender team classification, a female-to-male (FTM) transgender student athlete who is taking medically prescribed testosterone related to gender transition shall be counted as a male participant and must request a medical exception from the National Governing Body (NGB) prior to competing because testosterone is a banned substance.

### B. Transgender student athletes who are NOT undergoing hormone treatment

1. For purposes of mixed gender team classification, a female-to-male (FTM) transgender student athlete who is not taking testosterone related to gender transition may be counted as either a male or female.
2. For purposes of mixed gender team classification, a female-to-male (FTM) transgender student athlete who is not taking testosterone related to gender transition participating on a women’s team shall not make that team a mixed gender team.
3. For purposes of mixed gender team classification, a male-to-female (MTF) transgender student athlete who is not taking hormone treatment related to gender transition shall count as a male.

### III. Recommended Implementation Process

#### A. The student's responsibility

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 shall submit the request to participate on a sports team in writing to the athletic director upon matriculation or when the decision to undergo hormonal treatment is made.
2. The student shall submit her or his request to the athletic director. The request shall 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 shall identify the prescribed hormonal treatment for the student's gender transition and documentation of the student's testosterone levels, if relevant.

#### B. Individual School and National Governing Body Responsibilities

1. The athletic director shall meet with the student to review eligibility requirements and procedure for approval of transgender participation.
2. The athletic director shall notify the NGB of the student's request to participate. The NGB will assign a facilitator to assist the athletic director in responding to the request.
3. If a student athlete's request is denied by the athletic director, the decision must be automatically reviewed by a Transgender Participation Committee to be established by a school administrator. This committee shall be convened and its decision reported to the athletic director and school administrator in a timely fashion. This committee should include:
  - A health care professional, e.g. physician, psychiatrist, psychologist or other licensed health professional with experience in transgender health care and the World Professional Association for Transgender Health (WPATH) Standards of Care. The student athlete's physician can serve in this role.
  - A faculty athletic representative; and
  - A representative assigned by the institution's president with expertise in institutional anti-discrimination policy, such as someone from the institution's human resources, ombuds office, or Americans with Disabilities compliance office.
4. The athletic director will notify the NGB of the appeal outcome.
5. The NGB will confirm that the treatment requirement has been met.

6. Transgender student athletes subject to a one-year transition period should receive an extension of their eligibility at the end of their transition period, upon timely review and approval by the NGB.
7. An opposing team or school may only challenge a transgender student athlete's approved eligibility through the accepted formal appeal process of the NGB.
8. 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.\*

[\*The NGB should provide a model confidentiality policy for member institutions, including information about medical waivers.]

## **ADDITIONAL GUIDELINES FOR TRANSGENDER STUDENT ATHLETE INCLUSION**

In addition to overall eligibility policy, we recommend that the following additional guidelines be adopted by individual schools at both the high school and college level. These guidelines will assist schools, athletic 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 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. In School—All members of the school community should receive information and education about transgender identities, school or district 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. Athletic Conference Personnel—Athletic 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/Schools—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 athletic representatives (conference and/or state leaders, sports information departments and personnel, school leaders, athletic administrators, team members, and coaches) who are authorized to speak with the media should receive information about appropriate terminology, use of preferred names and pronouns, and school and athletic 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 athletic 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 athletic department will also take appropriate remedial action to correct the situation. Any member of the athletic department who becomes aware of conduct that violates this policy should report the conduct to the appropriate official such as the athletic director.
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. This athletic department will take steps to prevent any retaliation against any person who makes such a complaint.

# **PART THREE:**

## **BEST PRACTICES RECOMMENDATIONS FOR IMPLEMENTING TRANSGENDER STUDENT ATHLETE INCLUSION POLICIES**

## PART THREE: **BEST PRACTICES RECOMMENDATIONS FOR IMPLEMENTING TRANSGENDER STUDENT ATHLETE INCLUSION POLICIES**

Part Three describes best practices—the actions that coaches, administrators, student athletes, and parents of transgender 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 we recommend specifically to athletic administrators, coaches, student athletes, and parents of student athletes, as well as athletic staff who interact with the media.

### **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 will negatively affect all boys, girls, men, and women who participate in athletic competition. If discrimination is accepted as part of the common practices of an athletic 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 athletic department's broad commitments to safety, fairness, and respect for all participants. It helps when athletic department leadership, including coaches, value all aspects of diversity. Collegiate athletics provide 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. Athletic administrators should make their commitment to valuing diversity explicit in media interviews and other public speaking opportunities as well as in meetings with athletic department staff. That diversity-valuing approach then shapes and informs activities throughout the athletic 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.

- When diversity values are explicit, athletic 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 their teammates. Parents should communicate the importance of these values in meetings with prospective coaches and athletic 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 Athletic Administrators**

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

- 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.
- 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.
- Become knowledgeable about school non-discrimination and harassment policies that include gender identity and expression.
- Include gender identity and expression in departmental non-discrimination statements on all official department documents and web sites.
- Become aware of state and federal non-discrimination laws that prohibit discrimination

based on gender identity and expression (see Part 5 Appendix B for a list of relevant federal and state laws).

6. Adopt an effective and fair athletic 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 athletic 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 athletic 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 athletic 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 athletic 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,

**ON THE TEAM:** EQUAL OPPORTUNITY FOR TRANSGENDER STUDENT ATHLETES

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 athletic director 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 student athlete.
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 athletic director 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 athletic director to address this behavior.
8. Ask the student athlete advisory council at your school 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.

## Best Practices for Parents of Student Athletes

Best practices for parents of student athletes highlight the importance of the role of parents in monitoring athletic department policy and practice to encourage adherence to core principles of fairness for all student athletes.

1. If you are the parent of a transgender student, ask school officials and athletic administrators for their policy on the participation of transgender students in athletic programs.
2. Encourage athletic administrators to educate coaches, other athletic staff, student athletes, and parents of student athletes about policies and preferred terminology relating to the participation of transgender student athletes on school teams.
3. Talk with your child about the importance of respecting the rights of transgender teammates and understanding transgender identity.

4. If your child is transgender, talk with them about actions to take if she or he is feeling unsafe or is treated disrespectfully.
5. Respect the right to privacy of all student athletes 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.
6. If you become aware of discriminatory or harassing behavior by spectators or participants based on perceived or actual gender identity or expression during competitions, report this behavior to your school's athletic director.

#### PARENT OF HIGH SCHOOL ATHLETE

**“ Like any parent, I want to make sure my daughter is treated fairly and with respect when playing sports. I spend a lot of time watching her sporting events. Any time I have seen her being discriminated against, harassed, or degraded, I set up meetings with her teachers or the principal so they could address the problem and figure out how to prevent future issues. In addition, I’ve talked to my daughter on ways she can respond if her team members treat her with disrespect, make fun of her, or shun her. I also kept on top of the law in this area, so that we know her rights as a student and athlete and can educate others on their responsibilities. ”**

### Best Practices for Athletic 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 athletic department should provide training to all athletic 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.

# **PART FOUR:**

## **ADDITIONAL RESOURCES ON TRANSGENDER ISSUES**

PART FOUR: **ADDITIONAL 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).

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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](http://transequality.org/Resources/NCTE_UnderstandingTrans.pdf).

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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](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](mailto: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/hundredtwentywob.doc](http://www.abanet.org/leadership/2006/annual/dailyjournal/hundredtwentywob.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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://www.transequality.org)

**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](http://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](http://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](http://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](http://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](http://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](http://www.groundspark.org/our-films-and-campaigns/straightlaced)

# **PART FIVE:**

## **APPENDICES**

PART FIVE: **APPENDIX A****Definitions and Terminology: A Word About Words<sup>21</sup>**

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 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.

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<sup>21</sup> These terms and definitions were adapted from Gender Spectrum’s “A Word About Words.” Available online at [http://www.genderspectrum.org/images/stories/Resources/Family/A\\_Word\\_About\\_Words.pdf](http://www.genderspectrum.org/images/stories/Resources/Family/A_Word_About_Words.pdf).

**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. No one should be treated differently or made to feel uncomfortable or unaccepted because they are gender non-conforming.

**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.

#### 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. ”



**Intersex**—An estimated one in 2,000 babies is born with an “intersex” condition or Difference of Sex Development (DSD), that is, a reproductive or sexual anatomy and/or chromosome pattern that doesn’t seem to fit typical definitions of male or female. These conditions include androgen insensitivity syndrome, some forms of congenital adrenal hyperplasia, Klinefelter’s syndrome, Turner’s syndrome, hypospadias, and many others. People with intersex conditions generally identify as men or women, just as people without intersex conditions do. 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, hairstyle, 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**—A person whose gender identity differs from the person’s assigned gender at birth. Transsexual people do not identify with their birth-assigned genders and desire to live and be treated by others consistently with their gender identity. In addition to transitioning socially, transsexual people may also 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. There is no cookie cutter approach. 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 FIVE: **APPENDIX B: 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

**The Employment Non-Discrimination Act (ENDA)**—ENDA is a bill that was introduced in the 111th U.S. Congress in 2009.<sup>22</sup> 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.<sup>23</sup> Furthermore, the HCPA requires the Federal Bureau of Investigation to track statistics on hate crimes.<sup>24</sup>

**Title IX of the Education Amendments of 1972**—The purpose of Title IX is to address sex discrimination in schools. However, this federal law has also been successfully used to address discrimination or harassment in schools based on gender stereotypes.<sup>25</sup> 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.<sup>26</sup>

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<sup>22</sup> H.R. 3017, 110th Cong. (2010).

<sup>23</sup> 18 U.S.C.A. § 249.

<sup>24</sup> 28 U.S.C.A. § 534.

<sup>25</sup> 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).

<sup>26</sup> 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[.]”).

**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.”<sup>27</sup> 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.<sup>28</sup>

## State Non-Discrimination Laws

As of July 2010, 13 states and the District of Columbia<sup>29</sup> have enacted non-discrimination laws prohibiting discrimination on the basis of sexual orientation and gender identity or expression: California,<sup>30</sup> Colorado,<sup>31</sup> Hawaii,<sup>32</sup> Illinois,<sup>33</sup> Iowa,<sup>34</sup> Maine<sup>35</sup>, Minnesota,<sup>36</sup> New Jersey,<sup>37</sup> New Mexico,<sup>38</sup>

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<sup>27</sup> U.S. Const. amend. XIV, § 1.

<sup>28</sup> 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”).

<sup>29</sup> 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).

<sup>30</sup> Cal. Penal Code § 422.56, Cal. Gov’t Code § 12926 et seq. (non-discrimination in employment and housing), Cal. Civ. Code § 51 (public accommodations).

<sup>31</sup> Colo. Rev. Stat. Ann. §§ 24-34-401 et seq. (non-discrimination in public accommodation, housing and employment), 22-32-109 (non-discrimination in education).

<sup>32</sup> Haw. Rev. Stat. §§ 489-2 (non-discrimination in public accommodations), 515-3 (real property transactions).

<sup>33</sup> 775 Ill. Comp. Stat. 5/2-102 (non-discrimination in employment, public accommodations, real estate transactions, and access to financial credit).

<sup>34</sup> Iowa Code Ann. § 216.1 et seq. (non-discrimination in public accommodation, employment, housing, credit, and education).

<sup>35</sup> Me. Rev. Stat. Ann. tit. 5, § 4552 et seq. (non-discrimination in employment, housing, public accommodation, credit and education).

<sup>36</sup> Minn. Stat. Ann. § 363A.03 et seq. (non-discrimination in public accommodation, housing, employment, credit, and education).

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

<sup>38</sup> N.M. Stat. Ann. § 28-1-2 et seq., (non-discrimination in public accommodation, employment, housing and credit).

Oregon,<sup>39</sup> Rhode Island,<sup>40</sup> Vermont,<sup>41</sup> and Washington.<sup>42</sup>

Eight additional states have enacted laws prohibiting discrimination based on sexual orientation only: Connecticut, Delaware, Maryland, Massachusetts, Nevada, New Hampshire, New York, and Wisconsin.<sup>43</sup>

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 discrimination based on disability or medical condition: Florida, Illinois, Massachusetts, New Hampshire, New Jersey, New York, and Washington.<sup>44</sup>

### State Student Rights Laws

In addition to these federal protections, as of July 2010, twelve states and the District of Columbia<sup>45</sup> 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,

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<sup>39</sup> 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).

<sup>40</sup> 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).

<sup>41</sup> 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).

<sup>42</sup> 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).

<sup>43</sup> 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).

<sup>44</sup> 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](http://www.nclrights.org/site/DocServer/state_cases091004.pdf?docID=1203).

<sup>45</sup> D.C. Code 1981 §§ 2-1401.02 & 2-1402.41.

Minnesota, New Jersey, North Carolina, Oregon, Vermont, and Washington.<sup>46</sup> Four additional states offer protections on the basis of sexual orientation only: Connecticut, Massachusetts, New York, and Wisconsin.<sup>47</sup>

### 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](http://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](http://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.<sup>48</sup>

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<sup>46</sup> 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).

<sup>47</sup> 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.

<sup>48</sup> See A.B.A. Recommendation 122B (adopted August 7-8, 2006) available online at <http://www.abanet.org/leadership/2006/annual/dailyjournal/hundredtwentytwob.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.”).

## PART FIVE: APPENDIX C

### EQUAL OPPORTUNITY FOR TRANSGENDER STUDENT ATHLETES A NATIONAL THINK TANK, OCTOBER 25-26, 2009: PARTICIPANTS

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NATIONAL CENTER FOR LESBIAN RIGHTS

NATIONAL CENTER FOR LESBIAN RIGHTS

**SPORTSPROJECT**

[www.nclrights.org](http://www.nclrights.org)

The National Center for Lesbian Rights 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.

**WOMEN'S  
SPORTS  
FOUNDATION**

[www.womenssportsfoundation.org](http://www.womenssportsfoundation.org)

Founded in 1974 by Billie Jean King, the Women's Sports Foundation is a national charitable educational organization dedicated to advancing the lives of girls and women through physical activity. The Women's Sports Foundation is the only national organization promoting all sports and physical activities for women of all ages and skill levels. The Foundation's goal is to create a society in which girls and women of all ages fully experience and enjoy sports and physical activity with no barriers to their participation.

**It Takes A Team!**

[www.ittakesateam.org](http://www.ittakesateam.org)

It Takes A Team! Education Campaign for Lesbian, Gay, Bisexual and Transgender Issues in Sport is an education and advocacy initiative of the Women's Sports Foundation. Our goal is to eliminate barriers to safe and respectful sports participation for all people regardless of their sexual orientation or gender identity. It Takes A Team works toward this goal through the development and dissemination of practical educational information and resources to athletic administrators, coaches, parents and student athletes at the high school and college levels.

September 20, 2022

# **NCAA Transgender Student-Athlete Participation Policy: Clarifying Application and Next Steps**

Dr. Jean Merrill, Director, Office of Inclusion

Mallory Mickus, Associate Director, SSI

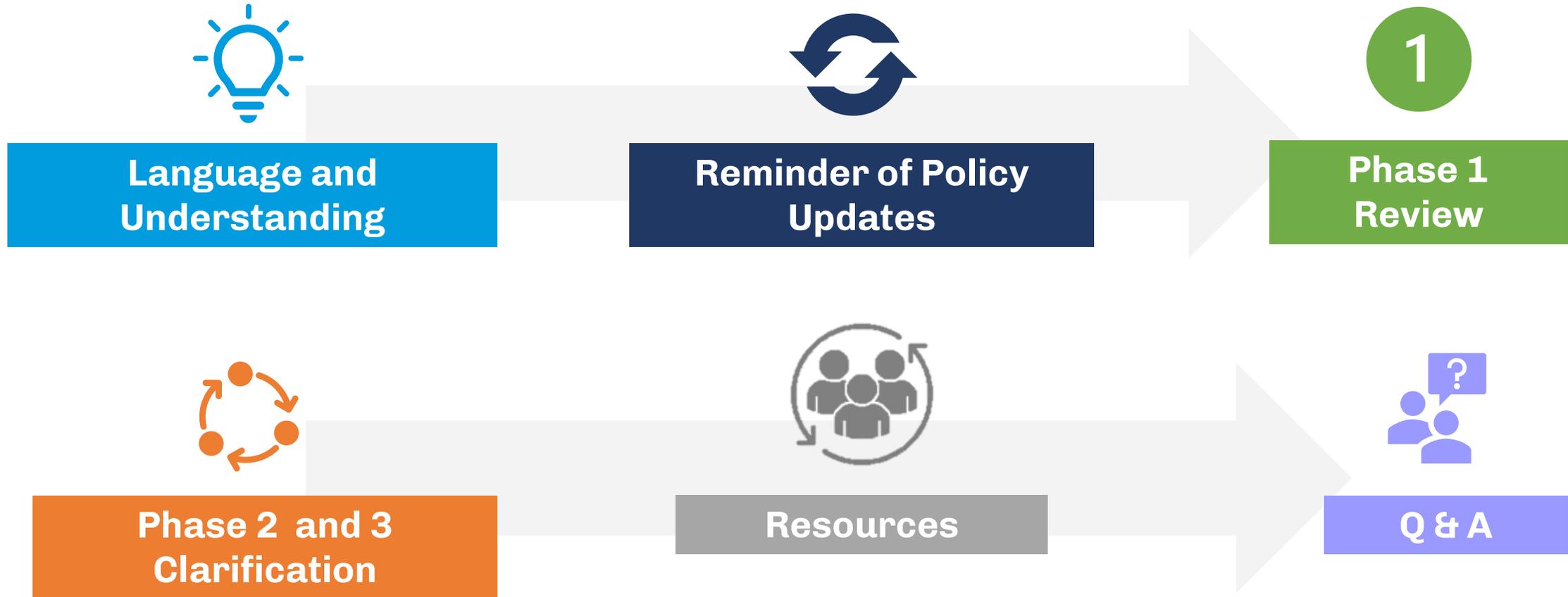
Anne Rohlman, Director, SSI

# Scope of Presentation and Legal Disclaimer

- Presentation is designed and intended for use by the NCAA membership.
- Scope is limited to key components of the published policy, related procedural guidance and supporting educational materials.
- Staff may not share information about the discussions/deliberations of the NCAA Board of Governors or other governance committees involved in policy decision-making or any other non-public, confidential information.
- It is intended as a resource and not a substitute for legal or other professional advice.



# Webinar Overview



# Language and Understanding





- **Gender identity:** one's internal sense of their own gender. This does not have to match one's sex or gender assigned at birth. Though it often does as most people are not transgender.
- **Sex/Gender assigned at birth:** the designation of a newborn child's sex or gender based on inspection of their external genitalia.
  - *Note: "sex/gender assigned at birth" is a more inclusive phrase than "biological male" or "born male"; or "biological female" or "born female."*
- **Gender expression:** ways in which a person communicates their gender identity to others through behavior, clothing, haircut, voice, name, pronouns, and other forms of self-presentation.

- **Transgender/Trans**: an adjective used to describe a person who does not identify as the gender they were assigned at birth.
  - **Trans man/male**: a man assigned female at birth.
  - **Trans woman/female**: a woman assigned male at birth.
    - *Note: References to "FTM" or "MTF" may be problematic for some trans persons.*
- **Cisgender/Cis**: an adjective used to describe a person who identifies as the gender they were assigned at birth.
  - **Cis man/male**: a man assigned male at birth.
  - **Cis woman/female**: a woman assigned female at birth.

- **Non-Binary:** Term used to describe a person who does not identify with the male/female gender binary. For some, this means identifying somewhere between male and female; for others, it means identifying as a combination of genders; for others, it means not having a gender identity.
  - **Genderqueer, gender expansive, gender non-conforming:** terms similar to non-binary that a person may choose to use when their gender identity is neither male nor female.
- **Transition:** any step(s) a person takes to affirm their gender identity; this may or may not include changes in one's name, pronouns, physical appearance, taking hormones, undergoing surgery, among many others. There are various ways through which an individual can choose to transition.
- **Misgender:** the act of referring to someone in a way that does not reflect that person's gender identity (e.g., using deadnames or incorrect pronouns or prefixes).
- **Deadname:** the name someone was given or used before they transitioned and/or discovered their true gender identity.

# Language and Application to NCAA Policy

- NCAA sports historically have been categorized according to the participant's sex assigned at birth (male and female sports).
- Transgender Student-Athlete Participation Policy (TSAP) applies to any SA who plans to compete in an NCAA sport that does match the SA's sex assigned at birth.
  - Applies to a multitude of identities (e.g., transgender, nonbinary, genderqueer).
- TSAP does not apply to intersex SAs, whose reproductive anatomies do not fit traditional definitions of male or female.
- TSAP does not factor a SA's sexual orientation.

# **Transgender Student-Athlete Participation Policy**



**ncaa.org/transgender**



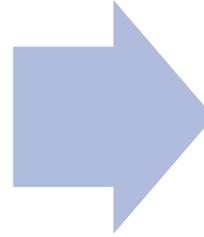
# 2022 Policy Updates



# 2022 Update to NCAA Policy

## Competitive Safeguards and Medical Aspects of Sports

Association-wide  
23 members  
Medical personnel and athletics administrators



## Board of Governors

Highest governing body  
25 members  
Presidents/chancellors & 5 independent members

### Consensus:

1. Testosterone thresholds can facilitate and support fair competition while providing participation opportunities for trans athletes.
2. Consistency with Olympic model intended to provide continuity for student-athletes. Deference to sport-specific rules intended to rely on those who have studied and manage potential impact in the sport.
3. Flexibility should be considered for SAs who lose eligibility, but are able to meet requirements in the future.

# 2022 Update to NCAA Policy

Alignment with Olympic Movement to balance fairness, inclusion and well-being.

January 2022: BOG adopts policy as recommended by CSMAS:

1. Trans student-athletes must continue to meet 2010 policy; and
2. Meet sport-specific eligibility requirements reviewed and approved by CSMAS, in each case to be informed by national governing body policy (or international federation policy or 2015 IOC policy).
3. Implemented over three phases:
  - a. Phase One: 2022 Winter/Spring - Championship competition, testosterone thresholds apply.
  - b. Phase Two: 2022-23 academic year - **All competition**, testosterone thresholds apply.
  - c. Phase Three: 2023-24 academic year and beyond - All competition, all sport-governing policy components considered.



# 1. Meet 2010 Transgender SA Participation Policy.

## Trans Men

- A trans man with a medical exception for testosterone may compete on a men's team but not on a women's team.
- A trans man who is not taking hormone treatment may compete on a men's or women's team.

## Trans Women

- A trans woman may not compete on a women's team until completing one calendar year of testosterone suppression treatment.
- Managed by student-athlete's institution, unless medical exception is needed.

## 2. Meet Sport-Specific Eligibility Requirements.

### Examples of Trans Athlete Policy Components

#### 1. Testosterone Threshold.

- E.g., 5 nmol/L.

Applicable  
Phase One and Two

#### 2. Length of Testosterone Mitigation and Maintenance.

- Requirement that testosterone threshold be continuously met for specific number of months (e.g., 12 months).
- Requirement to maintain testosterone threshold level throughout period of participation.

For  
consideration  
in Phase  
Three

#### 3. Additional policy considerations.

- E.g., gender declaration, case-by-case review, gender-affirming surgery, birth certificate aligns with gender identity, proof of mitigated advantage.

### 3. Implemented Over Three Phases.

#### Phase One 2022 Winter/Spring

- Only impacted trans women.
- Only impacted championship competition.
- 2010 NCAA policy; and
- One-time sport-specific testosterone threshold.

#### Phase Two 2022-23 Academic Year

- Impacts all competition.
- Additional eligibility documentation submission requirements.
- Only testosterone threshold component of sport-specific policy apply.
- Only impacts trans women.

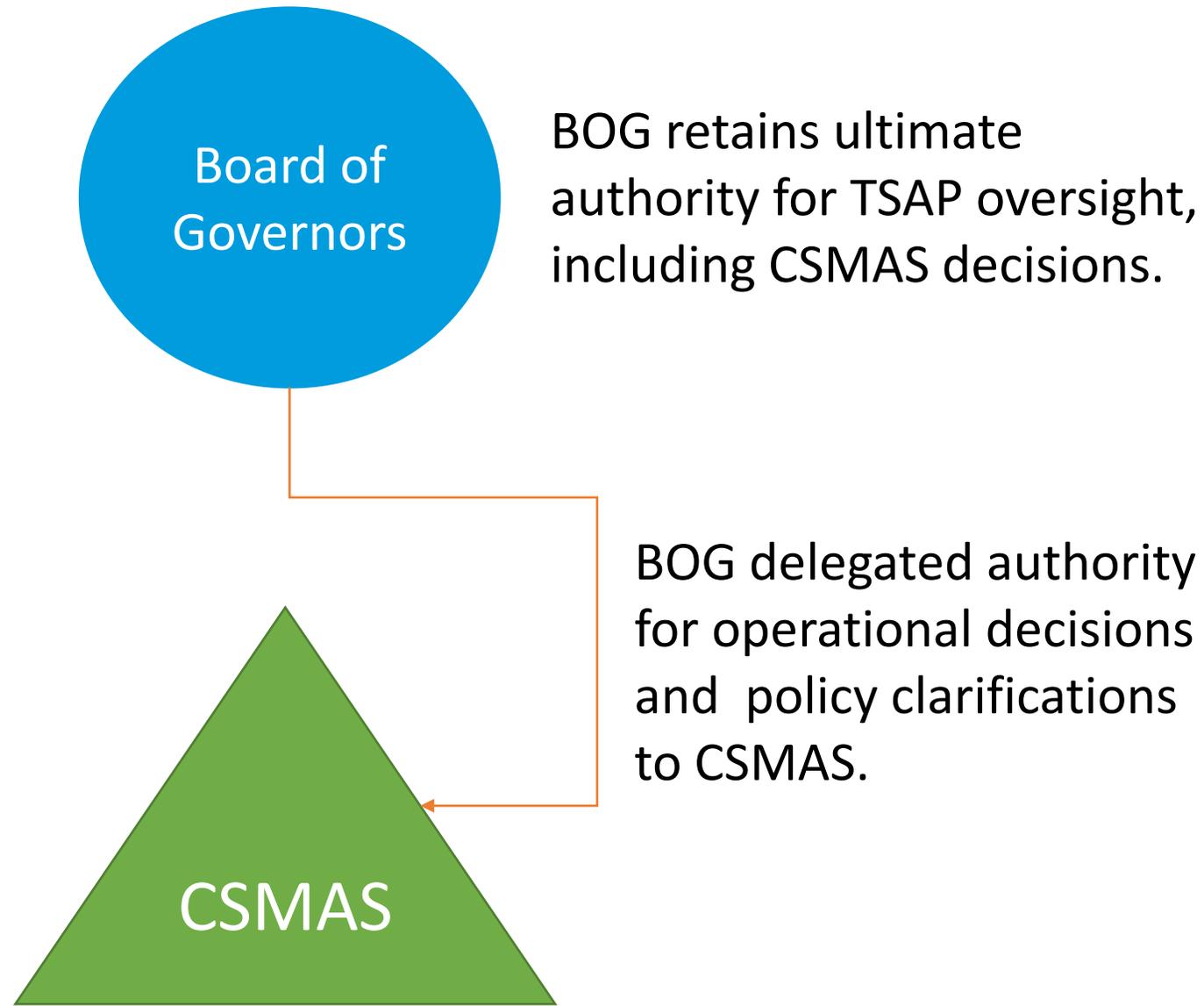
#### Phase Three 2023-24 Academic Year

- All parts of applicable sport-governing policy to be considered by CSMAS, including:
  - Length of testosterone mitigation; and
  - Other requirements.
- May impact trans men.

# Phase Two



# Policy Authority



# Phase 2 Policy Clarifications (2022-23 Academic Year)

## Testosterone Thresholds

- Set Phase 2 thresholds for 2022-23 academic year (including emerging sports).
- All thresholds align with relevant sport-governing policies.

## Mid-Cycle Policy Changes

- Clarified that should a sport governing body change its policy after the NCAA releases its eligibility requirements for an academic year, the published requirements will not be reconsidered for that academic year.

## Eligibility Documentation Submission

- Clarified submissions must occur:
  - Annually (prior to initial traditional and nontraditional competition); and
  - Prior to NCAA championship competition.

# Submission Requirements

**1**

Traditional

Annual Eligibility Submission

Non-Traditional

**2**

Championship Eligibility Submission

# Annual Submission Requirements

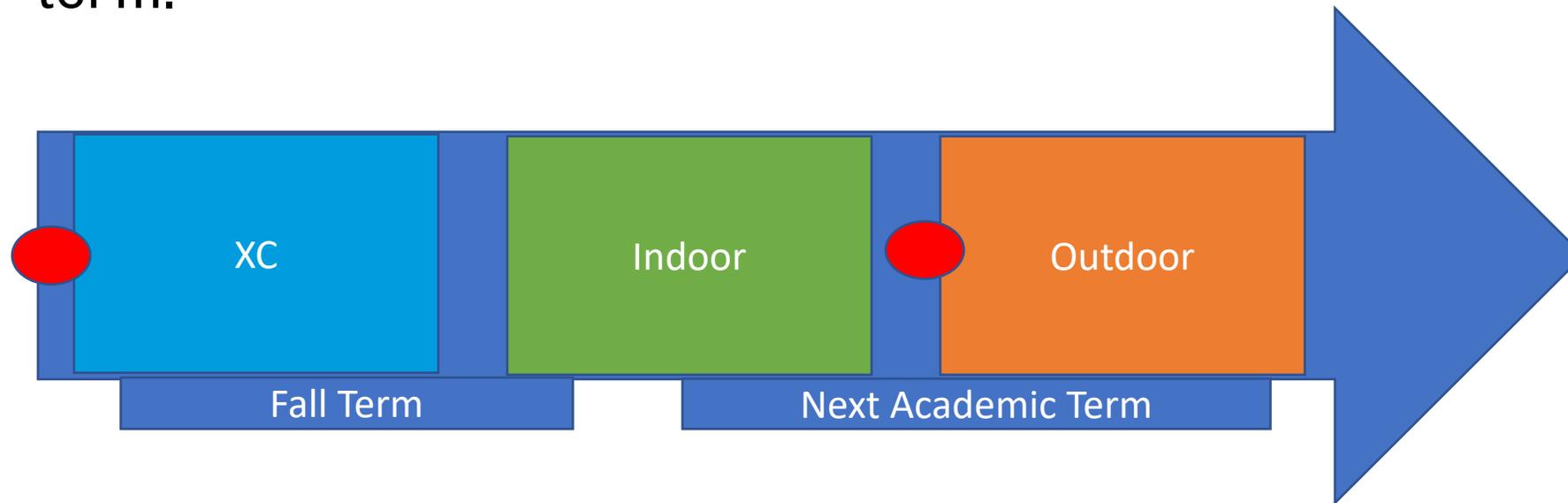
Softball  
Submit before  
nontraditional  
competition in fall

Softball  
Submit again before  
traditional competition  
in spring

- Competition season refers to both traditional and non-traditional segments; and
- Eligibility must be reviewed by Medical Review Panel before the SA competes in each segment.

# Annual Submission - Multi-Sport Student-Athletes

- At least twice per academic year:
  1. Before initial contest in fall term; and
  2. Before initial contest of an additional sport in the following academic term.



# Championship Submission

- Same as Phase 1.
- Submit if possibility SA will qualify for championship.

**4**

Lab results within four weeks of the championships

**1**

Submit  $\geq$  one week before championship selections.

# Medical Review Process

## Who

- CSMAS Medical Review Panel.
  - Anonymous review.
  - Communication with school-identified contact only.

## What

- **Eligibility Review Form**, including medical professional attestation.
- **Evidence of Serum Testosterone Level.**
  - Lab must be within four weeks of competition.

## When

- Submitted at least one week prior to initial competition of relevant season or championship.

# Phase Three/Simplification

Consideration of all components of sport-governing policies.

# Phase 3: Seeking Consolidation and Simplification

- Acknowledgement that trans athlete policies should be regularly reviewed and updated based on quickly-evolving landscape.
- CSMAS, in collaboration with relevant experts, will:
  - Continue to evaluate policy and related eligibility requirements.
  - Consider emerging medical and scientific information, trends in policy landscape and possible sport “classification” (e.g., contact, endurance, power and skill sports).
  - Aim to pro-actively prioritize simplification while balancing objectives of inclusion, fairness and well-being.
  - Develop consensus-driven foundational principles that will drive possible new policy.

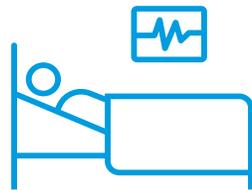
# Membership Guidance – Phase Three

CSMAS will not recommend the Board of Governors include eligibility criteria from sport-governing policies that are determined to be fundamentally inconsistent with NCAA's values of fairness, inclusion and student-athlete well-being. For example:

Complete  
Prohibition



Surgery



Gender  
Determinations



(e.g., review panel, align with ID docs, physical evaluation)

Gender  
Challenges



(e.g., won't use Drug-Testing Program to respond to challenge)

# Resources and Support



# Gender Identity Summit

- Commissioned in October 2020 with over 60 participants.
- Brought together experts in inclusion, endocrinology, athletics administrators, cisgender student-athletes, transgender and nonbinary (TGNB) student-athletes, and other external stakeholders.
  - Included representatives from the Committee to Promote Cultural Diversity and Equity (CPCDE) and Committee on Competitive Safeguards and Medical Aspects in Sports (CSMAS).
- Consensus statements were developed for consideration by governance groups, not membership requirements.

# Additional Resources

- Inclusion page on [ncaa.org](https://www.ncaa.org) (core area: LGBTQ).
- Sport Science Institute page on [ncaa.org](https://www.ncaa.org).
- Gender Identity and Student-Athlete Participation Summit Outcomes ([Final Report](#)).
- [Champions of Respect](#).
- [Five ways](#) to have an LGBTQ-inclusive athletics department.
- Inclusion of Transgender Student-Athletes Best Practices [Handbook](#).
- NCAA Inclusion Forum.



[ssi@ncaa.org](mailto:ssi@ncaa.org)

Contact Sport Science Institute for questions on policy application or document submission.



SPORT SCIENCE  
INSTITUTE™



[inclusion@ncaa.org](mailto:inclusion@ncaa.org)

Contact office of inclusion for questions on creating inclusive environments or related resources.



INCLUSION



NCAA.org

Five ways to have an LGBTQ-inclusive athletics department

# Five ways to have an LGBTQ-inclusive athletics department

*This resource serves as a guide to ensure athletics departments are providing an environment that is inclusive of all student-athletes, especially those who identify as lesbian, gay, bisexual, transgender and/or questioning. Included in this resource are samples of policies and codes of conduct; additional resources for coaches, players and staff; and LGBTQ inclusion training best practices. [Click here for the PDF](#)*

## 1. LGBTQ-Inclusive Nondiscrimination Policies

Athletics departments should have a written nondiscrimination policy that explicitly covers “sexual orientation,” “gender identity” and “gender expression” to protect lesbian, gay, bisexual, transgender and questioning people.

- [Click here](#) for sample language to be used in athletics department handbooks.
- [Click here](#) for the NCAA Inclusion of Transgender Student-Athletes guide, which includes gender identity and gender nonconforming policies.

## 2. LGBTQ-Inclusive Codes of Conduct

Athletics departments should ban anti-LGBTQ conduct by players, coaches, athletics administrators and fans.

**Team Code of Conduct:** Teams should be encouraged to create codes of conduct outlining consequences for engaging in homophobic and transphobic behaviors.

- [Click here](#) for a sample team code of conduct

**Fan Code of Conduct:** Fans should not be subjected to discriminatory language and behavior by those on the field or in the stands. Values and expectations should be communicated to fans via the school’s official fan code of conduct.

- [Click here](#) for a sample fan code of conduct

## 3. Communications

Athletics departments should ensure all media communications and recruiting materials (media guides, community outreach, team camp brochures, etc.) include a nondiscrimination clause and use LGBTQ-inclusive language.

## 4. Accessible Resources

Athletics departments should maintain up-to-date LGBTQ inclusion resources that are readily available to coaches, players and staff throughout the year.

- [Click here](#) for a list of resources

## 5. Annual LGBTQ Inclusion Trainings for Staff and Students

Athletics departments should hold timely mandatory training sessions that review policies and codes of conduct, as this is essential to creating LGBTQ-inclusive environments.

- [Click here](#) for LGBTQ inclusion training best practices

### Resources:

#### Sample Language To Be Used in Athletics Department Handbooks

- “The athletics department prohibits discrimination based on race, sex, religion, national origin, sexual orientation, gender identity and gender expression.”
- “As an athletics department that respects and celebrates inclusion, (school X athletics) prohibits discrimination based on sexual orientation, gender identity and gender expression.”

*Note: If the school already has a policy that covers sexual orientation and gender identity discrimination, the policy should be explicitly referenced in athletics department materials (e.g., student handbook, website, etc.).*

#### Sample Team Code of Conduct

- “Respect and sportsmanship are core values of this team. All members of this team are expected to reflect these core values in their words and conduct toward members of marginalized communities, including (but not limited to) the LGBTQ community.”
- “Respect and sportsmanship are core values of this team. All members of this team are expected to reflect these core values in their words and conduct. Racist, sexist, homophobic, biphobic, and/or transphobic language or conduct will not be tolerated.”

#### Sample Fan Code of Conduct

- “(Insert School Name) expects fans to enjoy the game experience free from fighting, thrown objects, attempts to enter the playing field, political or inciting messages and disorderly behavior, including foul, sexist, racist, homophobic, transphobic, obscene or abusive language or gestures.”

#### LGBTQ Inclusion Training Best Practices

- As a best practice, LGBTQ inclusion training should:
  - Be held at least once each academic year.
  - Be mandatory for all coaches, players and staff.
  - Review all LGBTQ harassment policies and team codes of conduct.
- This training can be integrated into similar training programs (e.g., CHAMPS) or, depending on time, resources and capacity, a separate training program can be developed.
- Athletics departments also should maintain up-to-date LGBTQ inclusion resources that are readily available to coaches, players and staff throughout the year, for review between training programs.

### Printable Resources:

#### Sports-Specific Resources (free and printable)

- [Champions of Respect](#)
- [On the Team](#)
- [NCAA Inclusion of Transgender Student-Athletes Best Practices](#)

#### Books and Films (available for purchase)

- [Out To Win \(Film\)](#)
- [Training Rules \(Film\)](#)
- [Strong Women, Deep Closets \(Book by Pat Griffin\)](#)
- [In The Game: Gay Athletes and the Cult of Masculinity \(Book by Eric Anderson\)](#)
- <http://competenetwork.com> (Magazine)

### General LGBTQ Resources (free and printable)

- [Human Rights Campaign Municipal Equality Index](#)
- [Movement Advancement Project Equality Maps](#)

### Web Resources:

### Sports-Specific Websites (internet only, free)

- <http://www.transathlete.com>
- <http://www.athleteally.org>
- <http://www.glsen.org/sports>
- <http://www.goathletes.org>
- <http://www.campusprideindex.org/sports/index>
- <http://sportsinclusion.wix.com/sportsinclusion>

### LGBTQ General Websites (internet only, free)

- <http://www.hrc.org>
- <http://www.glsen.org>
- <http://www.glaad.org>
- <http://www.nclrights.org>

## LGBTQ Resources

- [NCAA Champions of Respect: LGBTQ Inclusion Best Practices](#)
- [LGBTQ Terminology](#)
- [Five ways to have an LGBTQ-inclusive athletics department](#)
- [Common Ground](#)
- [Division III LGBTQ OneTeam Program](#)

# 5 Ways to Have an **LGBTQ-Inclusive** Athletics Department

**1**

## **LGBTQ-Inclusive Nondiscrimination Policies**

Athletics departments should have a written nondiscrimination policy that explicitly covers “sexual orientation,” “gender identity” and “gender expression” to protect lesbian, gay, bisexual, transgender and questioning people.

**2**

## **LGBTQ-Inclusive Codes of Conduct**

Athletics departments should ban anti-LGBTQ conduct by players, coaches, athletics administrators and fans.

**Team Code of Conduct:** Teams should be encouraged to create codes of conduct outlining consequences for engaging in homophobic and transphobic behaviors.

**Fan Code of Conduct:** Fans should not be subjected to discriminatory language and behavior by those on the field or in the stands. Values and expectations should be communicated to fans via the school’s official fan code of conduct.

**3**

## **Communications**

Athletics departments should ensure all media communications and recruiting materials (media guides, community outreach, team camp brochures, etc.) include a nondiscrimination clause and use LGBTQ-inclusive language.

**4**

## **Accessible Resources**

Athletics departments should maintain up-to-date LGBTQ inclusion resources that are readily available to coaches, players and staff throughout the year.

**5**

## **Annual LGBTQ Inclusion Trainings for Staff and Students**

Athletics departments should hold timely mandatory training sessions that review policies and codes of conduct, as this is essential to creating LGBTQ-inclusive environments.

For samples of policies and codes of conduct, go to <https://www.ncaa.org/about/resources/inclusion/five-ways-have-lgbtq-inclusive-athletics-department#ADH>.

## LGBTQ Terminology and Definitions

**Sex Assigned at Birth:** Refers to the designation of a newborn child's sex based on inspection of their external genitalia.

**Gender Identity:** One's inner concept of self as male or female or both or neither.

**Gender Expression:** Refers to the ways in which a person communicates their gender identity to others through behavior, clothing, haircut, voice, name, personal pronouns and other forms of self-presentation.

**Transgender:** An adjective describing a person whose gender identity does not match their sex assigned at birth.

**Transitioning:** The process by which a transgender person strives to live consistently with their gender identity (Male to female or female to male, for example). Transitioning may include changing behavior, names, pronouns, clothing, hairstyles and other appearance related characteristics. Transitioning may also, but not necessarily, include surgically changing one's body or taking or suppressing hormones.

**Cisgender:** An adjective describing a person whose gender identity is consistent with their sex assigned at birth.

**Non-Binary:** Describes a person whose gender identity is not either male or female. A non-binary person may feel some mix of both male and female, somewhere in between, or something completely different. Other terms that are similar to 'non-binary' are genderqueer, gender expansive, and gender nonconforming.

**Gender Fluid:** Describes a person whose gender identity and expression are not fixed and can vary at any time.

**Sexual Orientation:** Describes a person's sexual attraction to other people. "Heterosexual" (or "straight") describes a person attracted to people of a different sex. "Lesbian" describes a woman attracted to women. "Gay" describes a man attracted to men ("Gay" is also used as an umbrella term referring to both lesbians and gay men). "Bisexual" or "pansexual" describe someone attracted to people of any sex.

**Queer:** Historically a slur used to demean lesbian and gay people, queer is now a self-description preferred by many lesbian, gay, bisexual and transgender people (especially younger people) as a challenge to traditional sex and gender expectations or labels and to reclaim the word in a positive way from its historically negative use.

**LGBTQ:** A short-hand way to refer to lesbian, gay, bisexual, transgender, queer people. The "Q" can also refer to people who are questioning their sexual orientation or gender identity.

**Heterosexual or Cisgender Ally:** A description for heterosexual and cisgender people who take actions to support LGBTQ people and address prejudice and discrimination against LGBTQ people.

View [Champions of Respect — Inclusion of LGBTQ Student-Athletes and Staff in NCAA Programs](#) resource here.



# APPENDIX B

Dear NCAA,

*I would like to address this past week's events and express my thoughts. First, I would like to remind everyone that I am a human being and that as a human being I experience feelings and emotions.*

*My name is Reka Gyorgy from Hungary. I am a 2016 Rio Olympian, represented Virginia Tech for the past 5 years, a 2 time ACC Champion, 2 time All-American and 3 time Honorable Mention All-American.*

*With all due respect, I would like to address something that is a problem in our sport right now and hurting athletes, especially female swimmers. Everyone has heard and known about transgender, Lia Thomas, and her case including all the issues and concerns that her situation brought to our sport. I'd like to point out that I respect and fully stand with Lia Thomas; I am convinced that she is no different than me or any other D1 swimmer who has woken up at 5am her entire life for morning practice. She has sacrificed family vacations and holidays for a competition. She has pushed herself to the limit to be the best athlete she could be. She is doing what she is passionate about and deserves that right. On the other hand, I would like to critique the NCAA rules that allow her to compete against us, who are biologically women.*

*I'm writing this letter right now in hopes that the NCAA will open their eyes and change these rules in the future. It doesn't promote our sport in a good way and I think it is disrespectful against the biologically female swimmer who are competing in the NCAA.*

*I swam the 500 freestyle at NCAA's on March 17th, 2022 where I got 17th which means I did not make it back to the finals and was first alternate. I'm a 5th year senior. I have been top 16 and top 8 before and I know how much of a privilege it is to make finals at a meet this big. This is my last college meet ever and I feel frustrated. It feels like that final spot was taken away from me because of the NCAA's decision to let someone who is not a biological female compete. I know you could say I had the opportunity to swim faster and make the top 16, but this situation make it a bit different and I can't help but be angry or sad. It hurts me, my team and other women in the pool. One spot was taken away from the girl who got 9th in the 500 free and didn't make it back to the A final preventing her from being an All-American. Every event that transgender athlete competed in was one spot taken away from biological females throughout the meet.*

*The NCAA knew what was coming this past week. They knew opinions and minds will be divided and chose to do nothing. This week has been more about reporters, media and division in our sport than things like two women going under 21 seconds in the 50*

*freestyle, 3 women going under 50 seconds in the 100 butterfly and the first women IN HISTORY to go under 49 seconds in the 100 backstroke. Thursday was not a specific athlete's fault. It is the result of the NCAA and their lack of interest in protecting their athletes. I ask that the NCAA takes time to think about all the other biological women in swimming, try to think how they would feel if they would be in our shoes. Make the right changes for our sport and for a better future in swimming.*

*Thank you for reading,  
Reka Gyorgy, Virginia Tech swimmer*

**CIVIL COVER SHEET**

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

**I. (a) PLAINTIFF(S)**

**DEFENDANT(S)**

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF** \_\_\_\_\_  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT** \_\_\_\_\_  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

**(c) ATTORNEYS** (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

**ATTORNEYS** (IF KNOWN)

**II. BASIS OF JURISDICTION**

(PLACE AN "X" IN ONE BOX ONLY)

- |                             |   |
|-----------------------------|---|
| 1 U.S. GOVERNMENT PLAINTIFF | 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)          |
| 2 U.S. GOVERNMENT DEFENDANT | 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)  
 (FOR DIVERSITY CASES ONLY)

PLF	DEF	PLF	DEF
1	1 CITIZEN OF THIS STATE	4	4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
2	2 CITIZEN OF ANOTHER STATE	5	5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
3	3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	6	6 FOREIGN NATION

**IV. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- |  |                            |                                 |                          |  |                                       |   |
|--|----------------------------|---------------------------------|--------------------------|--|---------------------------------------|---|
| 1 ORIGINAL PROCEEDING                    | 2 REMOVED FROM STATE COURT | 3 REMANDED FROM APPELLATE COURT | 4 REINSTATED OR REOPENED | 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District) | 6 MULTIDISTRICT LITIGATION - TRANSFER | 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT |
| 8 MULTIDISTRICT LITIGATION - DIRECT FILE |                            |                                 |                          |  |                                       |   |

**V. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

**(IF COMPLEX, CHECK REASON BELOW)**

- |  |  |
|--|--|
| 1. Unusually large number of parties.            | 6. Problems locating or preserving evidence                  |
| 2. Unusually large number of claims or defenses. | 7. Pending parallel investigations or actions by government. |
| 3. Factual issues are exceptionally complex      | 8. Multiple use of experts.                                  |
| 4. Greater than normal volume of evidence.       | 9. Need for discovery outside United States boundaries.      |
| 5. Extended discovery period is needed.          | 10. Existence of highly technical issues and proof.          |

**CONTINUED ON REVERSE**

**FOR OFFICE USE ONLY**

RECEIPT # _____	AMOUNT \$ _____	APPLYING IFP _____	MAG. JUDGE (IFP) _____
JUDGE _____	MAG. JUDGE _____ (Referral)	NATURE OF SUIT _____	CAUSE OF ACTION _____

**VI. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 440 OTHER CIVIL RIGHTS
- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395f)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 376 Qui Tam 31 USC 3729(a)
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 485 TELEPHONE CONSUMER PROTECTION ACT
- 490 CABLE/SATELLITE TV
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT 899
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTTITRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK
- 880 DEFEND TRADE SECRETS ACT OF 2016 (DTSA)

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT
- 835 PATENT-ABBREVIATED NEW DRUG APPLICATIONS (ANDA) - a/k/a Hatch-Waxman cases

**\* PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

**VII. REQUESTED IN COMPLAINT:**

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ \_\_\_\_\_

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

**VIII. RELATED/REFILED CASE(S) IF ANY**

JUDGE \_\_\_\_\_ DOCKET NO. \_\_\_\_\_

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. \_\_\_\_\_, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

/s/ Bryan P. Tyson

3/14/24

SIGNATURE OF ATTORNEY OF RECORD

DATE