

PARTICIPATION OF TRANSGENDER ATHLETES IN WOMEN'S SPORTS

INTRODUCTION

Everyone has a gender identity, which can be described as our own internal understanding of our gender. We also all have a gender expression: the varying ways we express our gender through the way we dress, style our hair, and even through the name we choose to be called. Someone whose gender identity or expression does not conform to typical expectations is often referred to as transgender. Increasing numbers of transgender young people, often with the support of their parents, choose to transition to live as a gender that is more congruent with their internal sense of self. As these young people mature, some take medically prescribed hormone-blocking medication to delay the onset of puberty and its accompanying bodily changes that are often so devastating to transgender youth. After reaching the age of majority, many eventually undergo hormone therapy and/or some form of permanent sex-reassignment surgery.

As the number of young people transitioning in elementary junior high and high school increases, we can assume that some of them will want to participate in school athletic programs; indeed, some already are. Currently only a few school sport governing organizations have adopted policies addressing the inclusion of transgender athletes, although many more are beginning to explore the issue and to recognize the need for such policies. Failure to develop informed and fair policies leaves school athletic programs unprepared to respond to the increased probability that a transgender student will seek to join a school team.

The Women's Sports Foundation supports the right of all athletes, including transgender athletes, to participate in athletic competition that is fair, equitable and respectful to all. "Transgender" refers to people whose gender identity (their internal sense of themselves as male or female) does not conform to traditional expectations associated with their assigned sex at birth. Schools must be prepared to fairly accommodate these students and their families in athletics as well as other school programs.

The Foundation has prepared the following position paper to help equip schools and transgender student-athletes with the information they need to ensure fair access and integration into sports and physical activity.

I. ARE SCHOOLS OBLIGATED TO ACCOMMODATE TRANSGENDER ATHLETES?

Yes. The Equal Protection Clause of the U.S. Constitution and Title IX's prohibitions against sex discrimination have both been interpreted by state and federal courts to encompass discrimination based on gender stereotyping, including discrimination against individuals because of their gender identity or expression (i.e. transgender athletes). Therefore, schools may face legal liability if they deny access to such student-athletes, even if no law explicitly addresses the issue.

In addition to federal laws and federal constitutional protection, transgender student-athletes are protected under many state and local laws. A growing number of states have enacted legislation explicitly prohibiting discrimination based on gender identity/expression: California, Colorado, Hawaii, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington and the District of Columbia. A number of additional states prohibit discrimination based on gender identity or expression under state disability laws. Additionally, California, Illinois, Iowa, Maine, Maryland, Minnesota, New Jersey, Oregon, Vermont and the District of Columbia have enacted Student Rights Laws that explicitly prohibit discrimination or harassment based on gender identity or expression in schools. Dozens more states have passed laws that prohibit such harassment and discrimination generally, with no specific categories of students listed. Individuals might find protection at a local level as well, as more schools are adding "gender identity/expression" to their non-discrimination policies.

II. WHAT TYPES OF PHYSICAL ACCOMMODATIONS MUST SPORTS GOVERNING BODIES MAKE TO ENSURE THE INCLUSION OF TRANSGENDER ATHLETES IS FAIR AND APPROPRIATE?

Individual sport governing organizations should accommodate transgender athletes to ensure access to locker rooms, showers and toilet facilities appropriate for their gender identity. These accommodations should be made with the comfort and privacy of all athletes in mind. Ideally, transgender athletes should have access to the facilities that are available to other athletes of the gender with which they identify. Athletes who desire increased privacy should be provided with accommodations that best meet their needs and privacy concerns, such as, where possible, private showers, changing areas and toilet facilities within locker rooms, or separate changing areas, toilets or showers. If women's and men's team uniforms in the same sport are different, transgender athletes with female gender identities should be permitted to wear the women's team uniform and vice versa. Gender-neutral dress codes and recognition of preferred gendered pronouns and names of transgender athletes are also an important aspect of according respect and fair treatment.

III. DO MALE TO FEMALE TRANSGENDER ATHLETES HAVE A PHYSICAL ADVANTAGE IN COMPETITION AGAINST NON-TRANSGENDER FEMALES?

No. If a young person transitions from male to female prior to puberty, as in the case of some transgender people, no accommodation is necessary at all and this student should be treated as any other competitor in girls' or women's sports. Additionally, if a transgender student transitions after puberty, medical experts increasingly agree that the effects of taking female hormones negate any strength and muscular advantage that testosterone may have provided and places a male-to-female transgender athlete who has completed her transition in the same general range of strength and performance exhibited by non-transgender females who are competing. A female-to-male transgender athlete has no physical advantage before, during or after transition and should be permitted to participate fully on male sports teams. Goorin, Louis, and Mathijs Bunck, "Transsexuals and Competitive Sports," *European Journal of Endocrinology* 151 (2004): 425-429.

IV. WHAT OBLIGATIONS DO SPORT GOVERNING BODIES HAVE TO EDUCATE THEIR MEMBERS ABOUT THE RIGHTS OF TRANSGENDER ATHLETES?

Sport governing organizations should provide education to their member institutions and to individual coaches, athletes, administrators and other stakeholders about transgender athletes and their right to equal sport participation. These educational efforts should be focused on providing participants with an understanding of how transgender athletes will be accommodated in ways that protect the rights of all athletes to participation in a fair and respectful sports environment. For general resources and information about transgender rights and educational resources, please see:

[Transgender Law and Policy Institute: www.transgenderlaw.org](http://www.transgenderlaw.org)

[National Center for Transgender Equality: www.nctequality.org](http://www.nctequality.org)

[Transgender Law Center: www.transgenderlawcenter.org](http://www.transgenderlawcenter.org)

[National Center for Lesbian Rights: www.nclrights.org](http://www.nclrights.org)

[National Gay and Lesbian Task Force: www.thetaskforce.org](http://www.thetaskforce.org)

[Gay, Lesbian, Straight Education Network: www.glsen.org](http://www.glsen.org)

[Lambda Legal: www.lambdalegal.org](http://www.lambdalegal.org)

V. WHAT ARE THE ELEMENTS OF SOUND SCHOOL POLICY ON TRANSGENDER ATHLETES?

Sport governing bodies, including high school and collegiate athletic programs, should develop policies addressing the following elements and meet the following objectives:

- Set clear and reasonable criteria for determining an athlete's eligibility to compete that are based on up-to-date expert legal and medical knowledge about the effects of gender transition on athletic performance.
- Be tailored to the specific sport context (level and eligibility needs), age of the athlete and age when the athlete transitions.

- Preserve competitive equity among all participants in sports in which competition is separate for men and women.
- Provide assurance that transgender students are offered sport opportunities of their choice at the level of participation best suited to their interests and abilities.

There is no one policy that adequately or fully addresses the needs of all transgender athletes and meets the legal requirements of each state; however, the Foundation recommends the Washington Interscholastic Athletic Association Policy on Gender Identity and Athletics as a model and guide to other sport governing organizations developing their own policies.

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