

Pending State Bills Propose to Limit Ability of Transgender Student-Athletes to Compete

By Gregg E. Clifton and Michelle E. Phillips

January 15, 2020

Several states have introduced legislation to require transgender student-athletes at the elementary and secondary school levels to compete based only on their sex assigned at birth, not based on their gender identity.

While more than a third of states allow transgender students to compete on teams based on their gender identity, legislators in several states (including Georgia, Idaho, Missouri, New Hampshire, Tennessee, and Washington) are attempting to end this personal right of choice. Legislators in these states have introduced legislation (or pre-filed proposed legislation for their upcoming state legislative sessions) that would restrict students from being able to compete based on their gender identity.

For example, the proposed Tennessee legislation (House Bill 1572) would require elementary and secondary schools that receive public funding to ensure that students participating in school-sanction sports compete only “based on the athlete’s biological sex as indicated on the athlete’s original birth certificate.” Any birth certificate that has been revised or amended regarding the athlete’s sex will not be accepted. A violation can result in the loss of public funds from state or local government. Also, a principal or school administrator may be fired and fined up to \$10,000 as a civil penalty.

The bill’s sponsor, Representative Bruce Griffey, said, “I’m just trying to maintain fairness, I don’t want girls to be at a disadvantage.”

In Washington, Representative Brad Klippert has introduced legislation that would overturn the state’s policy of allowing students to participate in sports “consistent with their gender identity.” The legislation, aimed at trans-female athletes (MTF), would require school districts to “prohibit male students from competing with and against female students in athletic activities with separate classifications for male and female students if the athletic activity is (a) intended for female students; and (b) an individual competition sport.” A “male student” is defined as a student whose assigned sex at birth was male.

The push for this type of legislation reflects a growing concern that certain transgender protections have resulted in unfair competition in women’s sports. Several legislators suggested that transgender female athletes have natural physical advantages over biological females, including differences in muscle mass, bone strength, lung capacity, and heart size. While bill sponsors have had difficulty finding specific examples to support this position, several referred to a Connecticut state girls indoor track championship where two transgender female high-school students won in dash events.

While competition at the high school level is not covered by specific NCAA regulation, a review of the working model introduced by the NCAA can provide guidance. The NCAA has confronted the fair competition issues with a formal transgender policy. The NCAA policy on participation of transgender student-athletes is as follows:

- A trans male (FTM) student-athlete who has received a medical exception for treatment with testosterone, for purposes of NCAA and 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. 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) student-athlete being treated with testosterone suppression medication 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. 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.

Meet the Authors



[Gregg E. Clifton](#)

Principal
Phoenix 602-714-7044
Email



[Michelle E. Phillips](#)

Principal
New York Metro
White Plains 914-872-6899
Email

We will continue to monitor these state bills and the issues relating to the rights of transgender student-athletes to compete in interscholastic competition. Please feel free to reach out to any member of the Collegiate and Professional Sports Practice Group with questions regarding the status of any of the proposed laws.

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