

# **LSA ANNUAL SPORTS LAW SEMINAR**

**Transgender Students:  
Maryland's Laws and Guidance on  
Student Athletics,  
Public & Private Accommodations,  
Birth Certificates,  
and Other States' Laws**

## **Transgender Student Athletes**

**Maryland Public Secondary Schools Athletic  
Association (MPSSAA) Transgender Person  
Guidance for Participation in Interscholastic  
Athletics**

**"The purpose of this guideline is to designate a set of criteria in which student-athletes are able to on a level compete playing field in a safe, competitive and friendly environment, free of discrimination. At the center of educational programming is the value placed in providing equal opportunity for all students."**

**Adopted July 2, 2014**

## **Transgender Student Athletes**

### **MPSSAA Transgender Guidance**

- Definitions
- Guiding Principles
- Participation Determination
- Appeal Review Committee

### **MPSSAA Guiding Principles**

Local school system's criteria for inclusion of students whose gender identity and expression does not match their gender assigned at birth should be consistent with the following guiding principles:

1. Participation in interscholastic athletics is a valuable part of the education experience for all students.
2. All student athletes should have equal opportunity to participate in sports.
3. The integrity of women's sports should be preserved.

### **MPSSAA Guiding Principles**

4. Policies governing sports should be based on sound medical knowledge and scientific validity.
5. Policies governing the participation in sports should be fair in light of the tremendous variation among individuals in strength, size, musculature, and ability.
6. The legitimate privacy interests of all student athletes should be protected at all times.

### **MPSSAA Guiding Principles**

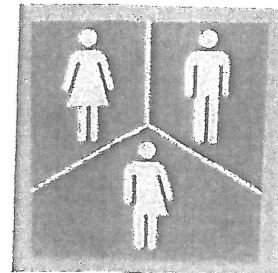
7. Policies governing the participation of students in athletics should comply with Maryland and federal laws protecting students from discrimination based on sex, disability, sexual orientation, and gender identity and expression.
8. Once the student has been granted eligibility to participate in the 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.

## Transgender Student Athletes

### MPSSAA Transgender Guidance

**Gender Identity:** A person's deeply-felt internal sense of being male or female.

**Transgender Person:** A person whose gender identity does not match the sex assigned to him or her at birth.



## Transgender Student Athletes

### MPSSAA Transgender Guidance

**Participation Determination:** To ensure competitive fairness and equal opportunities to participate without discrimination, local criteria for transgender persons should reflect the following:

- A. Transgender students can participate on the team of the student's birth gender;
- B. Transgender students can participate on teams of the gender that the student has transitioned to. This may be supported by medical documentation (hormonal therapy, sexual re-assignment surgery, counseling, etc.) confirming transition of gender;

## **Transgender Student Athletes**

### **MPSSAA Transgender Guidance**

#### **Participation Determination:**

C. Transgender students may compete on the interscholastic team of the gender the student identifies with, as recognized by the local school system and established in official school system records.

(This may differ from the student's gender listed in school system records).

## **Transgender Student Athletes**

### **Maryland Regulations**

#### **School Safety**

All students in Maryland's public schools, without exception and regardless of race, ethnicity, region, religion, gender, sexual orientation, language, socioeconomic status, age, or disability, have the right to educational environments that are:

- A. Safe;
- B. Appropriate for academic achievement; and
- C. Free from any form of harassment.

***COMAR 13A.01.04.03***

## **Transgender Student Athletes**

### **Maryland State Law**

#### **Bullying Reporting Law**

- In July, 2005, the Safe Schools Reporting Act required the development of a form to be used by students, parents, and close family members to report incidents of bullying, harassment, or intimidation to school administrators.
- The law also required all local school systems to record specific information from these forms and to submit that information to MSDE for inclusion in its annual report to the General Assembly.

## **Transgender Student Athletes**

### **Maryland State Law**

The Safe Schools Reporting Act defines “harassment or intimidation” as conduct, including verbal conduct, that:

- (1) Creates a hostile educational environment by substantially interfering with a student’s educational benefits, opportunities, or performance, or with a student’s physical or psychological well-being and is:
  - (i) Motivated by an actual or a perceived personal characteristic such as race, national origin, marital status, sex, sexual orientation, gender identity, religion, or disability; or
  - (ii) Threatening or seriously intimidating; and
- (2) Occurs on school property, at a school activity or event, or on a school bus.

## **Transgender Student Athletes**

### **Maryland Regulations**

#### **Mandated Anti-Bullying Policies**

In 2008, the Maryland General Assembly passed a law requiring the Maryland State Board of Education, in consultation with local school systems, to develop and adopt a model policy prohibiting bullying, harassment, or intimidation in schools.

## **Transgender Student Athletes**

### **Maryland State Law**

#### **Model Anti-Bullying Policy & Guidance**

MSDE issued a model policy in 2009, updated in 2013, to require that local school systems adopt bullying prevention efforts including at least annual professional development for administrators and all staff to increase awareness of the prevalence, causes, and consequences of bullying and to increase the use of evidence-based strategies for preventing bullying.

## **Transgender Student Athletes**

### **Fairness for All Marylanders Act**

- Maryland enacted the Fairness for All Marylanders Act in 2014 (House Bill 212).
- This bill prohibits discrimination based on “gender identity” in public accommodations, labor and employment, and housing.
- The law also allows private facilities offering public accommodations (such as hotels and gyms) to not have to allow transgendered individuals access to a locker room of their chosen gender if equivalent space is offered to them.

## **Transgender Student Athletes**

### **Fairness for All Marylanders Act**

“Gender identity” means the gender-related identity, appearance, expression, or behavior of a person, regardless of the person’s assigned sex at birth, which may be demonstrated by (1) consistent and uniform assertion of the person’s gender identity or (2) any other evidence that the gender identity is sincerely held as part of the person’s core identity.

## **Transgender Student Athletes**

### **Fairness for All Marylanders Act**

The bill does not apply to a private facility in a place of public accommodation.

The bill defines “private facility” as a facility

- (1) that is designed to accommodate only a particular sex;
- (2) that is designed to be used simultaneously by more than one user of the same sex; and
- (3) in which it is customary to disrobe in view of other users of the facility.

## **Transgender Student Athletes**

### **Official Documents – Birth Certificates**

- All official documents prepared by the school system concerning a student must use the student’s legal name as it appears on the student’s birth certificate.
- Under a new law passed in 2015 (Senate Bill 743), a person may change their legal name either by obtaining a court order (prior law) or certification by a licensed health care professional of a sex change or diagnosis of intersex condition (new law).

## **Transgender Student Athletes**

### **Official Documents – Birth Certificates**

The new law defines “licensed health care practitioner” as a licensed physician, psychologist, registered nurse (who is also certified as a nurse practitioner, nurse psychotherapist, or clinical nurse specialist), or a certified social worker-clinical.

(Senate Bill 743 (2015))

## **Transgender Student Athletes**

### **Official Documents – Birth Certificates**

The professional certification must be based on the individual having undergone surgical, hormonal, or other treatment appropriate for the individual, based on generally accepted medical standards; or the individual has an intersex condition.

The new birth certificate may not be marked “amended” or show on its face that a change has been made to a sex designation.

## **Transgender Student Athletes**

### **Unofficial Documents & Communications:**

Teachers and school staff should honor requests by students to be called a name other than the legal name in classrooms and in general communications with the student.

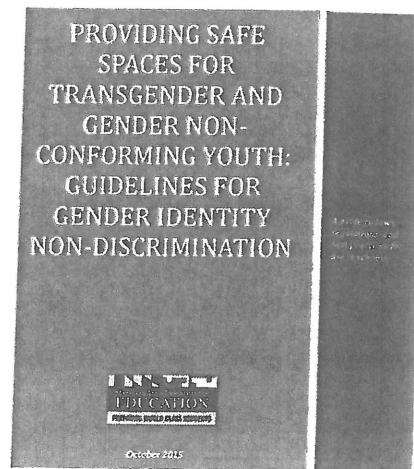
This could include names consistent with the student's identified gender ("Stephanie" rather than "Stephen").

No student should be forced to answer to an undesired name in informal communications.

## **Transgender Student Athletes**

### **MSDE's Policy Guidelines**

"These guidelines are designed to serve as suggestions for consideration for school systems and administrators who may want to develop their own transgender policy, procedures, and/or guidelines."



## **Transgender Student Athletes**

### **MSDE Policy Guidelines**

Specific Sections of the Guidelines:

- Non-Discrimination Guidelines for Restrooms
- Non-Discrimination Guidelines for Locker Rooms
- Non-Discrimination Guidelines for Physical Education and Athletics

## **Transgender Student Athletes**

### **MSDE Guidelines – Physical Education/Athletics**

Suggested guidelines for consideration:

- Include transgender students in sex-segregated athletic activities based on their gender identity.
- Allow athletic participation without medical or legal documentation regarding gender.
- Protect the student athlete's privacy rights.
- Follow MPSSAA Guidelines and COMAR for participation in Interscholastic Athletics.

## **Transgender Student Athletes**

### **MSDE Policy Guidelines**

#### **Locker Rooms**

- Provide access to the locker room that corresponds to the student's gender identity.
- Provide the option to use a safe and non-stigmatizing private alternative space for any student who is uncomfortable using shared facilities.
- Provide reasonable alternative arrangements.

## **Transgender Student Athletes – Other States**

### **Other State Laws**

In 2013 California enacted the School Success and Opportunity Act (Assembly Bill 1266) to ensure that students can fully participate in all school activities, sports teams, programs, and facilities that match their gender identity, irrespective of the gender listed on the pupil's records.

### **Transgender Student Athletes – Other States**

- New York's Dignity for All Students Act passed in 2012.
- The State's Education Dept. issued guidance in 2015 that schools provide transgender students access to restrooms and locker rooms that correspond with their gender identity. Private bathrooms and changing spaces should be available to all students who desire additional privacy. In addition, transgender students should have the opportunity to participate in gender-segregated activities.
- The guidelines affirm that the only requirement to confirm a student's gender identity is a statement from the student.

### **Transgender Student Athletes – Other States**

- The state has enacted the Colorado Anti-Discrimination Act, but in addition its Civil Rights Commission issued regulations to "contribute to the elimination of discrimination on the basis of sexual orientation, inclusive of transgender status, in employment, housing, public accommodations, and advertising."
- Colorado's "Sexual Orientation Discrimination Rules" define transgender, gender identity, and gender expression – and have been applied in cases involving schools.

## Transgender Student Athletes – Other States

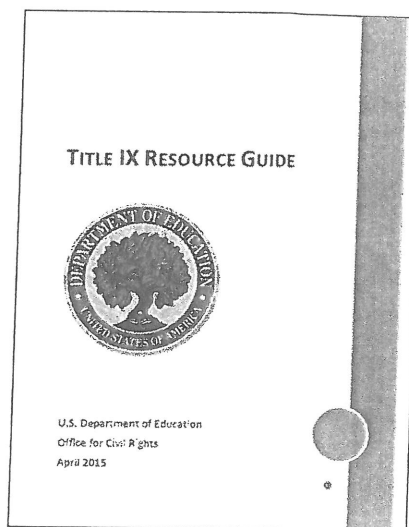
A two-year federal investigation found that Township High School District 211 in Palatine, Illinois, unfairly denied a transgender teenager (who was undergoing hormone therapy but had not undergone gender reassignment surgery) access to school facilities in violation of Title IX, that bars discrimination in federally funded education programs.

However, district officials did not back down, stating that they “remain strong in our belief that the District’s course of action ... appropriately serves the dignity and privacy of all students in our educational environment.”

## Transgender Student Athletes

Office of Civil Rights, US  
Department of Education  
Releases New Title IX  
Coordinators Guidance

On Friday, April 24, 2015,  
the Office of Civil Rights  
(OCR), US Department of  
Education (ED), released  
three new guidance  
documents for Title IX  
coordinators.



## **Transgender Student Athletes**

### **Title IX and Student-on-Student Sexual Harassment and Sexual Violence**

The U.S. Dept. of Education Office of Civil Rights issued a Dear Colleague Letter on April 29, 2014: "Questions and Answers on Title IX and Sexual Violence"

"Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation. Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a school's obligations."

## **Transgender Student Athletes**

### **Title IX and Student-on-Student Sexual Harassment and Sexual Violence**

Depending on the specific nature of the problem, remedies for the complainant may include, but are not limited to:

Training or retraining school employees on the school's responsibilities to address allegations of sexual violence and how to conduct Title IX investigations.

Targeted training for a group of students if, for example, the sexual violence created a hostile environment in a residence hall, fraternity or sorority, or on an athletic team.

## **Transgender Student Athletes**

### **Fourth Circuit Title IX Case**

Several weeks ago panel of the 4<sup>th</sup> Circuit in the case of *G.G. v. Gloucester* in a 2-1 opinion reversed the trial court's denial of G.G.'s preliminary injunction request. The divided court held that the U.S. Dept. of Education regulations that school districts must generally treat transgender students consistent with their gender identity is entitled to deference because Title IX is ambiguous when permitting sexual segregated bathrooms and locker rooms for males and females.

The Gloucester (VA) School Board has requested an en banc review of the case by the entire 4<sup>th</sup> Circuit Court and that request is currently under consideration.