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BILL: HB 359

TITLE: Education – Interscholastic and Intramural Junior Varsity and Varsity Teams and Sports – Designation Based on Sex (Save Women’s Sports Act)

DATE: February 15, 2023

POSITION: Oppose

COMMITTEE: Ways and Means

CONTACT: Mary Pat Fannon, Executive Director, PSSAM

The Public School Superintendents’ Association of Maryland (PSSAM), on behalf of all twenty-four local school superintendents, **opposes** House Bill 359.

House Bill 359 would require certain interscholastic and intramural junior varsity and varsity athletic teams to be expressly designated based on biological sex. Additionally, this bill would prohibit certain entities from taking certain adverse actions against a school or county board of education for maintaining separate interscholastic and intramural junior varsity and varsity athletic teams and sports for students of the female sex. The bill also stipulates that certain individuals have the right to bring a civil action under certain circumstances.

Maryland’s superintendents raise serious concerns about the mandated, statewide approach to participation in interscholastic sports taken by this bill. Instead, PSSAM favors the maintenance of locally controlled systems of interscholastic athletics governed by the guidance of Maryland Public Secondary Schools Athletic Association (MPSSAA) and regulations adopted by the Maryland State Department of Education (MSDE). Since 1991, interscholastic sports in Maryland have operated in accordance with the “Master Agreement Outlining the Interscholastic Structure for Public Schools in Maryland,” which establishes the responsibilities of MPSSAA, MSDE, and local school systems. Local superintendents believe that this system of regulation and oversight is working well.

The MPSSAA Guidance for Participation of Transgender Youth in Interscholastic Athletics states that its purpose is to “designate a set of criteria in which student-athletes are able to compete on a level 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.” The Guidance further provides that “each school system should develop and apply criteria for students to participate in interscholastic athletic teams consistent with their gender identity.”

This guidance includes several principles and criteria for local school systems to use in determining eligibility of transgender students in interscholastic sports. These include attention to preserving the integrity of women's sports, as well as policies that are fair in light of the variation among individuals in strength, size, musculature, and ability. Through these means, the guidance reflects Maryland’s high priority on establishing and maintaining an interscholastic athletic system that assures that sports activities contribute to the entire educational program for all students choosing to participate.

Additionally, PSSAM would like to highlight the potential of this legislation to create liability for discriminatory practices under a new statewide system of criteria for student participation in women’s sports based solely on sex assigned at birth. Other state legislatures have established that enforcing the standard of biological sex would likely require subjecting youth to invasive mandates in order to ensure eligibility, which could be considered sex discrimination as defined by the Supreme Court case of *Bostock v. Clayton County*, in which the Court asserted that anti-transgender discrimination violated Title VII’s prohibition against sex discrimination.

For these reasons, PSSAM **opposes** House Bill 359 and kindly requests an unfavorable report.