



**TRANS LAW STUDENT
ASSOCIATION**

University of Baltimore, School of Law

HB47 and SB381 - Education - Interscholastic and Intramural Junior Varsity and Varsity Teams - Designation Based on Sex (Fairness in Girls' Sports Act) - January 27, 2024 - IN OPPOSITION

Thank you for the opportunity to submit written testimony. The Trans Law Student Association (TLSA) strongly opposes Bill HB47/SB381, titled the "Fairness in Girls' Sports Act." TLSA is a student organization at the University of Baltimore, School of Law in Baltimore, MD. Members of our organization are constituents of Maryland. Our organization is dedicated to serving the trans student population by advocating for the unique needs of the population to administration, faculty, students, and the broader legal community. This bill directly impacts the community we serve, including the K-12 schools which educate our future lawyers.

The Fairness in Girls' Sports Act endangers the lives of trans youth and places dangerous legal liability on already underfunded public and private schools. In a study published by the National Library of Medicine, researchers found that anti-transgender legislation is directly linked with suicide-and depression-related internet searches. Anti-trans legislation directly links to an increased rate of suicide in trans youth. The American Psychology Association found that [one in three LGBTQ+](#) youth said their mental health was poor due to anti-LGBTQ policies and legislation.¹ [According to a 2021 report from the Trevor Project](#), 61% of transgender children faced some form of bullying or harassment; 32% of those transgender children would go on to attempt suicide.² Othering transgender children and not allowing them to organize within the gender they identify ostracizes them. The passing and implementation of these bills acts as reinforcement for the schools to tell other children that it is okay to "other" individuals and single them out. This bill requires schools to designate sports by biological sex or by "co-educational or mixed team sport." By prohibiting trans students from participating in the sport on the basis of gender identity, it discriminates on the basis of transgender status and sex in violation of the United States Constitution and Title IX of the Civil Rights Act. 20 U.S.C. § 1681.

Schools are placed in an impossible decision between compliance under Title IX or compliance with the proposed bill. This bill provides standing to a person harmed—directly or indirectly—by a school's violation of the proposed bill. If a school decides to abide by Federal law, Title IX, and allow a student to participate in the sport aligned with gender identity, the school is subject to liability for violating the bill. In the alternative, if a school places the student in co-ed or in their biologically designated team, the school may be subject to liability under Title IX. Under Title IX, the funding of the school will be threatened and result in funding being removed from schools which serve all students, not just transgender students. If compliance with the proposed bill results in the "stigmatized and isolated" feelings by a trans student, the bill would fail under heightened scrutiny. *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 617 (4th Cir. 2020).

¹ <https://www.apa.org/topics/lgbtq/mental-health-anti-transgender-legislation>

² <https://www.thetrevorproject.org/research-briefs/bullying-and-suicide-risk-among-lgbtq-youth/>



**TRANS LAW STUDENT
ASSOCIATION**

University of Baltimore, School of Law

This bill poses Constitutional concerns. It discriminates against nonbinary and trans students on the basis of sex by excluding them from participation in sports on the basis of status. Co-ed teams are not a satisfactory remedy because the team would not be able to participate in the same tournaments or games that another team would. (See, 1996 Office of Civil Rights: Guidance on Sports and Title IX, where equal opportunity for competition is required to be in compliance with Title IX). It would not provide an equal opportunity to trans students. Separation on the basis of sex is permissible under the Constitution if there is an activity of equal value, including the benefits provided. In a fact-sheet the Department of Education recognized that blanket bans on transgender athletes on the basis of sex does not satisfy constitutional requirements. According to the Department, Title IX's "nondiscrimination requirement serves to ensure that all students have equal opportunity to enjoy the benefits of team sports participation." The U.S. Department of Education recognized "participating in school athletics is an important component of education and provides valuable physical, social, academic and mental health benefits to students." Thus, legislation or school policies cannot categorically ban trans students from participating on sports teams consistent with their gender identity. The alternative co-ed option could not be satisfied because it would not be able to achieve the same benefits. Currently, there are no satisfactory competitive platforms for interscholastic co-ed sports that are recognized for scholarships and benefits to students. Students in co-ed teams would not be afforded the same opportunities that may result in full-rides to college and other benefits.

The Maryland State Department of Education has addressed this in an issued Guideline. The Department provided non-discrimination guidelines for physical education and athletics. It cautioned that "any single-sex classes or extracurricular activities must be consistent with Title IX and applicable regulations." It cautioned against any policies which require medical or legal documentation for participation. This poses a discrimination issue and opens a school up to potential violations under Family Education Rights and Privacy Act (FERPA). For a student to file a complaint under the proposed bill, evidence would require disclosing a transgender student's identity and status, compromising the trans student's privacy rights. Additionally, a student could only become aware of a violation under this statute by being made aware of the transgender status of a student. This raises concerns on the protection of student information under FERPA.

Recently, the Fourth Circuit recognized gender dysphoria as a disability under Americans with Disabilities Act (ADA). If a transgender or nonbinary student sought the accommodation to participate in a sport according to gender identity, the bill would place the school in a position of being liable under the ADA and Section 504 of the Rehabilitation Act. *Williams v. Kincaid*, 45 F.4th 759 (4th Cir. 2022). The ADA would require accommodations for a student experiencing Gender Dysphoria to allow for that student to participate in the activities consistent with their gender identity. This bill does not recognize the requirements of the ADA and, if passed, would open schools up to potential loss of federal funding, investigations by the OCR, and suit by



**TRANS LAW STUDENT
ASSOCIATION**

University of Baltimore, School of Law

private citizens. The burden of these potential consequences will ultimately be placed on Maryland taxpayers and already overburdened courts.

This bill is based on the flawed presumption that trans students may hold a biological advantage over non-trans students in sports. Since 2004, trans students have been participating in sports on the basis of gender identity. There have been no statistics showing categorical dominance of transgender students. Transgender students have been participating in the NCAA since 2011. For example, the ACLU noted that transgender women have been eligible for qualifications at the Olympics, but have not medaled in a women's event. Similar to *Grimm v. Gloucester Cty. Sch. Board*, this bill is "marked by misconception and prejudice" against trans athletes. Trans athletes are like all athletes. They do not automatically have a single body type that would render an automatic advantage in a sport. Not only is this bill riddled with legal implications, it is not supported by data.

We respectfully request the committee to kill the Fairness in Girls' Sports Act to protect our education institutions from legal liability under Title IX, the ADA, and FERPA. We ask the committee to recognize the human behind the transgender status and look towards statistical evidence that trans athletes deserve to participate in the sport aligned with their gender identity. TLSA writes this testimony with great grief as we recognize it is an attack on the existence of trans people in Maryland. This bill was written hastily and without concerns for legal implications or the health and wellbeing of the people it blatantly discriminates against. It poses a risk of defunding our Maryland schools and directly targets the lives of trans students. Thank you for your time in reading our testimony.

Thank you,

Trans Law Student Association
By: Julea Seliavski, Co-President

By: A Rand, Co-President

By: Cooper Tanbusch, Communications Officer