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BILL: HB 47
TITLE: Education - Interscholastic and Intramural Junior Varsity and Varsity Teams - Designation Based on Sex (Fairness In Girls' Sports Act)
DATE: January 31, 2024
POSITION: Oppose
COMMITTEE: House Ways and Means Committee
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 47.

This bill requires an interscholastic or intramural athletic team or sport that is sponsored by a public or nonpublic high school to be expressly designated as one of the following based on biological sex: (1) a boys', male, or men's team or sport; (2) a girls', female, or women's team or sport; or (3) a coeducational or mixed team or sport. An interscholastic or intramural athletic team or sport designated for girls, females, or women may not include students of the male sex. A governmental entity, a licensing or accrediting organization, or an athletic association or organization may not accept a complaint, investigate, or take any other adverse action against a school for maintaining separate interscholastic or intramural athletic teams or sports for students of the female sex. Students and schools are authorized to bring specified civil actions.

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 47 and kindly requests an unfavorable report.