

Proposed Federal rulemaking on athletic eligibility under Title IX would establish that policies violate Title IX when they categorically ban transgender students from participating on sports teams consistent with their gender identity.

The Department of Education's April 2023 proposal focusing specifically on athletics received more than 150,000 public comments. A ruling on the Department's proposals has been delayed.

- ◆ The proposed rule would apply to public K-12 schools, as well as colleges, universities, and other institutions that receive federal funding.
- ◆ The Department's approach would allow schools flexibility to develop team eligibility criteria that serve important educational objectives, such as ensuring fairness in competition or preventing sports-related injury. These criteria would have to account for the sport, level of competition, and grade or education level to which they apply. However, these criteria could not be premised on disapproval of transgender students or a desire to harm a particular student. The criteria also would have to minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied.
- ◆ Under the proposed regulation, schools would not be permitted to adopt or apply a one-size-fits-all policy that categorically bans transgender students from participating on teams consistent with their gender identity.

SOURCE: U.S. Department of Education, *FACT SHEET: U.S. Department of Education's Proposed Change to its Title IX Regulations on Students' Eligibility for Athletic Teams (4/06/23)* <https://www.ed.gov/news/press-releases/fact-sheet-us-department-educations-proposed-change-its-title-ix-regulations-students-eligibility-athletic-teams>



PRESERVE FREEDOM OF SPEECH

The First Amendment to the United States Constitution states that Congress protects the right of the people from abridgment of freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

In her Congressional Testimony, Paula Scanlan, former member of the University of Pennsylvania Swim Team, stated that she wrote an op-ed for the Daily Pennsylvanian, the student run newspaper. She approached the issue from a scientific, statistical perspective to discuss how Y chromosomes cannot be changed by any surgical procedure or systemic therapy. She wrote that this biological fact lends itself to athletic advantages that cannot be mitigated by lowering testosterone levels. The article was published on the evening of February 10, 2022, but a few hours later was retracted. Ms. Scanlan was given no notice or reasoning. She said she was silenced for her dissenting viewpoint and felt her First Amendment rights were denied by the University.

PROTECT PERSONAL SAFETY AND HUMAN DIGNITY

The Fourth Amendment to the U.S. Constitution establishes "The right of the people to be secure in their persons."

Biological girls and women should not be forced to share intimate spaces such as locker rooms and showers with biological boys and men. Each person has the right to protect their modesty and dignity.

There should be separate locker rooms and showers for:

- Biological Girls and Women
- Biological Boys and Men
- Transgender Girls and Women
- Transgender Boys and Men

Ms. Scanlan stated that, in September of 2021, the University of Pennsylvania Swim Team required biological female swim team members to share their locker room with a biological male identifying as female and the University "offered psychological services to attempt to reeducate us to become comfortable with the idea of undressing in front of a male." "My teammates and I were forced to undress in the presence of Lia, a six foot four tall, biological male, fully intact with male genitalia, 18 times per week."

SOURCE: Congressional testimony of Paula Scanlan, former University of Pennsylvania Swim Team member (7/27,/23) <https://judiciary.house.gov/sites/evo-subsites/repUBLICans-judiciary.house.gov/files/evo-media-documents/scanlan-testimony.pdf>

NO, IT'S NOT FAIR!

SOLUTIONS FOR SAFETY AND FAIRNESS IN GIRLS' SPORTS:

- 1- Limit girls' and women's sports to biological girls and women
- 2- Have separate category for boys' and men's sports
- 3- Establish an Open or Mixed category open to all competitors

CALL TO ACTION

Contact your Maryland Legislators
<http://www.mgaleg.maryland.gov>

And urge them to support and enact the 2024

Fairness in Girls' Sports Act



Prepared by the
Maryland Federation of Republican Women
Visit: <https://www.mfrw.org> to find a club near you.

Boys Competing in Girls' Sports

Is it Fair?



The 1972 Title IX law obligates educational institutions to provide:

- **Proportional financial assistance (i.e., scholarships)**
- **Equivalent benefits and opportunities**
- **Effective accommodation of interest and abilities**

While directed toward intercollegiate athletics, the policy is often applied to interscholastic athletic programs at the elementary and secondary levels, as well as to club and intramural programs.

While Title IX prohibits sex discrimination in recipient schools' athletic programs, this does not mean all sex-based distinctions are banned. According to Title IX regulations, schools may offer separate athletic teams for each sex where selection is based on competitive skill or the activity is a contact sport.

SOURCE: Congressional Research Service, *Title IX and Athletics: Legal Basics (2/09/23)*

Title IX does not cover "sexual identity"

In 2023, the U.S. Court of Appeals for the 11th Circuit ruled regarding a St. John's County transgender bathroom law, that the word "sex" in Title IX does not cover "sexual identity." Southern District of Florida Federal Judge Roy Allman then ruled that the Florida "Fairness in Women's Sports Act of 2021" did not violate the Equal Protection Clause as not all gender-based classifications violate the Equal Protection Clause.

SOURCE: Warner Todd Huston, *The Western Journal* by (11/10/23)

DIFFERENCES IN BODIES AND STRENGTH

Boys Exhibit Athletic Performance Advantages BEFORE puberty.

A White Paper by Gregory A. Brown, Ph.D. (U. Nebraska) reported data that, even at age 6, young males have significant advantages over females in cardiovascular endurance, muscular strength, speed/agility & power tests.

SOURCE: Gregory A. Brown, Ph.D. White Paper Concerning Male Physiological and Performance Advantages in Athletic Competition and The Effect of Testosterone Suppression on Male Athletic Advantage (12/14/21, pages 20-23).

There is an average 10-12% performance gap between elite males and elite females. The gap is smaller between elite females and non-elite males, but it's still insurmountable.

In 2017, Olympic, World, and U.S. Champion Tori Bowie's 100 meters lifetime best of 10.78 was beaten 15,000 times by men and boys.

In 2017, men and boys around the world outperformed Olympic, World, and U.S. Champion Allyson Felix's 400 meters lifetime best of 49.26 more than 15,000 times.

"The results make clear that sex determines win share. Female athletes – here defined as athletes with ovaries instead of testes and testosterone (T) levels capable of being produced by the female, non-androgenized body – are not competitive for the win against males—here defined as athletes with testes and T levels in the male range. The lowest end of the male range is three times higher than the highest end of the female range. Consistent with females' far lower T levels, the female range is also very narrow, while the male range is broad."

Data below was drawn from the International Association of Athletics Federations (IAAF) website which provides complete, worldwide results for individuals and events, including on an annual and an all-time basis. The analysis was limited to those events where a direct performance comparison could be made. Not only did hundreds and thousands of males outperform the best results of the elite females, they did so thousands and tens of thousands of times.

Event	Best Women's Result	Best Boys' Result	Best Men's Result	# of Boys Outperforming	# of Men Outperforming	Instances of Men Outperforming
100 Meters	10.71	10.15	9.69	124+	2,474	10,009
200 Meters	21.77	20.51	19.77	182	2,920	8,993
400 Meters	49.46	45.38	43.62	285	4,341	13,898
800 Meters	1:55.16	1:46.3	1:43.10	201+	3,992	12,285
1500 Meters	3:56.14	3:37.43	3:28.80	101+	3,216	8,251
3000 Meters	8:23.14	7:38.90	7:28.73	30	1,307	1,784
5000 Meters	14:18.37	12:55.58	12:55.23	15	1,243	2,140
High Jump	2.06 meters	2.25 meters	2.40 meters	28	777	2,741
Pole Vault	4.91 meters	5.31 meters	6.00 meters	10	684	2,981
Long Jump	7.13 meters	7.88 meters	8.65 meters	74	1,652	4,801
Triple Jump	14.96 meters	17.30 meters	18.11 meters	47	969	3,440

Normal post-pubescent testosterone levels (nanomoles per liter) differ substantially:
 Males — 7.7 to 29.4 nmol/L Females — 0.12 to 1.76 nmol/L

SOURCE: Duke Law School, Comparing Athletic Performances: The Best Elite Women to Boys and Men — <https://law.duke.edu/sports/sex-sport/comparative-athletic-performance/>

Women athletes are less strong and powerful than equally trained men. Muscle strength of women is typically reported in the range of 40 to 75% of men.

- ◆ Women had lower maximal strength values when compared to men at bench press (-59.2%), squat (-57.2%), deadlift (-56.3%), and mid-shin pull (-53.2%). Lower levels of power were detected in females in both the upper (-61.2%) and the lower body (-44.2%).
- ◆ Muscle thickness in male individuals was characterized by significantly higher values compared to females. Muscle fascicle length was significantly longer in males compared to females. These differences play an important role in determining the maximum contraction velocity of the muscle and the range of active force production.

SOURCE: Journal of Functional Morphology and Kinesiology, A Comparison between Male and Female Athletes in Relative Strength and Power Performances (2/09/21) <https://www.mdpi.com/2411-5142/6/1/17>



HIGH SCHOOL INJURIES

The Maryland General Assembly's 2015 report of the Task Force to Study Sports Injuries in High School Female Athletes stated that "differences between the female and male athletes can place the female at higher risk of certain injuries when competing in high school athletics."

Page 63 — Gender differences contributing to the higher risk of injury to females include anatomical, neuromuscular, hormonal, and developmental differences in comparison to their male counterparts.

Page 75 — Disorders of relative energy deficiency (e.g. female athlete triad) are disproportionately seen in adolescent girls and emerging adult women. The irregular menstrual cycles, reduced bone density, and the disordered eating observed in affected female athletes are symptoms to be recognized given the association with observed adverse health outcomes (e.g. stress fractures).

SOURCE: Maryland General Assembly, Report of the Task Force to Study Sports Injuries in High School Female Athletes (12/15) <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/021000/021772/unrestricted/20160016e.pdf>

Recent examples of concussion injuries in females by male players:

A North Carolina female high school volleyball player suffered a serious concussion and injuries to her neck and face when an opposing team male-to-female player spiked the ball. She did not return to sports in college.

In 2023, a Massachusetts high school girl experienced significant facial and dental injuries after being hit in the face on a shot from a male opponent. Kelsey Bain, a Field Hockey Captain, wrote a letter to the Massachusetts NCAA urging a separate league be established for males.

MORE INJURIES

Despite scientific evidence from many sources that clearly demonstrates physical superiority of biological males over biological females and greater susceptibility by females to certain sports injuries, the U.S. Department of Education has chosen to emphasize the emotional wellbeing of transgender students rather than the physical safety of biological female athletes.

- ◆ Discussion of sex-specific factors for sports injuries refers to biological differences. Sex differences relate to factors including hormones, anatomy, or X and Y chromosome gene expression. Gender expression is associated with societal behaviors and cultural factors.
- ◆ Teen girls are more prone than boys to some of the most common sports-related injuries, (i.e. ankle sprains, knee injuries, stress fractures.) These differences are credited, in general, to body function, hormones and bone density.
- ◆ Across all levels of play in basketball and soccer, female athletes are 2-8 times more likely to sustain injury to the anterior cruciate ligament (ACLs) than male athletes. The risk comes from many factors, including muscle imbalance in the thighs.
- ◆ Girls' quadriceps can overpower their hamstrings, which puts pressure on the knee.
- ◆ Biomechanical and anatomical risk factors for bone stress injuries (BSI) in female athletes include: reduced calf circumference, high rates of loading, increased tibial free moment, and femoral adduction.
 - ◇ Higher rates of concussions are observed in female athletes despite competition rules designed to reduce the level of contact between players. Female lacrosse is a noncontact sport; however, the relative risk of concussion in females is 64% higher than in males.
 - ◇ Females tend to have a reduced amount of neck girth and strength relative to head size and head-neck length compared to males. This may reduce the overall stability and stiffness of the head-neck segment such that it is less able to absorb externally applied forces. Decreased neck strength has been associated with an increased risk for concussion.
 - ◇ Most studies have found an increased duration of time loss for female athletes following a concussion, and that females are at an elevated risk for post-concussive syndrome compared to males.

SOURCE: National Library of Medicine, Sex Differences in Common Sports Injuries (3/14/18) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6138566/>

SOURCE: Yale New Haven Health, How Teen Girls Can Prevent Sports Injuries (6/19/23) <https://www.ynhhs.org/articles/how-teen-girls-can-prevent-sports-injuries>

Physical injuries may lead to mental health problems for girl athletes:

A *Women's Health Magazine* article by Erin Strout (November 2, 2022) focused on the 2022 suicides of five female college athletes. Their stories were similar – injury, isolation, anxiety, and depression. It also reported on a Maryland high school teacher and lacrosse coach who had suffered a sports concussion in high school that led to mental health struggles including anxiety and depression. Her injury and learning of a former soccer teammate's death at 19 by suicide caused her to change her goals for sports in college and professionally.