

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader - Revised

House Bill 47
Ways and Means

(Delegate Szeliga, *et al.*)

Education - Interscholastic and Intramural Junior Varsity and Varsity Teams -
Designation Based on Sex (Fairness in Girls' Sports Act)

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. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: State finances are not directly affected. If the bill is deemed to be in violation of federal Title IX law, federal fund revenues provided to the State related to public schools may be jeopardized.

Local Effect: If the bill is deemed to be in violation of federal Title IX law, federal fund revenues for public schools may be jeopardized. Local school systems may incur additional costs related to civil actions brought under the bill. Local school systems can update sports eligibility policies and guidelines using existing resources.

Small Business Effect: None.

Analysis

Bill Summary: “Student of the female sex” means a student whose biological sex is female; “student of the male sex” means a student whose biological sex is male.

A student who is deprived of an athletic opportunity or suffers any harm resulting from a violation of the bill’s provisions may bring a civil action against the student’s school. A student who is subject to retaliation or other adverse action by a school or an athletic association or organization resulting from reporting a violation of the bill’s provisions to (1) an employee or representative of the aforementioned entities or (2) any State or federal agency with oversight of schools in the State, may bring a civil action against the school or athletic association or organization. An individual prevailing in a civil action under the bill is entitled to recover monetary damages, reasonable attorney’s fees and costs, and any other relief as the court may determine appropriate.

A school that suffers any harm from a governmental entity, a licensing or accrediting organization, or an athletic association or organization as a result of a violation of the bill may bring a civil action against any of those entities.

If any provision of the bill or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction (1) the provision must be construed to give the provision the maximum effect permitted by law unless the provision is held to be absolutely invalid and (2) the invalidity does not affect other provisions or any other application of this bill, and the provisions of the bill are declared severable.

Current Law: State regulations under the Maryland State Department of Education govern the athletic programs for all high school students in Maryland public secondary schools, which are members of the Maryland Public Secondary Schools Athletic Association (MPSSAA). Local school systems may adopt rules governing their athletic programs that are more restrictive than those of MPSSAA. MPSSAA transgender guidance requires local school systems, on a case-by-case basis, to ensure all students are eligible to participate.

Under federal law – Title IX of the Education Amendments of 1972 – discrimination on the basis of sex in educational programs and activities is prohibited for educational institutions receiving federal funding. Every institution that receives federal financial assistance is bound by Title IX; however, an educational institution that is controlled by a religious organization is exempt from Title IX when the law’s requirements conflict with the organization’s religious tenets.

In June 2021, the U.S. Department of Education’s (USED) Office for Civil Rights released a Notice of Interpretation explaining that it will enforce Title IX’s prohibition on discrimination on the basis of sex to include (1) discrimination based on sexual orientation

and (2) discrimination based on gender identity. In July 2022, a federal U.S. District Court judge issued a preliminary injunction against enforcing Title IX based on the aforementioned policy. However, the injunction applies only in the 20 states that challenged USED's policy; the order explicitly advises that the injunction does not apply nationwide. Accordingly, states (including Maryland) that were not plaintiffs are not affected by the injunction.

Further, USED issued a [notice of proposed rulemaking](#) in April 2023 that incorporates the new policy into federal regulations. These regulations are expected to be finalized by March 2024. Notably, the proposed regulations would establish that policies violate Title IX when they categorically ban transgender students from participating on sports teams consistent with their gender identity. However, the proposed regulations would permit some flexibility in determining standards for team eligibility, if the standards are substantially related to an important educational objective (such as ensuring fairness in competition or preventing injury) and minimize harm to students whose opportunity to participate on a team consistent with their gender identity would be limited or denied.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 359 of 2023 and HB 757 of 2022.

Designated Cross File: SB 381 (Senator Carozza, *et al.*) - Education, Energy, and the Environment.

Information Source(s): Anne Arundel County Public Schools; Baltimore City Public Schools; St. Mary's County Public Schools; Maryland Commission on Civil Rights; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; U.S. Department of Education; Department of Legislative Services

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