

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 359
Ways and Means

(Delegate Szeliga, *et al.*)

Education – Interscholastic and Intramural Junior Varsity and Varsity Teams
and Sports – Designation Based on Sex (Save Women’s 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 or county board 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 action. **The bill takes effect July 1, 2023.**

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 direct or indirect harm from a governmental entity, a licensing or accrediting organization, or an athletic association or organization as a result of a violation of this section 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: The Code of Maryland Regulations governs 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, irrespective of the gender listed on a student’s record. Local education agencies facilitate individual analysis with the student and family to determine participation eligibility within the policies of the local educational agency.

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 all 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 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.

Additional Information

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

Designated Cross File: None.

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

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km/mcr

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