

**Testimony in Opposition to House Bill 359
Education – Interscholastic and Intramural Teams and Sports – Designation
Based on Biological Sex**

**House Ways and Means Committee
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The Maryland State Education Association opposes House Bill 359, which would, in practice, require certain school interscholastic and intramural athletic teams or sports to exclude some transgender students, prohibit adverse actions against a school or county board of education for maintaining separate interscholastic and intramural athletic teams and sports, and allow certain parties to bring civil action against schools, government entities, or athletic organizations based on noncompliance with provisions of this bill.

MSEA represents 75,000 educators and school employees who work in Maryland's public schools, teaching and preparing our almost 900,000 students for the careers and jobs of the future. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3-million-member National Education Association (NEA).

This bill would restrict students' eligibility to participate on certain school athletics teams based on biological sex. This would bar many transgender and gender non-conforming students, whose gender identity does not align with their sex, from participating on the athletic teams that align with their gender identity, and thus would effectively exclude some students from school athletics altogether. Policies that function to exclude transgender students from school sports are plainly discriminatory and harmful to students. Transgender, non-binary, and gender non-conforming students are important members of our school communities and, like all students, deserve to be embraced, included, and treated with dignity.

It is well-documented that transgender and gender non-conforming youth face increased rates of depression and suicidal ideation compared to their cisgender peers,¹ and that they are more likely to experience harassment and social alienation at school.² The American Academy of Pediatrics firmly opposes legislation that would prevent transgender students' participation on athletic teams that align with their gender identity, calling such bills "dangerous" and advising that "playing on sports teams helps youth develop self-esteem, correlates positively with overall mental health, and appears to have a protective effect against suicide."³ We echo their condemnation of such laws and policies. School policies play an undeniable role in students' wellbeing, and it is incumbent upon educators to develop and uphold research-based policies that affirm the dignity of all students.⁴

Further, barring transgender and gender non-conforming students from the school athletic teams that align with their gender identity is degrees more exclusionary than the policies of the premiere athletic associations to which many young athletes aspire. The National Collegiate Athletic Association (NCAA) requires that "transgender student-athletes...document sport-specific testosterone levels beginning four weeks before their sport's championship selections,"⁵ and 2021 regional guidance from the International Olympic Committee (IOC) indicates that they are "moving away from a focus on individual testosterone levels in transgender

¹ American Academy of Pediatrics (2018). *Mental Health of Transgender and Gender Nonconforming Youth Compared With Their Peers*. Retrieved January 2023, from <https://publications.aap.org/pediatrics/article/141/5/e20173845/37843/Mental-Health-of-Transgender-and-Gender>

² Morbidity and Mortality Weekly (2019). *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts*. Retrieved January 2023, from <https://pubmed.ncbi.nlm.nih.gov/30677012/>

³ American Academy of Pediatrics (2021). *American Academy of Pediatrics Speaks Out Against Bills Harming Transgender Youth*. Retrieved January 2023, from <https://www.aap.org/en/news-room/news-releases/aap/2021/american-academy-of-pediatrics-speaks-out-against-bills-harming-transgender-youth/>

⁴ National Association of School Psychologists (2016). *Gender Inclusive Schools: Policy, Law, and Practice*. Retrieved on January 2023, from <https://www.nasponline.org/resources-and-publications/resources-and-podcasts/diversity-and-social-justice/lgbtq-youth/gender-inclusive-schools-faqs/gender-inclusive-schools-policy-law-and-practice>

⁵ NCAA (2022). *Board of Governors updates transgender participation policy*. Retrieved on January 2023, from <https://www.ncaa.org/news/2022/1/19/media-center-board-of-governors-updates-transgender-participation-policy.aspx>

and intersex athletes as a way of determining those athletes' eligibility for competition.”⁶ School sports teams aim to foster students' personal, social, and athletic achievement and development, and should thus be more, not less, open than professional athletic organizations.

It is also important to note that, as other state legislatures have established, enforcing the standard of biological sex would likely require subjecting youth to invasive mandates.⁷ The authors of this bill state that it intends to advance sex equality,⁸ but based on the Supreme Court decision in *Bostock v. Clayton County*, which asserted that anti-transgender discrimination is sex discrimination, it would do the opposite.⁹

Like all Maryland students, transgender and gender non-conforming students deserve dignity, opportunity, and access at school, including in athletics. **We urge the committee to issue an Unfavorable Report on House Bill 359.**

⁶ The Washington Post (2021). *IOC no longer will determine transgender athlete eligibility by testosterone levels*. Retrieved January 2023, from <https://www.washingtonpost.com/sports/olympics/2021/11/16/ioc-transgender-athlete-policy-changes/>

⁷ Florida House of Representatives (2021). *Bill Text CS/HB 1475*. Retrieved January 2023, from <https://www.flsenate.gov/Session/Bill/2021/1475/BillText/c1/PDF>

⁸ Maryland General Assembly (2023). *Bill Text HB 359*. Retrieved January 2023, from https://mgaleg.maryland.gov/2023rs/bills_noln/hb/fhb0359.pdf

⁹ National Archives Federal Register (2021). *Enforcement of Title IX of the Education Amendments of 1972 With Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*. Retrieved January 2023, from <https://www.federalregister.gov/documents/2021/06/22/2021-13058/enforcement-of-title-ix-of-the-education-amendments-of-1972-with-respect-to-discrimination-based-on>