



Department of Education Affirms Title IX Requires Inclusion of Transgender Students in School Sports

What to know about the federal Department of Education's [proposed regulation](#), issued April 6, 2023, regarding the requirement for inclusion of transgender students in school sports under Title IX.

Title IX is the federal law prohibiting discrimination on the basis of sex in education. It applies to all public schools and all educational institutions that receive federal funding.

In June of 2022, the Department of Education [issued a rule](#) making clear that Title IX protects transgender and LGBTQ students.

The new rule issued on April 6 clarifies that Title IX prohibits discrimination against transgender students in school sports.

The rule prohibits any policy that categorically bans transgender girls or women from playing on girls or women's sports teams or that prohibits transgender boys or men from playing on boys or men's sports teams.

Under the new rule, the laws adopted in at least 20 states (and proposed in others) barring transgender girls from playing on girls' teams would violate Title IX and therefore be invalid.

This rule would effectively prohibit any policies restricting the ability of transgender students to participate in school sports in elementary and middle school and would permit any such policies in high school only in very rare circumstances and only at highly competitive levels.

The rule would also prohibit categorical bans of transgender athletes at any level, including colleges and universities. This means that colleges and universities cannot enforce bans adopted by sport governing bodies.

The rule presumes that any restriction on transgender students is invalid and puts a high burden on the government or school to justify any exception based on specific, demonstrable, and important educational objectives.

The rule would not allow the following justifications to be used as reasons to exclude transgender students: anti-transgender bias, stereotypes, or unsupported assertions that transgender women and girls have a competitive advantage over non-transgender women and girls.

In addition, any criteria for exclusion must be specific to each sport, level of competition, and grade or educational level. This means that schools cannot adopt categorical rules that would apply to all sports and all ages based, for example, on ID markers, physical exams, or hormone levels.

The rule also requires schools to assess the harm that any restriction would have on transgender students, to adopt the least harmful alternative possible, and to take steps to mitigate any negative impact on students. For example, if a school requires a student to provide documentation of their gender identity, it would be required to consider any difficulty in obtaining documentation for that student, or the risk related to disclosure of confidential or private information.

The bottom line is: this rule affirms the importance of fair and equal treatment for transgender student athletes.

The rule will be finalized following a 30-day public comment period.