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Bill Analysis

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Primary Sponsors: Reps. Powell and Stoltzfus

Mitchell Smith, Research Analyst

SUMMARY

- Requires each school that participates in athletic competitions or events administered by an organization that regulates interscholastic athletic conferences or events to designate separate single-sex athletic teams based on the sex of the participants.
- Requires each state institution of higher education or private, nonprofit college or university that is a member of the NCAA, NAIA, or NJCAA to designate separate single-sex athletic teams and sports based on the sex of the participants.
- Authorizes an athletic participant to file a civil action if the participant is deprived of an athletic opportunity or suffers harm as a result of a violation of the bill's single-sex participation requirements or if the participant is subject to retaliation for reporting such a violation.
- Prohibits an state agency or political subdivision, accrediting organization, or athletic association that operates or has business activities in Ohio from taking adverse actions against a school, school district, or college or university that complies with the bill's single-sex participation requirements.
- Entitles the bill the "Save Women's Sports Act."

DETAILED ANALYSIS

Interscholastic and intercollegiate single-sex athletic teams

The bill requires each school that participates in athletic competitions or events administered by an organization that regulates interscholastic athletic conferences or events to designate athletic teams based on the sex of participants. Each school must have one single-sex team for participants of the female sex within female sports divisions, one for participants of

the male sex within male sports divisions, and if applicable, co-ed teams for participants of both sexes within co-ed sports divisions.¹

The bill also requires each state institution of higher education or private, nonprofit college or university that is a member of the National Collegiate Athletics Association (NCAA), the National Association of Intercollegiate Athletics (NAIA), or the National Junior College Athletic Association (NJCAA) to designate intercollegiate athletic teams and sports based on the sex of the participants. Each state institution and private college must have one single-sex team for participants of the female sex, one for participants of the male sex, and if applicable, co-ed teams for participants of both sexes.²

Interscholastic and intercollegiate male participants are prohibited from participating on athletic teams or in athletic competitions designated only for female participants.³

Verification of a participant's sex

If an athletic participant's sex is disputed, the bill requires the participant's sex to be established through a signed physician's statement indicating the participant's sex based upon only (1) the participant's internal and external reproductive anatomy, (2) the participant's normal endogenously produced levels of testosterone, and (3) an analysis of the participant's genetic makeup.⁴

Civil action authorized

An athletic participant may file a civil action for injunctive relief, damages, and any other relief available, if the participant is deprived of an athletic opportunity or suffers a direct or indirect harm as a result of a violation of the bill's single-sex participation requirements. Similarly, a participant may file a civil action for retaliation or other adverse action for reporting such a violation. A suit may be filed against a school, school district, interscholastic conference, organization that regulates interscholastic athletics or, college or university.⁵

Furthermore, state agencies and political subdivisions, accrediting organizations, and athletic associations that operate or have business activities in Ohio are prohibited from processing a complaint, beginning an investigation, or taking any other adverse action against a school, school district, or college or university for complying with the bill's single-sex participation requirements.⁶ Therefore, a school, school district, or college or university that

¹ R.C. 3313.5317(A).

² R.C. 3345.561(B).

³ R.C. 3313.5317(B) and 3345.561(C).

⁴ R.C. 3313.5317(C) and 3345.561(D).

⁵ R.C. 3313.5317(E) and 3345.561(F).

⁶ R.C. 3313.5317(D) and 3345.561(E).

suffers any direct or indirect harm as a result of a violation of this prohibition also may file a civil action against the entity that takes the retaliatory or other adverse action.⁷

The bill specifies that plaintiffs who prevail on such claims are entitled to monetary damages, including for any psychological, emotional, or physical harm suffered, reasonable attorney's fees and costs, and any other appropriate relief.⁸

Statute of limitations

The bill requires that any civil action brought as a result of a violation of the bill's single-sex participation requirements must be initiated within two years after the date on which the violation occurs.⁹

Background

OHSAA – generally

Ohio law authorizes school districts to implement athletic programs and addresses some aspects of interscholastic athletics, such as the participation of nonenrolled students in district athletic programs and protocols and safeguards for sports-related head injuries. Nevertheless, interscholastic athletics are regulated largely by schools and school districts and the private Ohio High School Athletics Association (OHSAA). The OHSAA regulates and administers interscholastic athletics through its constitution and bylaws, which by their own terms must be in compliance with Ohio law.

For more on the regulation of interscholastic athletics in Ohio, see the LSC Members Brief on Interscholastic Athletics under “General Reference” and then “Publications” at <https://www.lsc.ohio.gov/>.¹⁰

OHSAA transgender athlete policy

In December 2018, the OHSAA released a policy statement regarding transgender student-athlete participation in interscholastic athletics, establishing the process by which transgender students may participate in events or competition regulated by OHSAA.

First, a transgender student or the parent of a transgender student must contact the student's school administrator or athletic director indicating that the student has a consistent gender identity different than the gender assigned at birth, listed on the student's school registration records or as listed on the state birth record, and that the student desires to participate in activities in a manner consistent with the student's gender identity.

⁷ R.C. 3313.5317(E) and 3345.561(F).

⁸ R.C. 3313.5317(F) and 3345.561(G).

⁹ R.C. 3313.5317(F) and 3345.561(G).

¹⁰ <https://www.lsc.ohio.gov/documents/reference/current/membersonlybriefs/132interscholasticathletics.pdf>.

Upon receipt of the notice from the student and/or the parent, the administrator or director must notify the OHSAA Executive Director's Office in writing of the student's interest in participating in interscholastic athletics. The Executive Director's Office then must take one of the following actions:

1. A transgender female, whose sex at birth was male but who self-identifies and lives as a female, who is taking medically prescribed hormone treatment related to gender transition may participate on a boys' team at any time. Before a transgender female can participate in a girls' sport or on a girls' team, however, the student must either (a) have completed a minimum of one year of hormone treatment related to gender transition or (b) demonstrate to the Executive Director's Office with sound medical evidence that the student does not possess physical or physiological advantages over genetic females of the same age group.
2. A transgender male, whose sex at birth was female but who self-identifies and lives as a female, who has not yet begun medically prescribed testosterone treatment for purposes of gender transition may participate on a boys' team. Before a transgender male can participate in a boys' sport or on a boys' team, however, the student must submit medical evidence to the Executive Director's Office that (a) the muscle mass developed as a result of testosterone treatment does not exceed the muscle mass that is typical of an adolescent genetic male, (b) the student has not started any hormone treatment (or that the treatment does not cause hormone levels to exceed normal levels), and (c) the student's hormone levels are monitored by a licensed physician every three-to-six months.

If a transgender student-athlete is undergoing hormone treatment for gender transition, the treatment must be monitored by a physician, and the Executive Director's Office must receive regular reports about the student-athlete's eligibility according to OHSAA guidelines.

Should any questions arise about whether a transgender student-athlete's request to participate in a sports activity consistent with the student-athlete's gender identity is "bona fide," the student-athlete may seek review of eligibility for participation through an appeals procedure. The first level of review is before the Gender Identity Eligibility Committee. The student-athlete must provide the Committee with current transcripts and school registration information, documentation of the student's consistent gender identification, and any other pertinent documentation or information. The Committee must apply the same standard of review as utilized in all other eligibility appeals and must notify the parties in writing within 48 hours after reaching a decision.¹¹

Intercollegiate athletics transgender policies

In 2011, the NCAA approved a policy for athletic participation by transgender student-athletes. The policy suggests a collegiate participation policy based on medical treatments

¹¹ <https://www.ohsaa.org/Portals/0/Eligibility/OtherEligibilityDocs/TransgenderPolicy.pdf>.

involving the hormone testosterone and recommends participation of transgender student-athletes undergoing hormonal treatment for gender transition as follows:

1. A transgender male student-athlete who has received a medical exception for treatment with testosterone for diagnosed Gender Identity Disorder or gender dysphoria and/or transsexualism, for purposes of NCAA competition, may compete on a men's team, but is no longer eligible to compete on a women's team without changing that team's status to a mixed, or co-ed, team.
2. A transgender female student-athlete being treated with testosterone suppression medication for Gender Identity Disorder or gender dysphoria and/or transsexualism, for the purposes of NCAA competition, may continue to compete on a men's team but may not compete on a women's team without changing it to a mixed team until completing one calendar year of testosterone suppression treatment.

Any transgender student-athlete who is not taking hormone treatment related to gender transition may participate in sex-separated sports activities in accordance with the student-athlete's assigned birth gender.

In order to avoid challenges to the transgender student-athlete's participation during a sport season, the NCAA recommends that the student-athlete who has completed, plans to initiate, or is in the process of taking hormones as part of a gender transition to submit the request to participate on a sports team in writing to the school athletic director upon matriculation or when the decision to undergo hormonal treatment is made. Requests should include a letter from the student-athlete's physician documenting the intention to transition or the student-athlete's transition status if the process has already been initiated. The letter should identify the prescribed hormonal treatment for the gender transition and documentation of the student-athlete's testosterone, if relevant.

The NCAA also recommends the following for colleges and universities:

1. The school's athletics director should meet with transgender student-athletes to review eligibility requirements and procedures for approval of transgender participation;
2. If hormone treatment is involved in the student-athlete's transition, the director should notify the NCAA of the request to participate with a medical exception request;
3. To assist in educating and in developing institutional policy and practice, a Transgender Participation Committee should be established by the school. Members of the committee should represent a cross-section of institutional staff with student well-being interests, and include representation from specified departments.
4. All discussion among involved parties and required written supporting documentation should be kept confidential, unless the student-athlete makes a specific request

otherwise. All information about an individual student’s transgender identity and medical information must be maintained confidentially.¹²

HISTORY

Action	Date
Introduced	02-26-20

H0527-I-133/ts

¹² https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf.