Title IX And Rights Of Transgender Individuals: A Great Controversy

Transgender individuals and their rights are a hot topic in current society. A divisive matter arising from the transgendered, is how these individuals should participate in athletics. Should it be the gender they chose, or as their natural-born sex? There are numerous stakeholders involved, the athletes competing as their natural-born gender, transgender athletes, administrators and policy-makers. Currently, there are no national policies, this leads to states and even local governments to implement regulations. Inconsistencies, inequity and an uneven playing field are affecting athletes hoping to obtain both personal best performances and college scholarships. The issues of equal rights, fairness and competitive advantage are a few hot button topics. Transgender athletes should not participate and compete as their chosen gender. It is a violation of Title IX policy as transgender athletes have inate advantages. Clear national policy demands to be defined and implemented going forward.

The most vocal group currenty, are the student athletes competing as their natural-born gender (cisgender - Oxford Dictionary). These individuals do not feel it is fair for transgender athletes to compete using a chosen identity, contending transgender athletes have biological advantages in competition. Natural-born males are faster physically and conditioned differently than females, and natural-born females have longer endurance than males. Female athletes contend these are violations of equal rights policies.

Three Connecticut high school track athletes have filed a federal lawsuit in regard to this issue. Legal counsel expresses the frustration, “Girls deserve to compete on a level playing field. Women fought long and hard to earn the equal athletic opportunities that Title IX provides. Allowing boys to compete in girls' sports reverses nearly 50 years of advances for women under this law'. (Press, High School) Title IX was enacted in 1972 and was created to end imbalances between men and women in athletics by creating equal access. Title IX established set rules for educational facilities that are federally funded. They cannot discriminate against students or employees based on sex. Title IX dictates those schools must provide equal treatment of the sexes in all parts of education, including athletics. The lawsuit contends Title IX establishes competition based on natural-born sex (cisgender). Their viewpoint firmly believes Title IX and its provisions forbid discrimination only on the basis of natural-born sexual identity. They feel natural-born males who compete against natural-born females are violating the rules of Title IX. They are adamant Title IX was created solely for biological females, not transgender.

This lawsuit argues allowing transgender males to compete as females is a disadvantage to natural-born females in competitions. If a male athlete who self-identifies as a girl joins a female athletic team, the lawsuit argues those self-identifying athletes have biological advantages.

The Connecticut athletes feel they have lost out on state records and even college scholarships with transgender athletes in competitions. Two biological males finished first and second in the 55-meter dash at the Connecticut high school girls’ indoor track championships. A parent of one of the girls related, “A female competitor potentially loses the opportunity to compete in front of college coaches and the ability to gain scholarship opportunities is incredibly detrimental.” (Press, High School) Had they not completed, the girls would have taken the titles.

“The complaint from Connecticut says transgender girls have been consistently winning track and field events and the policy violates federal protections for female athletes.” (Press, High School) The girls also feel demoralized because they are not in a fair competition. They feel they are not allowed a fair opportunity to have their best performances, as it is expected the transgender athlete will win.

Transgender athletes view this issue as inequality. These individuals view their right to compete cannot be taken away. Their perception states the same rights to perform as natural-born athletes. Transgender individuals contend rights cannot be denied for choosing an alternate gender.

Transgender athletes assert Title IX protects them, they do not feel it solely protects natural-born females. The LGBTQ (lesbian, gay, bisexual, transgender, questioning) students believe they have the same rights as natural-born females to be free from inequities in all activities, including athletics. The LGBTQ community agrees, “Discrimination based on a person’s gender identity, a person’s transgender status, or a person’s nonconformity to sex stereotypes constitutes discrimination based on sex.” (Transgender Female)

The transgender community also cite other concerns which arise from non being allowed to participate. The LGBTQ community believes denying these students the right to compete as their chosen sex, can lead to self-harm, anxiety, and other health crises. “The most effective way to prevent them would be, from my perspective, through policy changes. Inclusive policies are necessary to advance equity.' (Transgender Female) This community wants administrators to establish rules and an operational plan to protect and aid these students in belonging and participating in all school activities, so health and wellness needs are met.

In looking at Title IX and its history, it was intended to protect natural born females only. Its basis is biological sex at birth and not altering that biology. The Justice Department recently filed a brief on this matter. “In Soule et al. v. Connecticut Association of Schools, Inc., et al., No. 3:20-cv-00201-RNC” (D. Conn.), the Department of Justice stated Title IX’s prohibition of sex discrimination does not apply to discrimination based on transgender status. In fact, the Justice Department believes “allowing transgender athletes to participate might violate Title IX.” (Justice Department) The order believes courts, “should give the word its “ordinary, contemporary, common meaning” when Congress enacted Title IX in 1972”. When enacted, sex was defined solely as simply the sex a person is born with.

The lawsuit and the Department of Justice views do have support. A July 2019 poll surveyed 2,200 U.S. adults on the issue of transgender girls. Their findings include, “Fifty-seven percent of U.S. adults said they agreed that transgender female athletes have a competitive advantage over cisgender female athletes, while 20 percent disagreed.” (Transgender Female) The study also showed the public believes males are naturally stronger and faster than females.

Republican lawmakers in three states have proposed legislation to prohibit athletes competing by chosen gender. These bills do not allow an athlete to compete in sports bases on transgender choice, all have been introduced ahead of the legislative session for 2020. Their legislation takes away state and local funds from schools allowing participation based on any criteria but sex at the time of birth.

Earlier this month, in Tennessee, State Rep. Bruce Griffey (R-Paris) introduced a bill

(Tennessee House Bill HB1572) requiring schools which receive public funding ensure students only participate based on the student's biological sex as listed on an athlete's "original" birth certificate. This bill, which is in the Tennessee State Legislature, would enact a law to impose career ending sanctions on school administrators who let transgender student athletes participate as a chosen gender. Their ruling applies to both male and female athletics. Idaho Governor Brad Little signed the 'Fairness in Women's Sports Act', House Bill 500 in March 2020. This legislation, the first in the United States, prohibits transgender athletes from competing in any way except as stated on their birth certificate.

There is a large emphasis on unfairness, especially males who change to female. It is shown they have definite advantages. Dr. Greg Bloche, "People who are physiologically male at birth have myriad advantages on the playing field; differences in muscle mass, skeletal structures, and hormonal biology persist after medical and surgical gender transition." (Bloche) Even with hormone replacement the male testosterone is at a "higher level in transgender male to female athletes". (Department) A Journal of Medical Ethics study stated healthy transgender male to female subjects "did not lose significant muscle mass (or power)". (Knox) They are not female, even with hormones and inhibiting pharmaceuticals. A Journal of Medicine study states, "Science demonstrates that high testosterone and other male physiology provides a performance advantage in sport, suggesting that trans-women retain some of that advantage." (Knox) The science strengthens the arguments against transgender athletes competing in their chosen gender. "A boy who was born as a boy, but self-identifies as a girl has an advantage to girls who were born as girls." (Tony) Natural attributes cannot be ignored.

The Journal of Medicine study revealed transgender males maintain their musculature through training. It indicates muscle memory helps the muscle retention. The study concluded opposite sex hormones given after the onset of puberty didn't alter effects of testosterone. "Essentially, this study concludes that men who "transition" by taking testosterone suppressant can rejuvenate whatever muscle mass, strength, and power they may lose initially through proper training". (Knox) It reinforces it is improbable to level the playing field between females and transgender males, the transgender male will biologically have a competitive advantage that cannot be significantly altered. There are no regulations on how low the testosterone level has to be in a male who transgenders to female, causing inequity.

Currently, the rules and regulations for transgender athletes are not aligned and take multiple approaches. Eight states have policies dictating the student athlete needs to play on a male or female sports team based on the sex on their birth certificate. Three other states, Missouri, Georgia, and Washington State, are all considering similar legislation. Two states make exceptions based on how far along in the process of transgenderism an athlete is, and others decide on a case by case basis. Three states allow the athlete to choose the sex they want to compete as in athletics, while many ignore it and have no policies. A few states allow each school district to make its own regulations.

The transgender debate has negative consequences for cisgender athletes even before competition begins. Transgender athletes may take a place on a team from a cisgender athlete. This can stem from competition or schools that may feel forced to take the transgender athletes side to avoid a perception of discriminatory policy.

National regulation will eliminate the inconsistent policies and allow for fair athletic competition. Currently, females competing against males who transgender to females, do not have the

opportunity to obtain important personal bests and are losing state titles. These are vital for those females hoping to receive athletic scholarships. They are competing against females in places where transgender athletes cannot participate, those females without that competition can appear as stronger athletes. Scholarships are easily influenced by a place on the podium and achieves victory. Federal regulation will also protect the premise of Title IX as developed. National policy will keep the very definition of gender as a natural-born male and female, this should not be redefined or changed.

Although it may appear discriminatory, policy outlining participation and enforced guidelines are a necessity. This allows Title IX to function as enacted and ensures all athletes compete fairly. Transgender athletes can compete as their natural-born gender, allowing fair opportunity. The surge in recent bills and laws shows the desire to accomplish this on a federal level. Without a national policy, there will be continued inequity, unfair competition and potential loss of titles and scholarships for some athletes.