

## **TRANSGENDER STUDENTS AND SPORTS**

### **The Connecticut Experience**

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Connecticut has been in the forefront of protecting people in their right to gender identity and expression. Consistent with that public policy, as reflected in Connecticut statutes, the Connecticut Interscholastic Athletics Conference adopted an eligibility rule that provides that the CIAC “shall defer to the determination of the student and his or her local school regarding gender identification” for purposes of eligibility to participate in interscholastic athletics. Based on that rule, Connecticut schools have permitted students to participate on teams that differ from the gender they were assigned at birth, and that has resulted in ongoing litigation. The Department of Education is now supportive of the CIAC position, but the case continues, as described below.

#### I. The CIAC Eligibility Rule.

In 2017, the CIAC adopted an eligibility rule that affirms the right of students to participate in interscholastic sports based on their gender identity, providing in relevant part:

The CIAC has concluded that it would be fundamentally unjust and contrary to applicable state and federal law to preclude a student from participation on a gender specific sports team that is consistent with the public gender identity of that student for all other purposes. Therefore, for purposes of sports participation, the CIAC shall defer to the determination of the student and his or her local school regarding gender identification. In this regard, the school district shall determine a student’s eligibility to participate in a CIAC gender specific sports team based on the gender identification of that student in current school records and daily life activities in the school and community at the time that sports eligibility is determined for a particular season.

The complete rule is available at  
<http://www.lawadmin.com/sg/gendocs/PrincipalTransgenderDiscussionQuickReferenceGuide.pdf>.

## II. State Law Protections

The CIAC rule is consistent with (and indeed required by) statutory protections in Connecticut. In 2011, the General Assembly passed Public Act 11-55, An Act Concerning Discrimination, which comprehensively protects the rights of individuals in their gender identity and expression (available at <http://www.lawadmin.com/sg/gendocs/2011PA-00055-R00HB-06599-PA.pdf>). Included in the law are protections for students in the public schools:

(a) The public schools shall be open to all children five years of age and over who reach age five on or before the first day of January of any school year, and each such child shall have, and shall be so advised by the appropriate school authorities, an equal opportunity to participate in the activities, programs and courses of study offered in such public schools, at such time as the child becomes eligible to participate in such activities, programs and courses of study, *without discrimination on account of race, color, sex, gender identity or expression, religion, national origin or sexual orientation . . . .*

Connecticut General Statutes § 10-15c (emphasis added).

## III. *Soule et al. v. Connecticut Association of Schools d/b/a Connecticut Interscholastic Athletic Conference*, Case No. 3:20-CV-00201-RNC

By complaint dated August 11, 2020, four female athletes sued CIAC and five local school districts, alleging that their rights under Title IX were violated by the local school districts that permitted students to participate in interscholastic athletics based on their gender identity in accordance with the CIAC policy. In their lengthy complaint (available here: <http://www.lawadmin.com/sg/gendocs/SouleComplaint.pdf>), plaintiffs allege that permitting students whose gender at birth was male to compete with cisgender females denies such cisgender females an equal opportunity to compete and to win athletic competitions.

Fundamental to the plaintiffs' complaint is the construct that students whose gender assigned at birth was male remain "males" irrespective of their gender identity. Plaintiffs claim that:

The cumulative effect of the CIAC Policy is that *all* girls in Connecticut do not receive equal athletic opportunities. . . . [T]he quality of competitive opportunities provided to *all* girls does not equally reflect the quality of competitive opportunities provided to boys, because -- in contrast to boys -- girls are forced to face a level of competition that does not equally reflect and accommodate girls' different physiological characteristics and abilities.

Defendants have moved to dismiss the complaint, on a number of grounds. *See* Motion to Dismiss dated August 21, 2020 (available at <http://www.lawadmin.com/sg/gendocs/CIACMotiontoDismiss.pdf>). The defendants contest the basic premise of the Complaint - that persons whose gender identity is female are not “girls” for purposes of Title IX. Indeed, defendants assert that refusing to permit students who identify as female from competing on girls teams would violate Title IX.

In support of their claims, defendants cite a number of sources, including the Title IX regulations, which do not prohibit recipients from permitting transgender students from participating on the separate sex teams with which gender they identify. Moreover, defendants rely on the recent United States Supreme Court decision, *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), which held that the Title VII prohibition against discrimination on the basis of sex applies to discrimination on the basis of sexual orientation or transgender status. In addition, defendants note that the claimed injuries are speculative and, further, that two of the four plaintiffs have graduated from high school, making their claims moot.

These same plaintiffs had previously filed a complaint with the Office of Civil Rights of the United States Department of Education, and that complaint is still pending. During the Trump Administration, OCR pushed hard against the defendants, proposing that they resolve the matter through a settlement agreement whereby defendants would be required to disavow the CIAC policy permitting transgender students to participate in sports in accordance with their gender identity. By contrast, the Biden Administration has expressed support for the rights of transgender persons, including students, first by Executive Order dated January 20, 2021 (available here: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/>), and then by letter from the Office of Civil Rights dated April 6, 2021 announcing a “comprehensive review” of the Department’s regulations and guidance on Title IX, especially as it relates to discrimination against students on the basis of sexual orientation or gender identity (available at <http://www.lawadmin.com/sg/gendocs/04062112618.pdf>).

Defendants’ Motion to Dismiss was argued in Connecticut District Court on February 26, 2021, and the parties are awaiting a ruling (which could come before the date of the Legal Update). Defendants are optimistic that the district court will dismiss the complaint, but realistic in expecting that the litigation may continue.