

Transgender Students in Athletics

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Definitions

- **Gender identity:** How people think of themselves and which gender they feel they are. Gender identity is an emotional, rather than a physical, characteristic.
- **Gender expression:** How people demonstrate their gender to the outside world through dress, speech, behavior, etc.

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Definitions

- **Transgender:** An umbrella term for people whose gender identity is different from what is typically associated with the sex they were assigned at birth.
- **Transgender female:** A person whose assigned sex at birth is male but identifies and lives as a female.
- **Transgender male:** A person whose assigned sex at birth is female but identifies and as lives as a male.

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Definitions

- **Transition:** The process by which a person begins to live as the gender with which they identify, rather than the gender they were assigned at birth. The exact steps involved in transition vary from person to person.

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Definitions

- **Gender Non-Conforming:** People whose gender expression is different from conventional expectations of masculinity and femininity. Not all gender non-conforming people identify as transgender, nor are all transgender people gender non-conforming.
- **Gender Fluid:** A gender identity that varies over time. A gender fluid person may at any time identify as male, female, or another non-binary identity, or some combination of identities.

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Definitions

- **Non-binary:** Refers to any gender that is not exclusively male or female.
- **Gender-neutral:** This is a person who does not identify as either female or male.
- **Cisgender:** People who are not transgender. In other words, their gender identity is the same as the sex they were assigned at birth.

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Federal Law—Title IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

- On-going legal debate across the country about whether “sex” means biological sex and/or gender identity.

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Oregon Law: Oregon Equality Act

- The Oregon Equality Act of 2007 amended many statutes to prohibit discrimination on the basis of sexual orientation, including in public education.
- ORS 174.100: “‘Sexual orientation’ means an individual’s actual or perceived heterosexuality, homosexuality, bisexuality or **gender identity, regardless of whether the individual’s gender identity, appearance, expression or behavior differs from that traditionally associated with the individual’s sex at birth.**”

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Oregon Law: Prohibition Against Discrimination in Education

- ORS 659.850 provides:
 - “(1) As used in this section, “discrimination” means **any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation,** either of which is based on race, color, religion, sex, sexual orientation, national origin, marital status, age or disability.
 - (2) **A person may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.**”

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ODE: Guidance on Transgender Students

- In May 2016, ODE issued “Guidance to School Districts: Creating a Safe and Supportive School Environment for Transgender Students”
 - <http://www.ode.state.or.us/groups/supportstaff/hklb/schoolnurses/transgenderstudentguidance.pdf>
- Guidance is in effect for Oregon school districts, but does not have the force of law.
- Guidance discusses major policy issues for transgender and gender diverse students.

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ODE Guidance re Sports and PE

- “Physical education is a required part of the curriculum and an important part of many students’ lives. Transgender students are to be provided the same opportunities to participate in physical education as are all other students.”

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ODE Guidance re Sports and PE

- “Generally, students should be permitted to participate in physical education and intramural sports in accordance with the student’s gender identity that is consistently asserted at school. Generally, transgender students should be permitted to also participate in interschool activities.”

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OSAA: Gender Identity Participation

- “The OSAA endeavors to allow transgender students to participate on the athletic or activity team of their consistently asserted gender identity while providing a fair, safe and consistent environment for all students. The OSAA also endeavors to provide fair competition and eliminate competitive advantages and disadvantages in each sport and activity.”

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OSAA -- Definitions

- “Transgender” refers to an individual whose gender identity does not match his or her assigned birth gender.
- “Gender Identity” refers to one’s deeply felt inner concept of self as male or female.
- “Transition” refers to the process by which a transgender person lives consistently with his or her gender identity.

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Female to Male Transgender Student

- “A female-to-male transgender student who is not taking hormone treatment related to gender transition may participate on a boys’ team or a girls’ team.”
- “A female-to-male transgender student who is taking medically-prescribed testosterone, or other potentially performance-enhancing drugs, for the purposes of gender transition may participate only on a boys’ team, unless the Executive Director and OSAA Chief Medical Advisor determine that the treatment will not create an unfair, unsafe or uncompetitive environment for students in that sport or activity.”

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Male to Female Transgender Student

- “A male-to-female transgender student who is not taking hormone treatment related to gender transition may participate only on a boys’ team, unless the Executive Director and OSAA Chief Medical Advisor determine that treatment is unnecessary in order to create a fair, safe, and competitive environment for students in that sport or activity.”
- “A male-to-female transgender student who is taking medically-prescribed hormone treatment for the purposes of gender transition may participate on a boys’ team at any time, but must complete one year of hormone treatment related to gender transition before competing on a girls’ team, unless the Executive Director and OSAA Chief Medical Advisor determine that the treatment is unnecessary in order to create a fair, safe, and competitive environment for students in that sport or activity.”

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Summary – Transgender boys

- Transgender boy + no hormone treatment = play on boys’ or girls’ team
- Transgender boy + hormone or drug treatment for gender transition = only on boy’s team unless individual OSAA determination (circumstances “will not create an unfair, unsafe, or uncompetitive environment for students in that sport.”)

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Summary – Transgender girls

- Transgender girl + no hormone treatment = only on boy’s team unless individual OSAA determination
- Transgender girl + hormone treatment = may participate on boys’ team at any time, but may only participate on girls’ team after one year of treatment, unless individual OSAA determination

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Consistent participation

“Once the transgender student selects the gender of the team on which the student wishes to participate, the student thereafter must consistently participate on teams of that gender in all sports and activities for the duration of the student’s high school career.”

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Process

- A request by a member school for a transgender girl who is not taking hormone treatment to participate on a boy’s team must be submitted to the OSAA.
- A request for any student who has or plans to start any treatment related to a gender transition must be submitted to the OSAA. Must include medical documentation if treatment is already underway.

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Process

- The OSAA Executive Director and Medical Advisor may consult with the student’s doctor or other medical or psychological professionals, while being mindful of confidentiality.
- The OSAA Executive Director and Medical Advisor will make a determination whether the student is eligible to compete under the above criteria. A decision may be appealed to the OSAA Executive Board.

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OSAA Confidentiality

- “All discussions among involved parties and required written supporting documentation shall be kept confidential, and the proceedings will be sealed, unless the student and family authorize release.”

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OSAA – Bullying and Harassment

- “The OSAA recognizes the value of activities and sports for all students and the potential for inclusion to reduce harassment, bullying and barriers faced by certain students.”

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OSAA – Stay Tuned

- “The OSAA recognizes that this policy will need to be reviewed on a regular basis based on improved medical understanding of gender identity and expression, evolving law, and societal norms.”
- OSAA 2017-18 Handbook:
<http://www.osaa.org/docs/handbooks/osaahandbook.pdf>

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Related Issue: Restrooms/Locker Rooms

- ODE Guidance:
 - Oregon law likely “provides protections for transgender students including the use of a bathroom consistent with the student’s gender identity.”
 - “It is recommended that alternative accommodations, such as a single ‘unisex’ bathroom or private changing space, should be made available to students who request them, but should not be forced upon students, or presented as the only option.”
- Significant cases in progress across the country and in Oregon regarding this issue.

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Related Issue: Restrooms/Locker Rooms

- Work cooperatively and proactively with student and family.
- Inform community in a positive manner, while protecting student privacy. Distinguish real problems from fear and rumor.
- Bring in outside expertise to assist in constructive dialogue.

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Related Issue: Confidentiality

- ODE Guidance: “School districts should work closely with the student and the student’s parents in devising an appropriate plan regarding the confidentiality of the student’s transgender identity.”
- All students have a right to privacy under the Family Educational Rights and Privacy Act (“FERPA”). Schools must be careful to safeguard confidential student information. Staff should only know if there is a “legitimate educational interest” in the information.

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Related Issue: Confidentiality

- Some families and students want to openly share information with teammates. Obtain a written release from parents, and be clear in advance about what information will be shared.
- Work with student and family on any disclosure plan. Community education efforts must not focus on particular students.

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Related Issue: Overnight Trips

- Transgender students should not be treated differently based on their transgender status and should be allowed to access the accommodations of their identified gender.
- Work closely with student, family, and chaperones to determine the right option.
- Appropriate to take student safety and student privacy concerns into consideration.
- Be mindful of the student's confidentiality under FERPA.

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Related Issue: Suicide Risk

- Oregon Youth Suicide Awareness Campaign sponsored by OSAA, OATS, OACA: "Lesbian, gay, bisexual and transgender youth are at high risk of bullying and their rates of suicide attempts and completions also are significantly higher than other youth. Parental acceptance of gender identity and sexual orientation is a protective factor, as are actions by adults to eliminate bullying or assault against LGBT youth."
- <http://www.osaa.org/docs/health-safety/SuicideAwareness-Article2.pdf>

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Related Issue: Gender Neutral and Gender Fluid Students

- Developing area of law and policy
- Very little precedent, but quickly growing.
- Challenging in the athletic context; consult with OSAA and legal counsel

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QUESTIONS?

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