



Guidelines for Creating Policies for Transgender Children in Recreational Sports

All children deserve the opportunity to play recreational sports. This publication provides basic information about how athletic associations and teams can create policies that welcome all children, including transgender children. This document specifically addresses policies appropriate for transgender children prior to adolescence.

Transgender Children

Medical experts recognize that attempting to change the gender identity of a transgender child is harmful and counterproductive. Based on current medical knowledge and practice, many more parents are supporting their transgender children and allowing them to be themselves while still in childhood.

Gender Transition for Transgender Children

The recommended medical treatment for transgender children is to allow them to live in their affirmed gender. This requires that the child's gender identity be respected and accepted by others. It is imperative for the health and well being of children with this complex medical condition that they be allowed to live fully in the appropriate gender role in all aspects of their lives, including when participating in social activities such as sports. Transgender children should be called by their preferred name, be referred to by gender-appropriate pronouns, and be permitted to wear clothing and uniforms that match their affirmed gender. Medical treatments such as hormones and surgery are not appropriate medical treatment for transgender children prior to adolescence.

Transgender Children Should Be Allowed to Play Sports in Their Affirmed Gender

All young people should have the opportunity to play recreational sports and have their personal dignity respected. Transgender young people are no different. In fact, because transgender young people often must overcome significant stigma and challenges, it would be particularly harmful to exclude them from the significant physical, mental and social benefits that young people gain by playing recreational sports. The impact of such discrimination can be severe and can cause lifelong harm. In contrast, permitting transgender children and youth to participate in recreational sports in their affirmed gender can provide an enormous boost to their self-confidence and self-esteem and provide them with positive experiences that will help them in all other areas of their lives.

Is It Fair to Allow Transgender Children to Compete in Their Affirmed Gender?

Gender segregation in sports is based, in part, on a concern about unfair physical advantages. Most existing policies for adult transgender athletes focus on the competitive advantage that male hormones may provide due to their effect on the musculoskeletal system. Those policies require that adult transgender athletes compete in the gender role consistent with their hormonal make-up. In preadolescent children, however, hormonal levels do not differ significantly between the sexes. Therefore, no hormonally-based advantage or disadvantage between girls and boys exists. Prior to puberty, boys do not have any physical advantages over girls because of their physiology. Gender segregation in children's sports is purely social. It is not based on any significant physiological differences.

From a medical and physiological perspective, there is nothing about being transgender that gives any particular child a physical advantage over others. Because of gender stereotypes, boys may have social advantages based on being encouraged more than girls to be physically daring and adventurous and to play sports, but they do not have any inherent physical advantages. The individual variation with respect to athletic ability within each gender is much more

significant than any group differences between boys and girls. Transgender children display the same individual variation in size, strength, and athletic ability as other youth. There is no reason based on considerations of fairness that would justify preventing a young person who is transgender from playing sports in the child's affirmed gender.

Why Shouldn't Children's Recreational Sports Adopt the Same Standards Used by the Olympics and Some Professional Sporting Leagues?

Guidelines developed for adult transgender athletes cannot be applied to children. The International Olympic Committee and some professional sporting leagues require transgender athletes to undergo hormone therapy and genital reconstructive surgery in order to compete.¹ As explained above, children who are transgender do not undergo medical treatment other than living in their affirmed gender role. Requiring medical treatments such as hormone therapy or surgeries before permitting a young child to participate in sports in their affirmed gender role would exclude them from participation, since young children cannot receive such treatments prior to the onset of puberty. Therefore, recreational leagues for children must develop age-specific policies to ensure that all children have equal access to sports.

A national think tank including high school and NCAA athletic officials and other experts is convening in October 2009 to create model policies for the inclusion of transgender athletes of all ages. Those model policies will be distributed to athletic associations nationally to provide guidance about how to adopt age-appropriate policies in recreational and school-based sports. Until that time, our

¹ See Int'l Olympic Committee, *Statement of the Stockholm consensus on sex reassignment in sports* (2003). Even with respect to adults, the current International Olympic Committee policy has been widely criticized as overly restrictive and outdated, and it is currently under review. See, e.g., Jill Pilgrim et al., *Far from the Finish Line: Transsexualism and Athletic Competition*, 13 *Fordham Intell. Prop. Media & Ent. L.J.* 495 (2003); Meghan Daum, *The Case of Caster Semenya*, *Los Angeles Times*, September 17, 2009.

recommendation for an interim policy for transgender children in recreational sports is as follows:

A transgender child should be allowed to play on the team of the child's full time gender role. To qualify for such participation, the family must submit a letter from either the child's therapist or doctor stating the child's diagnosis and confirming the child's gender identity.

Medical Confidentiality

An athlete's transgender status is confidential medical information. Therefore, it is not permissible or legal for this status to be communicated to anyone without the written permission of the family. Refusing to allow a transgender child to fully participate on the team that matches the child's gender presentation and gender identity may result in the unlawful disclosure of private protected information. Unnecessary disclosure of a child's personal and medical history to any third parties (such as other team members, parents, or members of the public) without consent may violate rights to privacy under state and federal law.²

Other Legal Considerations

Prohibiting children from playing on recreational teams consistent with their gender identity may also violate laws and policies that prohibit sex, gender identity and disability discrimination.

Sex discrimination: Refusing to respect a child's gender identity may constitute prohibited sex discrimination under Title IX, public accommodation laws, or league non-discrimination policies. Title IX prohibits sex discrimination in publicly funded schools. Many federal and state courts have held that discrimination on the basis of an individual's transgender status constitutes unlawful sex

² See *Powell v. Schriver*, 175 F.3d 107 (2d Cir.1999) (disclosure of transgender prisoner's history violated constitutional privacy right); *Diaz v. Oakland Tribune, Inc.*, 139 Cal.App.3d 118 (1983) (newspaper liable for public disclosure of transgender student's history).

discrimination.³ In addition, in many states, courts and administrative agencies have held that recreational sporting leagues are subject to laws barring sex discrimination in public accommodations.⁴ Federal courts have likewise held that sporting leagues are public accommodations for purposes of federal law.⁵

³ See *Schroer v. Billington*, 577 F.Supp.2d 293 (D.D.C. 2008); *Dep't of Fair Employment & Housing v. Marion's Place*, 2006 WL 1130912 (Cal. Fair Employment & Housing Comm'n 2006); *Shepley v. Lazy Days RV Center, Inc.*, Order No. 06-016 (Fla. Comm'n on Human Relations 2006); *Mitchell v. Axcan Scandipharm, Inc.*, 2006 WL 456173 (W.D. Pa. 2006); *Enriquez v. W. Jersey Health Sys.*, 777 A.2d 365 (N.J. Super. Ct. App. Div. 2001); *Doe v. Yunits*, 2000 WL 33162199, (Mass. Super. Ct.), *aff'd sub nom.*, 2000 WL 33342399 (Mass. App. 2000); *Maffei v. Kolaeton Industry, Inc.*, 626 N.Y.S. 2d 391 (N.Y. Sup. Ct. 1995); *Declaratory Ruling on Behalf of John/Jane Doe* (Conn. Human Rights Comm'n 2000).

⁴ See *Anderson v. Little League Baseball, Inc.*, 794 F.Supp. 342 (D. Ariz. 1992) (applying federal public accommodations statute to Little League); *Nat'l Org. for Women, Essex County Chapter v. Little League Baseball, Inc.*, 318 A.2d 33 (N.J. Super. Ct. App. Div.) (holding that Little League is subject to non-discrimination laws as a public accommodation), *aff'd*, 338 A.2d 198 (N.J. 1974); see also *Loewenstein v. Amateur Softball Ass'n of America*, 418 N.W.2d 231 (Neb. 1988) (holding that recreational sporting league playing in privately-owned or city-owned parks is subject to non-discrimination laws as a public accommodation); *Office of the Attorney General, Florida, Attorney General Opinion 2008-58* (October 29, 2008) (holding that the use of a municipal park by a recreational sporting league is subject to the non-discrimination provisions of Florida's public accommodations statute).

⁵ See *Martin v. PGA Tour, Inc.*, 204 F.3d 994 (9th Cir. 2000); *Matthews v. National Collegiate Athletic Association*, 179 F.Supp.2d 1209 (E.D. Wash, 2001).

Gender identity discrimination: Furthermore, a growing number of state and local jurisdictions have also adopted laws that specifically prohibit discrimination on the basis of gender identity in public accommodations and/or schools.⁶

Disability discrimination: Failure to accommodate transgender athletes may also violate state disability laws. Several state courts and agencies have held that gender identity disorder (GID) is a disability. Therefore, failure to provide a reasonable accommodation to children with GID is unlawful.⁷ In one case, for example, a state court held that refusing to permit a transgender child to attend school as a girl and be treated as a girl in all respects discriminated on the basis of disability because forcing her to come to school as a boy “would endanger her psychiatric health.”⁸

⁶ At present, states with specific protections for transgender children in schools or public accommodations include California, Colorado, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington and the District of Columbia. More than one hundred municipalities around the country also prohibit gender identity discrimination, including, for example, Atlanta, GA, Bloomington, IN, Broward County, FL, El Paso, TX, Jefferson County, KY, Kansas City, MO, and Scranton, PA. For a list of all municipalities that prohibit gender identity discrimination, see Transgender Law & Policy Institute & The National Gay and Lesbian Task Force, Scope of Explicitly Transgender-Inclusive Anti-Discrimination Laws, http://www.thetaskforce.org/downloads/reports/fact_sheets/TI_antidisc_laws_7_08.pdf.

⁷ See *Jean Doe v. Bell*, 754 N.Y.S.2d 846 (N.Y. Sup. Ct. 2003); *Enriquez v. W. Jersey Health Sys.*, 777 A.2d 365 (N.J. Super. Ct. App. Div. 2001); *Doe v. Yunits*, 2000 WL 33162199, (Mass. Super. Ct.), *aff'd*, 2000 WL 33342399 (Mass. App. 2000); *Evans v. Hamburger Hamlet & Forncrook*, 1996 WL 941676 (Chi. Com. Hum. Rel. 1996); *Smith v. City of Jacksonville Correctional Institution*, 1991 WL 833882 (Fla. Div. Admin. Hrgs. 1991); *Jane Doe v. Electro-Craft Corporation*, No. 87-B-132 (N.H. Sup. Ct. 1988).

⁸ *Doe v. Yunits*, 15 Mass. L. Rep. 278 (Mass. Super. Ct., Feb. 26, 2001).

Glossary of Terms

Affirmed gender: the gender that corresponds with a transgender child's gender identity and desired gender presentation, rather than the child's biological sex.

Gender identity: a person's internalized, deeply felt sense of being male or female, which may differ from the person's biological sex. Because gender identity is internal and personally defined, it is not visible to others, but is determined by the individual alone. Most people have an early sense of their gender identity, and if it is not consistent with their anatomical sex they may begin expressing this identity between the ages of two and four.

Gender presentation: the way we express our gender to others, such as through clothing, hairstyles, mannerisms, how we speak, how we play, and our social interactions and roles.

Transgender: refers to persons whose gender identity does not match their birth sex. For example, a child who self-identifies as a girl but is biologically male.

Transition: when a person changes outwardly from one gender to another and lives in accordance with their gender identity.