

Reference Guide for Transgender Policy

CIAC Transgender Policy

Page 54 – Article IX - Rules of Eligibility and Control for Boys and Girls High School Athletics in Connecticut: Section B. Transgender Participation

The CIAC is committed to providing transgender student-athletes with equal opportunities to participate in CIAC athletic programs consistent with their gender identity. Hence, this policy addresses eligibility determinations for students who have a gender identity that is different from the gender listed on their official birth certificates.

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. Accordingly, when a school district submits a roster to the CIAC, it is verifying that it has determined that the students listed on a gender specific sports team are entitled to participate on that team due to their gender identity and that the school district has determined that the expression of the student's gender identity is bona fide and not for the purpose of gaining an unfair advantage in competitive athletics.

Students who wish to participate on a CIAC gender specific sports team that is different from the gender identity listed on the student's current school records are advised to address the gender identification issue with the local school district well in advance of the deadline for athletic eligibility determinations for a current sports season. Students should not be permitted to participate in practices or to try out for gender specific sports teams that are different from their publicly identified gender identity at that time or to try out simultaneously for CIAC sports teams of both genders.

Nothing in this policy shall be read to entitle a student to selection to any particular team or to permit a student to transfer from one gender specific team to a team of a different gender during a sports season. In addition, the CIAC shall expect that, as a general matter, after the issue of gender identity has been addressed by the student and the school district, the determination shall remain consistent for the remainder of the student's high school sports eligibility. The CIAC has concluded that this criterion is sufficient to preclude the likelihood that a student will claim a particular gender identity for the purpose of gaining a perceived advantage in athletic competition.

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Shipman and Goodwin Recommendation

Shipman and Goodwin reviewed CIAC's policy accounting for applicable legal considerations and related guidance. They concluded that "gender fluid" is itself a form of gender identity or expression, and therefore that the team selection policy for these students should reflect the fluid nature of the gender fluid identity or expression to the maximum extent possible. We recognize that it would be impractical and disruptive (and perhaps susceptible to gamesmanship) to permit gender fluid students to switch back and forth from one gender-specific team to the other at their discretion (which theoretically could result in daily alternation between teams). Accordingly, we have proposed two possible "open enrollment" periods. The key is that the "open enrollment" period should be the shortest increment of time -- a CIAC season or a school year -- that is practical, so that the rule will be consistent with the protected status of gender fluid students.

Conn. Gen. Stat. § 46a-64(a)

(a) It shall be a discriminatory practice in violation of this section: (1) To deny any person within the jurisdiction of this state full and equal accommodations in any place of public accommodation, resort or amusement because of race, creed, color, national origin, ancestry, sex, gender identity or expression, marital status, age, lawful source of income, intellectual disability, mental disability or physical disability, including, but not limited to, blindness or deafness of the applicant, subject only to the conditions and limitations established by law and applicable alike to all persons; (2) to discriminate, segregate or separate on account of race, creed, color, national origin, ancestry, sex, gender identity or expression, marital status, age, lawful source of income, intellectual disability, mental disability, learning disability or physical disability, including, but not limited to, blindness or deafness.

Conn. Gen. Stat. § 46a-51(21) Defining Gender Identity

(21) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

Commission on Human Rights and Opportunities Consultation (3/1/2019)

On March 1, 2019, Executive Director, Glenn Lungarini, consulted with the legal division of Connecticut's Commission on Human Rights and Opportunities (CHRO). The attorney for CHRO stated that they were aware of the controversy surrounding transgender athlete participation in Connecticut and have been monitoring the topic closely. The CHRO attorney stated that their office was very pleased with the policy, actions, and position that CIAC has taken on transgender athlete participation. He affirmed Shipman and Goodwin's interpretation of Conn. Gen. Stat. § 46a-64(a), Conn. Gen. Stat. § 46a-51(21), and gender fluidity. Furthermore, he confirmed that Title IX supports transgender athletes being provided the

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opportunity to participate with the gender of which they identify. Finally, the CHRO attorney stated that if CIAC changed its policy to be more restrictive of transgender participation we may be susceptible to discriminatory action.

Office of Civil Rights (Boston Office) US Department of Education Consultation (3/4/2019)

On March 4, 2019, Executive Director, Glenn Lungarini, consulted with a compliance officer with the Office of Civil Rights (OCR, Boston office). In that consultation, we discussed Title IX, Connecticut discriminatory statutes, and Connecticut gender identity statutes. The OCR compliance officer confirmed that Title IX supports transgender athletic opportunities with the gender of which a person identifies. She further stated that such support does not require hormone therapy nor gender reassignment surgery. Based on Connecticut general statutes, she affirmed previous interpretations of gender identity we must consider for compliance. The OCR compliance officer stated that our current CIAC appears to be in compliance with Title IX and Connecticut law. She could not speculate whether a change to a more restrictive policy would violate Title IX as such changes were hypothetical and not current written policy. She did affirm that CIAC's current policy appears to be in full compliance for both cisgender and transgender athletes. Finally, she stated the U.S. Department of Education should be releasing updated Title IX language in the future which further addresses transgender participation.

Review of State Association Policies for Transgender Athletic Participation

A review of state association policies revealed a close connection to state law with reference to federal law, for those who have policies. Forty-three states currently have transgender policies defined within their state athletic association by-laws. Eighteen of those states have policies which do not require medical hormones or surgical requirements. Eighteen states require an individual review and make determinations on a case-by-case basis. Seven states require participants adhere to the gender identified on their birth certificate or require surgery and a hormone wait period. For thirty-six states that do not require hormone therapy or surgical modification, even those considering classification on a case-by-case basis, the following legal references are adhered to:

- Fourteenth amendment Equal Protection Clause which guarantees equal protection under the law and prohibits discrimination based on arbitrary criteria, including prohibition against inequities rooted in sexual orientation or gender identity.
- Title IX of the Education Amendments of 1972 which is a broad-based anti-gender-discrimination law increasingly being used to provide legal recourse for LGBTQ students.

State Laws Prohibiting Discrimination in Schools Based on Sexual Orientation or Gender identity

As of December 2018, 14 jurisdictions had enacted such legislation including California, Colorado, Connecticut, Indiana, Illinois, Massachusetts, Maine, Minnesota, New Jersey, New York, Oregon, Vermont, Washington, and the District of Columbia.

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FAQ:

- Can CIAC require transgender male-to-female athletes participate unattached? No
- Can CIAC recognize a cisgender and transgender champion? No
- Can CIAC create a separate field for transgender athletes? No
- Why are transgender athletes allowed to participate in the sex category with which they identify? CT law and Title IX compliance
- Is there a safety issue when transgender male-to-female athletes participate in female team sports? No, girls already participate with boys in contact sports in CT